NO. 190 - December 2022 - ISSN: 1829 7692

E-MAGAZINE

KONSTITUSI

PROTECTING THE COPYRIGHT

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CONSTITUTIONAL HISTORY CENTER

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Editor's Foreword

At the end of November 2022, the Constitutional Court (MK) decided on the constitutionality of the norms regarding the sold flat of songs in the Copyright Law. Application submitted by PT Musica Studios. The Panel of Constitutional Justices in its Decision Number 63/PUU-XX/2022 stated that it rejected PT Musica Studios' petition in its entirety.

The decision in the case of judicial review of the Copyright Law was added by a dissenting opinion from Constitutional Justice Suhartoyo. The hearing for examining this case was also added by various opinions from various parties: the President, the House of Representatives, the Related Parties, as well as the statements of experts and witnesses presented by the parties in the online hearing.

So, what are the implications of this decision for the creators and actors of the show, as well as for the phonogram producers? The December 2022 edition of the Headline News rubric will thoroughly examine the case filed by PT Musica Studios.

For readers who miss the KHAZANAH rubric, now this rubric is back in the KOSTITUSI magazine. Besides, many other rubrics can be read in the KONSTITUSI magazine, including, WINDOW which discusses Mark David Chapman; REVIEW, and others.

Enjoy reading! Happy New Year 2023. Hopefully, in the new year, health, blessings, happiness, and success always surround us all!

KONSTITUSI
Number 190 ▪ December 2022

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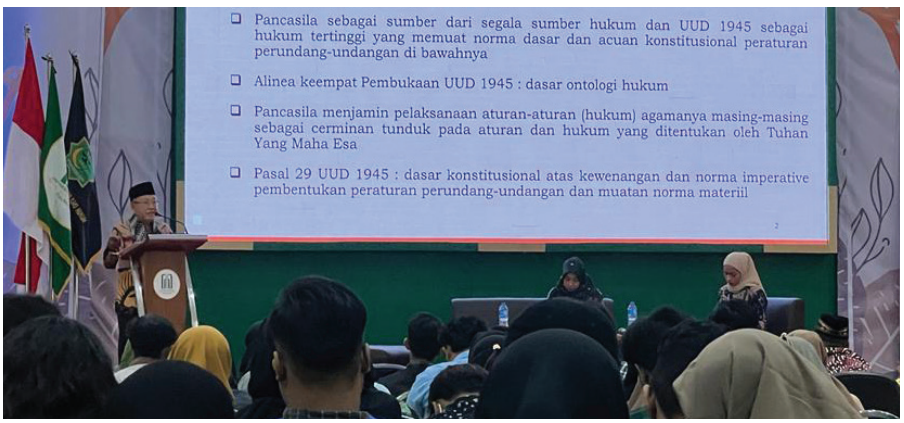
RETURN OF COPYRIGHT IN THE EYES OF THE CONSTITUTIONAL COURT

PT Musica Studios is testing the Copyright Law to the Constitutional Court (MK). The constitutional loss was due to having to return the copyrights that had been purchased with a system of sold flat. The Constitutional Court in Decision Number 63/PUU-XIX/2021 stated that they rejected all of PT Musica Studios' requests.

40 **CONSTITUTIONAL DOCUMENTATION**

THE FUNCTION OF THE CONSTITUTIONAL COURT IN ISLAMIC LAW



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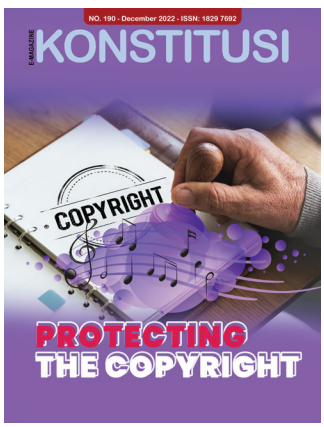
REVERSIONARY RIGHT IN THE COPYRIGHT LAW

Through Decision Number 63/PUUXIX/2021, the Constitutional Court emphasized state protection for the artist. The Constitutional Court stated the constitutional reversionary right which is regulated in Law Number 28 of 2014 concerning Copyright (Copyright Law). What is reversionary right? Simply put, reversionary rights are restrictions on the transfer of economic rights to creators and performers. From a doctrinal point of view, the reversionary right is the return of copyright to the creator within a certain period, after the rights have been handed over to another party. The return of economic rights is carried out for each transfer of rights, in the form of a written or unwritten agreement, either in the form of a sold flat and/or a transfer agreement without a time limit.



In the decision, the Constitutional Court stated that the legislator of the Copyright Law attempted to provide guarantees of protection and balance to creators and performers of copyrights that they owned exclusively, in particular the restoration of economic rights. Therefore, it is emphasized in Article 18 of the Copyright Law, "Creation of books, and/or all other written works, songs and/or music with or without text that are transferred in sold flat and/or transfer without a time limit, the Copyright switch back to the Creator when the agreement reaches 25 (twenty-five) years." Why is this provision true? In this decision, the Court emphasized some matters, as follows:

First, the bargaining position between creators and/or performers is often unequal. They are weaker than producers. Hence, there is the potential for misuse of circumstances to arise which results in the non-sustainable use of economic rights, in the form of compensation in the form of royalties, by the creators and/or performers of the performance. Arrangements regarding the transfer of copyright back to creators and performers are a manifestation of the state's role in providing guarantees and protection for exclusive rights owned by creators and performers.

Second, this regulation places creators and performers to have the economic benefits of their creations sustainably. Besides, they can continue to produce works of art or creations that are of high quality and can compete. That is the state's way of guaranteeing legal protection and certainty for the economic rights and moral rights of creators and owners of related rights so that they do not erode the motivation of creators and owners of related rights to create.

Third, such a regulation does not conflict with the principle of freedom of contract. According to the Constitutional Court, the principle of freedom of contract can be limited by law. Therefore, the time limit for sale agreements of sold flat or without a time limit for the transfer of creations or works of performers, even though they have been agreed before the Copyright Law, must be fully understood only in the context of this Law, not in the context of agreements on material rights in general.

Fourth, the regulation is given to restore economic rights, because, within the period of the copyright transfer agreement, the transferee has received a benefit value, which constitutionally the creator also gets the same opportunities and benefits to achieve equality and justice between moral rights and economic rights.

In essence, the Constitutional Court underlined that the Copyright Law was made to provide recognition, protection guarantees, and legal certainty that is balanced and fair in the legal relationship between creators, performers, and producers. Hence, anyone involved in copyright matters, understand this carefully and thoroughly this decision. This is the constitutional interpretation of the Constitutional Court. It is final and binding. Long Live Constitution!

Window

IMAGINE

I D.G.Palguna

"Peace is not something you wish for; It's something you make, something you do, something you are, and something you give away"

John Lennon

There are many ways to become famous, such as by becoming a killer of a famous person. Intentionally or not, that's the way Mark David Chapman took it. On December 8, 1980, two days before the commemoration of the 32nd World Human Rights Day, a man was killed by a bullet accidentally fired from a gun. Mark David Chapman pulled the trigger for that gun. The man who was picked up by Elmaut by Chapman's gun was John Lennon, one of the fabulous four—the nickname for the legendary band from Liverpool, England, The Beatles. The world was immersed in deep sorrow. Ironically, Chapman is a big fan of The Beatles. On that fateful day, Chapman followed Lennon as he was walking to his apartment in New York. "Mr. Lennon...," called Chapman. When Lennon was about to turn around, "Bang! bang! Bang!". Four bullets hit the body of the man who dreamed of the brotherhood of all humanity. In court, Chapman argued with his legal team because Chapman unilaterally changed the plea of not guilty on grounds of insanity defense or mental disorder defense—a person cannot be held responsible for his actions because he was suffering from a temporary mental illness when the act was committed—to plead guilty. According to Chapman, the reason was that God had told him to plead guilty and he would not change that confession, whatever the sentence that would be handed down to him. The judge—who believed Chapman was fit enough to undergo trial—finally sentenced Chapman to 20 years to life in prison along with an order to provide mental health care facilities.

Even though Chapman has been found guilty and imprisoned, until now the true motives for why he had the heart to commit this heinous act have never really been revealed. Chapman has always provided capricious information. Apart from the reason he was "ordered by God", he also said, "because he wanted to be 'someone' and nothing happened to stop him". But he also said that he held a deep grudge against his wife for not taking any action, for example reporting to the police, even though he knew that her husband had a gun and was planning to kill John Lennon. Meanwhile, in one of the hearing for his parole attempt—which since 2000 had been held more than 12 times and was always rejected—he had stated that there were actually some other names on the "persons to be killed" list, such as friends (as well as rivals) Lennon in the Beatles, Paul McCartney, actress Elisabeth Taylor, former first lady Jacqueline Kennedy (widow of the late President John F. Kennedy), and President Ronald Reagan. There was no specific explanation from Chapman as to why these people were on his must-kill list other than the fact that they were famous people. However, according to James Gaines, an experienced journalist who is also

a historian, and one of the few people who managed to conduct in-depth interviews with Chapman, it does not indicate that Chapman's motive for killing Lennon was to become famous.

However, despite the dozens of different and ever-changing reasons, there is one interesting statement from Chapman which not only can be considered as showing a motive, he killed Lennon but also proves that he is not as mentally ill as many people imagine.

"He made us imagine if there were no ownership when he owns millions of dollars and yachts and farms and country houses, laugh at people like me who believe all those lies and buy his records and helps build most of their lives around music." Chapman's statement refers to one of Lennon's famous singles, Imagine. Perhaps this statement caused him to be influenced by the character Holden Caulfield, a fictional character who hates hypocrisy, in the novel The Catcher in the Rye by J.D. Salinger—the novel he was reading at the scene when the police arrested him so there is the impression that Chapman had deliberately waited for the police to arrest him while reading the novel.

Imagine was composed in 1971—a year after the Beatles broke up. Here's how the complete lyrics sound: Imagine there's no heaven/ It's easy if you try/ No hell below us/ Above us only sky/ Imagine all the people/ Living for today/ Ah... Imagine there are no countries/ It's not hard to do/ Nothing to kill or die for/ And no religion too/ Imagine all the people/ Living life in peace/ hu...You may say I'm a dreamer/ But I'm not the only one/ I hope someday you'll join us / And the world will be as one... Imagine no possessions/ I wonder if you can/ No need for greed or hunger/ A brotherhood of man... Imagine all the people/ Sharing all the world/ hu... You may say I'm a dreamer/ But I'm not the only one/ I hope someday you'll join us/ And the world will be as one.

By many observers, Imagine has been named John Lennon's greatest work in his entire musical career after separating from the Beatles. Imagine was also the last song Lennon ever sang live. Until now, Imagine is considered to have been sung by more than 200 singers – and still has not lost its magnetism. Outside the world of music, Imagine has also established its excellence in the world of film. Those of you who have watched the movie, The Killing Fields will probably never forget this song. In the biographical drama film released in 1984 which tells the story of the atrocities of the Khmer Rouge Regime in Cambodia (1975-1979), who killed more than a million lives by director Roland Joffe, Imagine cries bitterly at the end of the film – movie coda. Apart from feeling like voicing the mournful screams of

souls who are at a loss for words to condemn the atrocities of a regime, in this film, Imagine has even become a kind of signature element – people immediately think of Killing Fields when they hear Imagine and vice versa.

Many observers say Imagine summed up Lennon's view of the world at that time: his anti-war stance, his promotion of humanity, and his political views – which had begun to seep into his compositions since he was with the Beatles in the final years leading up to their split. Lennon described the song as anti-religious, anti-nationalistic, anti-conventional, and anti-capitalistic, "yet because it was coated in sugar, it was accepted." However, Imagine's success did not immediately eliminate controversy and resistance. Partly due to Lennon's comments, and partly due to the lyrics of the song. After describing his song as anti-religious, anti-nationalistic, anti-conventional, and anti-capitalistic, he jokingly concluded, "You could say, in essence, this song is a communist manifesto." The comments, while meant as a joke, drew the ire of conservatives who took the remarks seriously. Meanwhile, some church leaders in the United States were infuriated by fragments of the lyrics "imagine there's no heaven" and "and no religion too." These people also mobilized the masses to burn vinyl records containing The Beatles' recordings five years earlier which were triggered by Lennon's statement saying The Beatles were more popular than Jesus.

There is one more story that many people do not know – because it is seldom reported. On the day after the September 11, 2001, terrorist attacks, Imagine was added to the "no-play list" of mass media corporation Clear Channel. What's the article? It is said that because of the fragment of the lyrics of "no heaven".

Despite all the controversies it has caused, Imagine has "awakened" again and shown how humanity grows and is united by a song in the twinkling of an eye after Immanuel Kelly sang it on the singing competition, X Factor. It was broadcast live by Australian Television in mid-2011. Kelly's voice is indeed good, the thing that makes this song even more "animated" is Kelly's own life story. Immanuel Kelly was born in Iraq. He was found by two soldiers in a cardboard box in a war zone with underdeveloped limbs – arms and legs. He was then taken to the Mother Theresa Orphanage in Baghdad. Over there, he met his brother, Ahmed – whose limbs also did not grow properly. They lived in the orphanage for more than seven years before a humanitarian worker, Moira Kelly, who heard their heartbreaking story, decided to adopt the two siblings and bring them to Australia. At the X Factor contest, Imagine was actually a backup song. Kelly was originally going to sing another song. Yet, for some reason, the "main" song could not be sung. "My mom always said everything happens for a reason, and I thought I suddenly started singing that song for a reason." Of course, he meant by "Mother" his adoptive mother, Moira, who looked so emotional and proud. Kelly then continued her story which made the entire audience unable to hold back their feelings of emotion. "As a kid coming from a war zone, going through war and witnessing the madness and suffering of life… singing songs about peace, to be honest, never really crossed my mind (at the time). This song is not just a song. It is a means. It was used properly, by the right people, this song is a vehicle to create, uplift, inspire and motivate." The entire audience, including the judges, and even those watching on the television screen, gave a standing ovation as soon as Kelly finished singing this thrilling song. Imagine has changed Immanuel Kelly's life forever.

When I was about to end this article, I suddenly remembered the song Rehumanize Yourself by The Police. The new wave rhythmic song is about how a person can simply be cut off from his humanity when he is in a certain situation. So, said The Police, every time we need to re-humanize ourselves. Do you agree? Try to play and listen to the song. *****

Catalog

PUBLISHER
KONSTITUSI PRESS (KONPRESS)

Gedung Mahkamah Konstitusi RI
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ISBN : 978-602-7995-28-9
Ukuran : 14,8 x 21 cm
Tebal : 422 Halaman
Terbit : 2014

Harga : Rp112.000

Catatan Hukum
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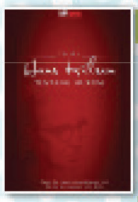

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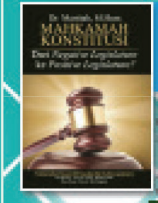

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SPECIAL JURISDICTION IN INDONESIA: HIGHLIGHTS OF THE CONSTITUTIONAL COURT'S DECISION ON ADMINISTRATIVE COURT FOR THE SETTLEMENT OF GENERAL ELECTIONS

Bagus Hermanto, S.H., M.H.
Observer, Researcher, and Constitutional Law Activist, Faculty of Law, Universitas Udayana

Approaching a political year becomes a momentum that drains energy, thought, and often brings the Indonesian people into conflict over differences in choices and political beliefs in the contestation of general elections. Even though general elections are a means of legitimacy in a country's democratic process, Indonesia faces various problems due to the frequent changes in general election law, the large number of voters with simultaneous general elections, the complexity of the pre, during and post-election stages, as well as the potential for fraud. In addition, violations in the process of general elections left various polemics, discourses, and academic debates regarding the need for general elections that are able to create a healthy democratic process and maintain the continuity of the rule of law order in post-reform Indonesia.

With the existence of a special court in the settlement of general elections, some academics have tried to express their thoughts on adopting this institution. The process of democratization and institutionalization of state administration after the reform and changes to the 1945 Constitution of the Republic of Indonesia encouraged the existence of *a de vierde macht* (fourth branch of power) which was marked by the many independent state institutions and even the existence of a special judicial phenomenon which also reflected a paradigmatic shift in state administration in Indonesia. One of the interesting writings expressed by Prof. Melissa Crouch (UNSW) in an article entitled "The Challenges for Court Reform after Authoritarian Rule: The Role of Specialized Courts in Indonesia"—published by Constitutional Review (Vol. 7, Iss. 1, pp. 1-25), departing from legal reform —constitutional reform, legislative reform, and large-scale institutional reform—in the world of justice also promotes the establishment of a culture of judicial independence, judicial control over court budgeting and administration, free from executive interference, and much greater efficiency in the execution of decisions and justice, resulting in the realization of 12 special judicial institutions in his research

(pp. 10-11). A special judicial institution has the privilege of having special jurisdiction, a unique selection process and composition of judges, as well as investigative and evidentiary procedures that are far more efficient than general courts. We are also faced with the problem of corruption which cannot be separated from the body of judges, lack of professionalism, incompetence, the potential for the entry of certain interests through certain judges, and even a form of compromising the needs of Indonesian donors as well as agreements or international demands on the Indonesian constitutional order.

The special election court regulation is an interesting issue, considering Article 157 paragraph (1), Article 157 paragraph (2), and Article 157 paragraph (3) of Law Number 10 of 2016 concerning Pilkada, which mandates the establishment of a special judicial body before the implementation of simultaneous national elections, temporarily carried out by the Constitutional Court to avoid a legal vacuum. This regulation is part of the dynamics of interpretation of the Constitutional Court in handling disputes over general election results, especially regional head elections, marked by the first, Constitutional Court's Decision Number 072-073/PUU-II/2004 (vide pp. 125-130 Decision 072; p. 114 -115 Decision 073) which became the initial milestone for the Court's consideration in interpreting the Regional Election through the principle of unity of constitution could be an expansion of the meaning of Election from Article 22E of the 1945 Constitution based on Article 18 Paragraph (4) of the 1945 Constitution or not formally depending on open law policies by legislators. Thus, authority can be delegated in disputes over regional election results to the Constitutional Court (if there is an expansion) or to the Supreme Court (as additional authority) (can refer to BMK May June 2005, No. 10, pp. 7-8). This decision prompted the establishment of Law Number 27 of 2007 concerning General Election Organizers, (Article 236C) of Law Number 12 of 2008 as an amendment to the Election Law, and (Article 29 paragraph (1) letter e) of Law Number 48 of 2009 concerning Judicial Powers, as an interpretation of the open policy of forming laws, regional elections as an election regime, and the authority for disputes was transferred from the Supreme Court to the Constitutional Court. Interestingly, in the second decision, the Constitutional Court Decision Number 97/PUUXI/2013, based on the interpretation of the original intent of Article 22E of the 1945 Constitution, regional elections are not included as an election regime. Besides, the limited authority for state institutions is determined by the Constitution and cannot be added or reduced by law and court decisions including the Constitutional Court Decision which actually took the role of forming the 1945 Constitution. Thus, quo articles were declared unconstitutional, but the Court still has the authority temporarily until the formation of a special judicial institution for post-conflict local elections (can refer to the June 2014 Edition of the Konstitusi Magazine, p. 9 -16).

Against these two previous Constitutional Court Decisions, it became an academic discourse considering that there were differences in understanding, which previously according to the Constitutional Court Decision Number 072-073/PUU-II/2004 handed over to the legislators in regulating the interpretation of Regional Head Election and settlement of disputes over Regional Head Election results. It was shifted by being annulled through Constitutional Court's Decision Number 97/PUU-XI/2013 which confirms the interpretation of the formulation of Article 22E and Article 18 paragraph (4) of the 1945 Constitution. However, Article 157 paragraph (1)-(3) of Law Number 10 of 2016 concerning the Regional Head Election describes the legislators -The law follows up on the Constitutional Court's Decision

Number 97/PUU-XI/2013 with the existence of a special court for Regional Head Election. Interestingly, for the third time, the Court interpreted the Constitutional Court Decision Number 85/PUU-XX/2022 which was based on the Constitutional Court Decision Number 55/PUU-XVII/2019 as a revised decision by revealing the debate that developed during the discussion of amendments to the 1945 Constitution and can be justified as long as the stance is changed. The Constitutional Court is based on substantial reasons. These things then become some things that underlie the Constitutional Court's effort in ensuring substantive justice is realized in the settlement of regional election disputes but also become input for the process of forming a special court that must reflect legal needs, following a just, democratic, legal, democratic country, and legal benefits.

The regulation of Law Number 10 of 2016, is based on changes to Article 157 of Law Number 10 of 2016 from the initial formulation in Legislation Number 1 of 2014 which left it to the authority of the Supreme Court. Furthermore, Law Number 8 of 2015 formulated the same norms as Law Number 10 of 2016, which was handed over to a special judicial body, and for the time being the handling was handed over to the Constitutional Court, before a special court was formed to handle regional election disputes which were regulated simultaneously initially in 2027 (Article 201 paragraph (7) Law 8/2015) to November 2024 (Article 201 paragraph (8) Law 10/2016). The steps have not materialized to form this special judicial institution. Thus, it triggered the problem that the mandate of the Constitutional Court Decision and the previous law must be properly considered and followed up. As in the case of setting up a special regional election court, it should have been formed before the simultaneous regional elections were not carried out. It is not implemented, it is not in the National Legislation Program, nor in various legislative drafting and procedural administrative steps to form institutions, procedural law, aspects of the composition of the recruitment of judges, aspects of human resources, and judicial administrative infrastructure facilities. Besides, other formal technical aspects to forming a special Regional Head Election court were not followed up until the Constitutional Court Decision Number 85/PUU-XX/2022 had been read. Thus, the possibility of stagnation in the Pilkada process would not occur if these things had been attempted by the legislators of the law and the government (vide p. 31-39).

A valuable lesson is the process involving the judiciary, especially in the establishment of a special judiciary. According to Prof. Jimly Asshiddiqie, the formation of a special court must be based on efforts to fulfill a sense of justice for the wider community and primarily must be able to streamline law enforcement efforts in certain areas within the structural differentiation of judicial institutions (Special Courts, in the KY Special Court Black White Paper, 2013, p. 1, 6), even though this is based on studies that are not comprehensive, as well as a lack of integration and a strong coordinating framework between government organs, thus encouraging the growth and addition of special courts in Indonesia. Thus, this is not more important than restructuring the function of adjudicating for effectiveness and the efficiency of the judiciary.

The special court is a necessity and can be justified. However, if it does not fulfill the spirit of strengthening the fulfillment of a sense of justice, it even tends to hinder the effectiveness of the judiciary. Besides, it can trigger different problems leading to budgetary political issues. The problem of new institutions includes a new special court within the framework of reform, even the fundamental issue of the need for law enforcement to create certainty, benefit, and especially justice. Lessons can be drawn from the journey of special judicial arrangements for Regional Head Election which were not formed institutionally, but received confirmation of annulment through the dynamics of interpretation of the Constitutional Court's establishment in the three decisions, both Constitutional Court's Decision 072-073/PUU-II/2004, Constitutional Court's Decision Number 97/PUU-XI /2013, and the Constitutional Court's Decision 85/PUU-XX/2022. It is expected that in the future, by affirming itself as an institution authorized to examine, try and decide on disputes over the results of regional elections, it will confirm the status of the Constitutional Court to become an institution for justice seekers regarding the results of simultaneous regional elections.

MAHKAMAH KONSTITUSI
REPUBLIK INDONESIA

MERDEKA MELAKSANAKAN DHARMA

PHI
2022

HAPPY *Mother's Day*

DECEMBER 22, 2022

INDONESIAN WOMEN TO
EMPOWERED INDONESIA

COPYRIGHT RETURN FR
COURT'S PERSPECTIVE

PT MUSICA STUDIOS REVIED THE COPYRIGHT LAW TO THE CONSTITUTIONAL COURT (MK). THE CONSTITUTIONAL LOSS THAT WAS POSSIBLE WAS DUE TO HAVING TO RETURN THE COPYRIGHTS THAT HAVE BEEN PURCHASED BY THE SOLD FLAT SYSTEM. THE CONSTITUTIONAL COURT IN DECISION NUMBER 63/PUUXIX/2021 STATES REFUSING THE ENTIRE PETITION OF PT MUSICA STUDIOS.

Nindyo Pramono as the applicant's expert gave his statement online at the hearing to test Law Number 28 of 2014 concerning Copyright, Tuesday (6/14) in the Courtroom Room of the Constitutional Court. Photo: Public Relation/Ifa.

OM CONSTITUTIONAL

PT Musica Studios conducted a binding contract into a copyright transfer agreement without a time limit with a creator named Rudy Loho on May 8, 1995. The transfer of copyright used a perfect flat pay system. The agreement is for the Purchase of Commercial Rights for the song "Datanglah Kasih" and the song "Mau Apa Lagi" composed by Rudy Loho.

The agreement stipulated the granting of full commercial rights to the use of the two songs to PT Musica Studios for use in various versions in the form of selection, karaoke, compact disc, laser disc, and others in an unlimited time and place. Thus, the Copyright for Rudy Loho's songs belongs to PT Musica Studios because Rudy Loho as the Creator has surrendered his copyright forever, without a time limit.

Syahdan, on October 16, 2014, the House of Representatives passed Law Number 28 of 2014 concerning Copyright (Law 28/2014) replacing Law Number 19 of 2002 concerning Copyright (UU 19/2002). The steps taken by the House of Representatives and the government to replace the law are a form of state protection for the economic rights and moral rights of creators.

With the issuance of Law 28/2014, PT Musica Studios must return the copyright to Rudy Loho after the agreement reaches 25 years plus 2 years (8 May 2022). Provisions regarding the period for returning copyrights are regulated in Article 18, Article 30, and Article 122 of Law 28/2014.

PT Musica Studios feels aggrieved by the enactment of the copyright refund provisions. Furthermore, the Director of the Company PT Musica Studios, Gumilang Ramadhan through Ot to Hasibuan's attorney, applied for a review of Law 28/2014 to the Constitutional Court (MK). The application was received at the Court's Registrar's Office on November 12, 2021. Furthermore, the application was recorded in the Electronic Constitutional Case Registration Book (e-BRPK) with Number 63/PUU-XIX/2021 on November 29, 2021. The material was tested to the Constitutional Court, namely Article 18, Article 30, and Article 122 of Law 28/2014 against the 1945 Constitution.

Copyright Returns

PT Musica Studios (Petitioner) in the substance of its petition argued that Article 18, Article 30, and Article 122 of Law 28/2014 contradict Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

Article 18 Law 28/2014

"Creations of books, and/or all other written works, songs and/or music with or without text that are transferred in a sale agreement and/or transfer without a time limit, the copyrights are transferred back to the creator when the agreement reaches a period of 25 (twenty five) years."

Article 30 of Law 28/2014

"Works of performers in the form of songs and/or music whose economic rights are transferred and/or sold, the ownership of economic rights is transferred back to the performers after a period of 25 (twenty five) years."

Article 122 Law 28/2014

"At the time this Law came into force, the agreement on the creation of books and/or other written works as well as songs and/or music with or without text that was transferred in a sale agreement of flat pay/or transferred without a time limit that was made before the enactment of this Law -This Law is returned to the Creator with the following conditions:

a. Flat pay agreements which at the time of enactment of this Law have reached a period of 25 (twenty five) years, the Copyrights will be returned to the Authors 2 (two) years from the enactment of this Law;
b. Flat pay agreements which at the time of enactment of this Law have not reached the period of 25 (twenty five) years, the copyrights will be returned to the Creator after reaching 25 (twenty five) years since the signing of the sale agreement referred to add 2 (two) years."

According to the Petitioner, the enactment of the provisions of Article 18 and Article 30 of Law 28/2014 is a limitation on the form of the agreement and the period of ownership and/or transfer of copyright between the creator and the Petitioner. The provisions of the norms of these articles violate the legal principle of freedom of contract. So far, the transfer of copyrights between creators and/or performers and the Applicant has been carried out using a perfect flat pay system or sold flat. Therefore, this is contrary to the constitutional mandate regarding the right of every person to have personal rights as referred to in Article 28H paragraph (4) of the 1945 Constitution and also contrary to the principles of guarantee, protection, and fair legal certainty and equal treatment before the law as provisions of Article 28D paragraph (1) of the 1945 Constitution.

"So, for example, if an object has been controlled by the property rights of the buyer, then he can use the object for any purpose and of course, there is no time limit regarding its ownership. We interpret it as easily as possible if I buy a car or pen, then of course as long as the transaction is done correctly, then the pen when I buy it becomes my property and I have the authority to use it forever and I have authority over this object, "said the attorney The petitioner, Otto Hasibuan, at the hearing held at the Constitutional Court on Monday (12/13/2021).

According to the Petitioner, the return of copyright that has been transferred through a flat pay agreement and/or an indefinite agreement, to an agreement made before the entry into force of Law 28/2014 as stipulated in Article 122 of Law 28/2014, is contrary to the principle of non-retroactivity (legality) of law and is an act of arbitrariness of the authorities or the state. Thus, this is contrary to the constitutional mandate regarding guarantees for everyone to be able to defend their property rights as protected by the provisions of Article 28H paragraph (4) of the 1945 Constitution and also does not provide fair legal certainty before the law as provided for in Article 28D paragraph (1) of the Constitution. 1945;

In addition, according to the Petitioner, the norms of Article 18, Article 30, and Article 122 of Law

28/2014 create contradictions. The provisions stipulated in this article are contrary to the norms of Article 63 paragraph (1) letter b of Copyright, thereby creating multiple interpretations and legal uncertainty for the Applicant. Therefore, this is contrary to the mandate of legal protection and certainty as outlined in Article 28D paragraph (1) of the 1945 Constitution.

Therefore, the Petitioner requests the Court to declare Article 18, Article 30, and Article 122 of Law 28/2014 contrary to Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution and do not have binding legal force.

The Reform of Copyright Law

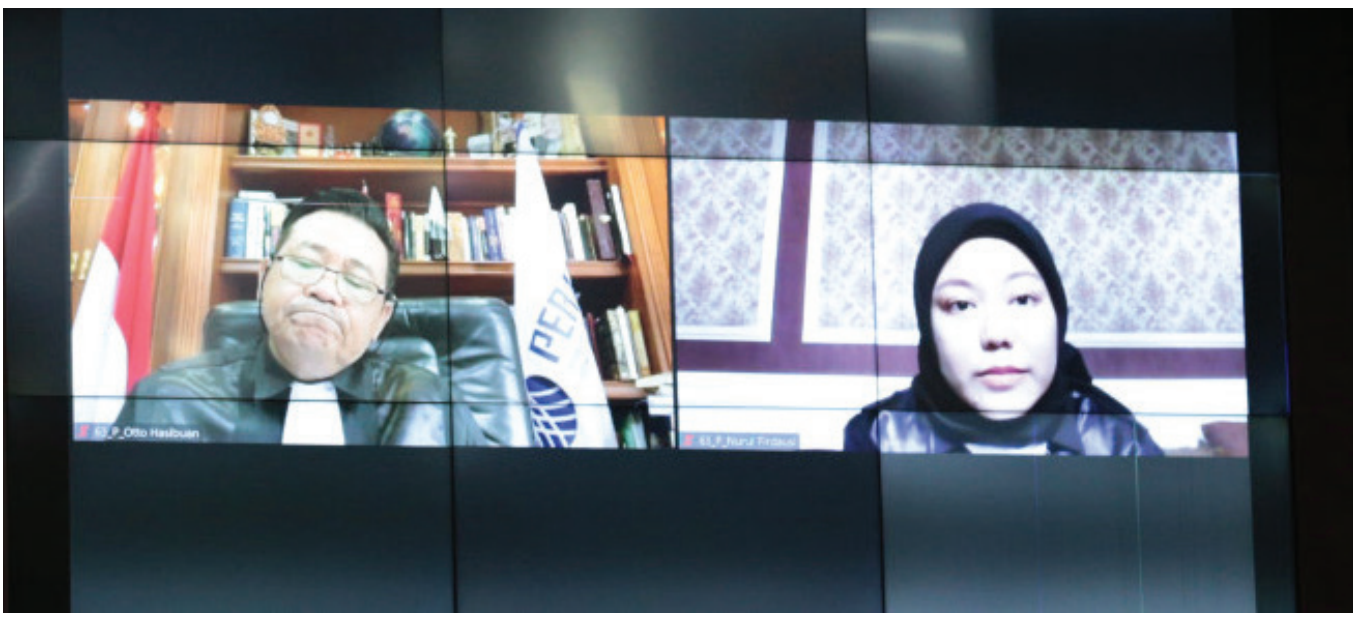
The Court in its legal considerations stated that Law 28/2014 was the result of an update to Law 19/2002 concerning Copyright (UU 19/2002). These updates intend to better reflect legal developments and societal needs, especially in the face of the rapid development of science, technology, art, and literature. Therefore, it is necessary to increase the protection and guarantee of legal certainty for creators, copyright holders, and related rights owners, as well as to encourage the growth of the national creative economy.

In addition, the importance of reforming copyright regulations is a form of Indonesia's participation as a member country in various international agreements related to the protection of copyrights and related rights. One of them is Indonesia's membership in the Berne Convention for the Protection of Artistic and Literary Works (Berne Convention on the Protection of Artistic and Literary Works), which was later ratified through Presidential Decree No. 18 of 1997 concerning Ratification of the Berne Convention for the Protection of Artistic and Literary Works.

Economic and Moral Rights

Legal considerations of the Constitutional Court also emphasized that through Law 28/2014, it was reaffirmed that copyright consists of economic rights and moral rights. These two rights are integral parts that cannot be separated from one another. The intended moral rights are rights that are eternally attached to the creator, which cannot be transferred as long as the creator is still alive, but the implementation of these rights can be transferred by testament or other reasons following the provisions of laws and regulations after the creator dies.

In the transfer of the exercise of moral rights, the recipient may waive or refuse the exercise of his rights provided that the relinquishment or refusal of the exercise of said rights is stated in writing. Meanwhile, economic rights as stipulated in



Otto Hasibuan and Nurul Firdausi the two attorneys for the applicant explained the petition to review the Copyright Law case Number 63/PUU-XIX/2021, Monday (13/12/2021), which took place online. Photo: Public Relations/Ilham WM

Members of the House of Representatives of the Republic of Indonesia Supriansa and Min Usihen Ginting as Expert Staff to the Ministry of Law and Human Rights in the Social Sector provided information online at a hearing on the review of Law Number 28 of 2014 concerning Copyright, Monday (3/14). Photo: Public Relation/Ifa.

the provisions of Article 8 of Law 28/2014, are the exclusive rights of creators or copyright holders to obtain economic benefits from works. Everyone who exercises economic rights is obliged to obtain permission from the creator or copyright holder as stipulated in Article 4, Article 5, and Article 8 of Law 28/2014.

Flat Pay/Sold Flat

According to the Court, copyright is placed as an exclusive right or monopoly right. It is the right to make use of the commercial value of the work itself. No one may take advantage of such commercial value except with the permission of the creator. However, monopoly rights can be "lost" due to a sale and purchase, because the creator no longer has commercial rights to his work.

The term "Flat Pay" is not recognized in Law 19/2002, including in the previous law. There is not a single article that explicitly regulates flat pay. Except that in Article 3 of Law 19/2002, it is stated that copyright can be transferred or transferred, either in whole or in part due to a written agreement. This provision is again regulated in Article 16 paragraph (2) of Law 28/2014 which basically states that copyright as an intangible movable object can actually be transferred either through inheritance, grants, endowments, wills, written agreements, or other causes as regulated in law.

Furthermore, in Article 26 paragraph (1) and paragraph (2) of Law 19/2002, it is stated in principle that the copyright to a work remains in the hands of the creator, as long as the buyer of the creation is not handed over to the creator of the entire copyright. Even though copyright is an object that can be agreed upon, which contains a transfer of ownership of the copyright, in making a copyright agreement it cannot be separated from the concept of moral rights that are inherent in the creator and are eternal. This is what distinguishes copyright as an object in Law 28/2014 from material rights according to the Civil Code (KUHPerdata). Thus, the character of copyright is considered *sui generis*. This is because copyright is not attached to movable or immovable objects. Copyright is an intangible movable object.

Therefore, in pledging a copyright object, an individual cannot fully base it on the provisions of the Civil Code because the nature of copyright material law is different from the nature of material law according to the Civil Code. Thus, it must be specifically regulated in a law that specifically regulates copyright.

The Creator's Bargaining Position is Weak

The Court is of the view that, in the context of copyright transfer

agreements, before the enactment of Law 28/2014, the bargaining position of creators and performers was often unequal (weak) when dealing with phonogram producers. In general, phonogram producers have greater economic power than performers and performers. Meanwhile, at that time, the conditions for creators and performers were generally not in good economic condition. Thus, phonogram producers tended to pervert the situation (*misbruik van omstandigheden*) by taking advantage of their stronger bargaining position to determine the contents of the agreement to the creators and performers of the performance. In this regard, a flat pay agreement and/or the indefinite transfer of a copyrighted work are detrimental to the interests of the creator and performer.

Besides, developments in information and communication technology can be used as a tool for phonogram producers or copyright buyers to distribute works or copies that have been transferred in order to obtain optimal benefits. In this regard, the determination of the period in the norms of Article 18 and Article 30 of Law 28/2014 was formulated because it has been shown that the sale agreement has harmed the interests of the creators and performers of the show. The copyright buyer generally has an interest in getting a large profit from the flat pay system because of the transfer of economic rights from the creator to the copyright buyer. This condition must be protected and balanced by imposing restrictions on agreements or transfer of economic rights to a creation of a book and/or all other written works, songs, and/or music with or without text within a period of 25 (twenty five) years. After this period ends, the ownership of economic rights returns to the creator.

In international practice, restrictions on the transfer of economic rights to creators and performers are known as reversionary rights. Doctrinally, the reversionary right is the return of copyright to the creator within a certain period after the rights have been handed over to another party. It means that the return of economic rights is carried out for each transfer of rights in the form of a written or unwritten agreement, either in the form of a flat pay agreement and/or a transfer agreement without a time limit. The transfer of copyright back to the intended creators and performers is a manifestation of the state's role in providing guarantees and protection of the exclusive rights owned by creators and performers. Therefore, setting limits on the transfer of copyright through copyright reassignment is not a new legal action, because this practice has already been implemented in pioneering countries for the protection of intellectual property, especially in the 181 member countries of the Berne Convention.

In this regard, the legislators of Law 28/2014 seek to provide guarantees of protection and balance to creators and performers of copyrights they own exclusively, in particular the restoration of economic rights. Thus, creators and performers can also have the economic benefits of their creations sustainably. This is conducted so that the creators and performers of the show can continue to produce copyrighted works or works of high quality and are able to compete nationally and internationally.

Restrictions on the Freedom of Contract Principle

Until now, the freedom of contract principle remains an important principle in every agreement. However, along with developments, the freedom of contract principle is not unlimited. In

Marcell Siahaan the attorney for the Related Party gave his statement online at the hearing of Law Number 28 of 2014 concerning Copyright, Wednesday (18/05). Photo: Public Relation/Ifa.

Khrisna Kuncahyo Winardi, the attorney of Piyu Padi gave his statement online at the hearing for Law Number 28 of 2014 concerning Copyright, Monday (3/21) in the Courtroom Room of the Constitutional Court. Photo: Public Relation/Ifa's.

Indonesia, there are some restrictions on the implementation of the freedom of contract principle through legislation and court decisions.

Doctrinally, several factors affect the occurrence of restrictions on the freedom of contract principle. It is due to: first, the strengthening of the influence of the teachings of good faith, where good faith is not only in the implementation of the agreement, but also must exist at the time the agreement is made; second, the development of the teaching of misuse of circumstances (*misbruik van omstandigheden*); third, the development of an economic field that forms trade associations, legal entities, corporate companies and other groups of people, such as workers, farmers, and musicians; fourth, the growing trend in society that wants social welfare; and fifth, the government's desire to protect the public interest or the weak party. Besides these factors, the Court emphasized that the principle of freedom of contract can be limited by law.

Not unlike the case with agreements in general, the limiting factors on the principle of freedom of contract also apply to copyright transfer agreements in the form of flat pay/or transfer without a time limit. As legal protection for the transfer of copyrights, flat pay and/or transfer agreements without a time limit must also be based on good faith based on decency, custom, or law as contained in Article 1338 paragraph (3) and Article 1339 of the Civil Code. If it is associated with the substance regulated in the norms of Article 18 and Article 30 of Law 28/2014, it can be understood that the regulation of restrictions on the transfer of copyright is because the object promised in the transfer of copyright as an intangible movable object contains special things.

Based on the Court, the creator and/or performer of the performance should have their copyright protected. One form of protection of economic rights and moral rights for creators and/or performers is by limiting the transfer of economic rights in the form of flat pay/or transfer without a time limit. The transfer restriction is intended to prevent the practice of abusing the conditions in the copyright transfer agreement in the form of a flat pay and/or transfer without a time limit. Therefore, the Petitioner's argument was contradicting the norms of Article 18 and Article 30 of Law 28/2014 with the principle of legal certainty as guaranteed by Article 28D paragraph (1) and 28H paragraph (4) of the 1945 Constitution is groundless according to law.

Non-Retroactivity Principle

Furthermore, the Court considered the Petitioner's argument stating that the norm of Article 122 of Law 28/2014 violated the principle of non-retroactivity because the provisions for returning copyrights to creators should not have applied to sales and/or transfer agreements without a time limit that had

been made between the Petitioner and the creator before Law 28/2014 this applies. According to the Petitioner, this is contrary to Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution.

According to the Court, the enactment of Article 122 of the Transitional Provisions is a logical legal consequence of the enactment of the provisions of the norms of Article 18 and Article 30 of Law 28/2014 which require legal certainty. Thus, there is no void when it has to be implemented. Therefore, provisions are needed to bridge the legal conditions that occurred before Law 28/2014 came into force.

The return of economic rights based on matters that were not originally regulated by regulations is not a violation of the principle of non-retroactivity. It is because agreements on intangible movable objects are part of a special agreement, which cannot be equated with material agreements in general. Thus, the re-transfer of copyrighted works and performance works that have reached 25 years as stipulated in the norms of Article 18 and Article 30 of Law 28/2014, then determines the mechanism for the transfer back in the transition period from the old law to Law 28/2014, is a form affirmation of legal protection of the moral rights and economic rights of the creators and actors of the show. Such a regulation is not meant to ignore the rights of the buyer who has received the beneficial value (economic value) within the 25 years of the transfer agreement. Hence, according to the Court, the Petitioner's argument regarding the transitional provisions of Article 122 Law 28/2014 is groundless according to the law.

Not Multi-interpreted

The Court considered the Petitioner's argument stating that the provisions of the norms of Article 18, Article 30, and Article 122 of Law 28/2014 lead to multiple interpretations when linked to Article 63 paragraph 1 letter (b) Law 28/2014. Thus, it contradicts Article 28D paragraph (1) of the 1945 Constitution Against this argument of the Petitioners, the Court stated that the link between the provisions of the norms of Article 18, Article 30, and Article 122 of Law 28/2014 with Article 63 paragraph (1) letter b of Law 28/2014 is the state's effort in providing recognition, guarantees of protection and legal certainty that balanced and fair in the legal relationship between the creator and performer and the phonogram producer. Basically, the provisions of the norms of Article 63 paragraph (1) letter b of Law 28/2014 have different norms from the provisions of the norms of Article 18 and Article 30 of Law 28/2014. The norms of Article 63 paragraph (1) letter b Law 28/2014 are more related to the substance of Article 58 paragraph (1), where Article 63 paragraph (1) letter b provides economic rights protection, while Article 58 paragraph (1) provides Copyright Protection for Works, economic

Ahmad M. Ramli and OK Saidin as Experts from the Related Parties were sworn in online to provide information at the hearing to review law Number 28 of 2014 concerning Copyright, Monday (08/08). Photo: Public Relation/Ifa.

Constitutional Justice M Guntur Hamzah and Constitutional Justice Daniel Yusmic during a hearing to pronounce the decision on Law Number 28 of 2014 concerning Copyright, Wednesday (11/30) in the Court's Courtroom. Photo: Public Relation/Ifa.

rights protection for Performers and Phonogram Producers for 50 years. Meanwhile, copyright protection for works lasts for the lifetime of the creator and continues for 70 years. Therefore, Article 63 paragraph (1) letter b Law 28/2014 is the basis and legal certainty for the protection of economic rights for 50 years, and Article 58 paragraph (1) is the basis and legal certainty for copyright protection for creations for 70 years.

Because the provisions of Article 63 paragraph (1) letter b of Law 28/2014 have different norms from the provisions of Article 18 and Article 30 of Law 28/2014, there is no contradiction in understanding which results in multiple interpretations of the application of norms as argued by the Petitioner, nor is it detrimental the constitutional rights of the Petitioners guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Thus, the Petitioners' argument is groundless according to the law.

The Court considers that the norms of Article 18, Article 30, and Article 122 of Law 28/2014 do not conflict with Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution. Hence, the Petitioner's argument is groundless according to the law. As a result, in the decision, the Court rejected the request filed by PT Musica Studios.

"The verdict/Decision, adjudicate, reject the Petitioner's petition in its entirety," said Chief Justice of the Constitutional Court Anwar Usman accompanied by eight constitutional judges when reading excerpts of Ruling Number 63/PUU-XIX/2021, on Wednesday (30/11/2022) in the Courtroom MK Plenary. ■

NUR ROSIHIN ANA.

"DISSENTING OPINION"

Nine constitutional judges are not unanimous in deciding on the judicial review of the Copyright Law. Constitutional Justice Suhartoyo has a dissenting opinion.

"Allegedly the provisions of the norms of Article 18 of Law 28/2014 are only picking up real cases of flat pay and discontinue agreements and/or transfers without a time limit, which were agreed before Law 28/2014 came into effect. It can be proven after I traced the norms of Law 19/2002 which did not none contain a sale agreement and/or transfer without a time limit," Suhartoyo said reading the dissenting opinion of Decision Number 63/PUU-XIX/2021.

the reasons for the emergence of the norm of Article 122 Law 28/2014 have the impact of being able to reach legal events in the form of a flat pay agreement and/or transfer without a time limit made before the norm of Article 122 Law 28/2014. This fact also confirms that Article 122 of Law 28/2014 clearly violates the principle of enforcing laws that should not be treated retroactively.

Therefore, if the parties feel aggrieved by legal actions in making a sale and purchase agreement with an indefinite termination and/or transfer system before Law 28/2014 was enacted, then they can resolve the dispute through alternative dispute resolution, arbitration, or a court of law. In this case is commercial court, as Article 95 paragraph (1) and (2) of Law 28/2014. It is because the substance of the problem contained is an inter-private dispute in which the state should not intervene, instead of forcing it to enforce provisions of the norms of Article 122 UU 28/2014 a quo retroactively, even with the argument that the nature of copyright is inherent in the principles of "reversionary rights" and "general principles of intellectual property law".

Furthermore, concerning the provisions of the norms of Article 30 of Law 28/2014, according to Suhartoyo, these norms are forward-looking, which means that after the entry into force of Law 28/2014, there is no longer any recognition of the copyright transfer system by way of sale and/or transfer without a time limit in the true sense. It is without separating moral rights and economic rights. "so, the provisions of this norm serve as confirmation that there is a *contraditio in terminis* between the provisions of the norms of Article 18 and Article 30 of Law 28/2014 a quo," continued Suhartoyo while stating that the Petitioner's request should have been partially granted.

Variety of Opinions

THE COPYRIGHT JUDICIAL REVIEW IS HELD 15 TIMES. THE VARIETY OF OPINIONS FROM THE PARTIES ENLIVENS THE HEARING ROOM ONLINE

SUPRIANSA
MEMBER OF COMMISSION III HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF INDONESIA

"A quo law is intended to provide better protection arrangements for the economic rights of creators and/or owners of related rights, including limiting the transfer of economic rights in the form of sold flats."

MIN USIHEN GINTING
EXPERT STAFF OF SOCIAL AFFAIRS OF THE MINISTRY OF LAW AND HUMAN RIGHTS

"The purpose of the formulation of Articles 18 and 30 of the Copyright Law is to correct unfair business practices and to provide legal certainty in legal relations between phonogram producers and performers so that the economic rights of creators and performers are guaranteed."

NINDYO PRAMONO
PETITIONER EXPERTS

"Sold flat/flat pay occurred before Copyright Law (UUHC) and bound both parties like a law (pacta sunt servanda) which has resulted in the economic property rights of the Author and Performer being transferred to the Producer. It must be returned to the Author since there is Copyright Law a quo. Such provisions clearly violate the principle of non-retroactivity regarding the applicability of certain laws and regulations including the Copyright Law."

FAHRI BACHMID
APPLICANT EXPERTS

"Article 18, Article 30, and Article 122 of Law Number 28 of 2014 Concerning Copyright have applied retroactively to the Petitioner's previous legal actions. In this way, they have caused material losses to the Applicant and created legal uncertainty which in essence elementally contrary to the 1945 Constitution of the Republic of Indonesia."

JUSAK IRWAN SUTIONO
THE PETITIONER'S WITNESS

"With the provisions of Article 18, Article 30, and Article 122 of Law 28/2014, Asirindo, which manages approximately 78 record companies that have rights to more than 30,000 songs, is now unable to circulate. Especially if you take the analogy of the 30,000 songs, if you calculate the recording costs starting from production, studio rental, etc., it reaches IDR 300,000,000,000."

AGUS SARDJONO
PRESIDENTIAL/GOVERNMENT EXPERT

"The provisions regarding reversionary rights contained in Articles 18 and 30 have the aim of protecting the interests of those with weak positions in transactions between creators and producers of phonograms. This provision is not only enforced in Indonesia through Article 18 and Article 30 but

also applied in other countries, although with a different narrative."

ASPRINDO

RELATED PARTIES

"The application of the provisions of Article 122 of the Copyright Law results in the related party's property rights (in the form of a copyright to a work of 'song and/or music with or without text') have already owned by the related party based on a sold flat and/or transfer without a time limit. made before this Copyright Law came into effect, are forced to return to the Author. Thus, the guarantee for Related Parties to be able to maintain their Property Rights as protected by Article 28 H paragraph (4) of the 1945 Constitution is taken away."

SATRIYO YUDI WAHONO (PIYU PADI)

RELATED PARTIES

"Currently, the digital music industry has provided enormous income for song catalog owners, including Evergreen's hits that are still heard today, even though these songs were composed decades ago. We can imagine the huge losses that will be experienced by songwriters who have purchased their rights by way of a split sale and do not return to the songwriters after the 25-year deadline expires. Record Companies will continue to exploit and make huge profits from the song, and it will cause a very big loss for the Songwriters.

INDRA LESMANA

RELATED PARTIES

"Related Party I (Indra Lesmana) was harmed by the practice of selling and sold flat that occurred in the decade 1980 to 1990, at which time the means and technology for producing and distributing songs were very limited and only owned by record companies (labels). "

AHMAD Z. IKANG FAWZI

RELATED PARTIES

"Related Party II (Ikang Fawzi) has contracts with several record label companies. The implementation of sold flat/flat pay agreement was carried out in such a wild and greedy way by the record label companies. What's even sad is the attitude of label companies or producers that closes itself to creators, especially what is experienced by Related Parties II, where label companies are difficult to find, even asking for clear and clear information regarding the use of the songs they have created is constrained by various reasons."

AHMAD M RAMLI

RELATED PARTY EXPERTS

"From the great potential of these copyrighted objects, the presence of the state is important. Thus, these great works do not stagnate and become unproductive because they have already been sold flat. Many songs are held hostage by sold flat/flat pay agreements that prevent their creators from doing anything about them. Therefore, it is time for mutualistic collaboration between creators and related rights to welcome the rise of digital music in the future based on the principle of general reversionary rights which is also practiced in various countries."

OK. SAIDIN

RELATED PARTY EXPERTS

"Copyright consists of moral rights and economic rights which are an inseparable unit. It is a property whose enjoyment can be transferred to third parties, but only limited to the enjoyment that has economic value and not to moral rights that follow economic rights anywhere the copyright exists. Therefore, the diversion must be limited to a certain time. If the transfer has exceeded the stipulated time limit, the copyright (of course related rights) must be returned (reversionary rights) to the creator (also to the relevant rights holder).

FESMI, PAMMI, ARDI, RAI

RELATED PARTIES

"Indonesia is not the only country that regulates the return of economic rights to creators and/or performers. Many countries, both in the common law and civil law systems, have implemented arrangements regarding the return of economic rights through different mechanisms, but for similar purposes, namely to provide opportunities for creators and/or performers to receive more worthy appreciation.

PRAISE RAHAESITA
RELATED PARTIES

"One example of the practice of sold flat agreements experienced by Related Party I (Puji Rahaesita) is a song composed by Related Party I entitled *Mabuk Cinta* which was released in 1984 where Related Party I only got paid IDR 75,000. 00 (seventy five thousand rupiahs). Even though during that era, the song *Mabuk Cinta* was awarded the HDX Awards (currently AMI Awards) with sales of approximately 10 (ten) million copies."

SLAMET ADRIYADIE
RELATED PARTIES

"The song created by Related Party II (Slamet Adriyadie) entitled Widuri which was released in 1976 was transferred through a sold flat agreement where Related Party II only received a payment of Rp. 10,000.00 (ten thousand rupiah). The song later became one of the best-selling songs of that era, and to this day, the song Widuri is still heard by many people, but Related Parties II has never received the appropriate award."

SUGITO
RELATED PARTIES

"Related Party III's (Sugito) children's song entitled *Kucing Meong-Meong* is an example of the practice of sold flat sales agreements experienced by Related Parties III, where Related Parties III only got paid once and at once in the amount of IDR 500,000.00."

RICHARD KYOTO
RELATED PARTIES

"The song entitled Love which was transferred in 1986 with a sold flat agreement, Related Party IV (Richard Kyoto) only received a one-time fee of IDR 100,000.00. Then, in 1989 the song *Kasih* which was composed by Related Parties IV was used by PT Musica Studios to be sung by Hetty Koes Endang with a keroncong version which was then marketed in Malaysia and became one of the best-selling songs at that time.

DHARMA ORATMANGUN
RELATED PARTY WITNESS

"In the period from the 1980s to the 1990s and to the 2000s, it turned out that there were a lot of work agreements or contracts, and even just passing a receipt was a means used in terms of transferring song copyrights, and this put songwriters in a marginalized position."

EKO SUTRISNO (EKO SAKY)
RELATED PARTY WITNESS

"In the world of dangdut music, I have produced many works and published many dangdut artists. One of my works is *Jatuh Bangun*, sung by Kristina and Nita Thalia, *Goyang Heboh*, and lots of my hits... Sometimes I feel sad and ashamed of my big name in music because I have never felt what I have done."

ERROS DJAROT (SUGENG W)
RELATED PARTY WITNESS

"The sold flat scheme makes the position of producers and creators unbalanced. In practice, the producer directly offers a sold flat to the creator so that there is no bargaining power from the creator to be able to review the agreement offered. Furthermore, the creators are not given any other choice other than a sales agreement, the offer made by the producer or the record company only accepts the sale, or the composer's song is not purchased at all. ■

NUR ROSIHIN ANA.

IDENTITAS PT MUSICA STUDIOS

Debut PT Musica Studios di blantika industri musik tanah air sejak 1970. Semula, perusahaan ini bernama PT. Metropolitan Studios. PT Musica Studios (Pemohon) yang merupakan badan hukum privat ini adalah Produser atau yang dalam terminologi UU Hak Cipta disebut sebagai Produser Fonogram, yaitu: "*orang atau badan hukum yang pertama kali merekam dan memiliki tanggung jawab untuk melaksanakan perekaman suara atau perekaman bunyi, baik perekaman pertunjukan maupun perekaman suara atau bunyi lain*" (*vide* Pasal 1 butir 7 UU Hak Cipta).

Salah satu kegiatan usaha Pemohon selaku Produser adalah memproduksi Master Rekaman yang dalam UU Hak Cipta disebut sebagai Fonogram, yaitu: "*Fiksasi suara pertunjukan atau suara lainnya, atau representasi suara, yang tidak termasuk bentuk Fiksasi yang tergabung dalam sinematografi atau Ciptaan audiovisual lainnya*" (*vide* Pasal 1 butir 14 UU Hak Cipta).

Sedangkan yang dimaksud dengan Fiksasi adalah: "*perekaman suara yang dapat didengar, perekaman gambar atau keduanya, yang dapat dilihat, didengar, digandakan, atau dikomunikasikan melalui perangkat apapun*" (*vide* Pasal 1 butir 13 UU Hak Cipta).

Adapun yang direkam oleh Pemohon dan kemudian menjadi Fonogram adalah Ciptaan yang diciptakan oleh Pencipta, yaitu berupa *lagu dan/atau musik dengan atau tanpa teks*, serta Karya Pelaku Pertunjukan berupa suara vokal Penyanyi dan suara permainan alat musik yang dibawakan oleh Pemain Musik selaku Pelaku Pertunjukan.

musica.id

JUDICIAL REVIEW DECISIONS IN DECEMBER 2022

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	113/PUU-XX/2022	Formal and Material Judicial Review of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection against the 1945 Constitution of the Republic of Indonesia	Hj. Merry, S. Ag.	Withdrawn	December 20, 2022	Click Decision
2	70/PUU-XX/2022	Judicial Review of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia against the 1945 Constitution of the Republic of Indonesia	H. Irnensi, S.H., M.H., Dr. Zulhadi Savitri Noor, S.H., M.M., Wilmar Ambarita, S.H., M.Sc., Dra. Renny Ariyani, S.H., M.H., LLM., and Dra. Indrayati H S., S.H., M.H.	Grant the Petition partially		Click Decision
3	80/PUU-XX/2022	Judicial Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia	Association for Elections and Democracy (Perludem), which in this case was represented by Khoirunnisa Nur Agustyati as Chairperson of the Perludem Foundation and Irmalidarti as Treasurer	Grant the Petition partially		Click Decision
4	96/PUU-XX/2022	Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Code against the 1945 Constitution of the Republic of Indonesia	Rudy Hartono Iskandar	Denied the Petitioner's application in its entirety		Click Decision

5	82/PUU-XX/2022	Formal Judicial Review of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations against the 1945 Constitution of the Republic of Indonesia	Dr. Ismail Hasani, S.H., M.H. (Petitioner I); Dr. Laurensius Arliman S., S.H., M.H., M.M., M.Kn., M.Si. (Petitioner II); Bayu Satria Utomo (Petitioner III); The Congress of the Alliance of Indonesian Trade Unions (KASBI), represented in this case by Nining Elitos as Chairperson, and Sunarno, S.H. as Secretary General (Petitioner IV); and the Indonesian Legal Aid Foundation (YLBHI), in this case, represented by Muhamad Isnur, S.H.I. as General Chairperson, and Zainal Arifin, S.H.I. as Head of Advocacy and Networking (Petitioner V).	Denied in its Entirety		Click Decision
6	104/PUU-XX/2022	Judicial Review of Law Number 2 of 2002 concerning the Indonesian National Police against the 1945 Constitution of the Republic of Indonesia	Sandi Ebenezer Situngkir, S.H., M.H.	Unacceptable		Click Decision
7	106/PUU-XX/2022	Judicial Review Number 36 of 2009 concerning Health against the 1945 Constitution of the Republic of Indonesia	Rega Felix	Denied in its Entirety		Click Decision
8	107/PUU-XX/2022	Judicial Review of Law Number 14 of 1985 concerning the Supreme Court and Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court against the 1945 Constitution of the Republic of Indonesia	Karminah	Denied in its Entirety		Click Decision

QUESTIONING THE SECURITY OF PERSONAL DATA

The Constitutional Court (MK) held a hearing to conduct a judicial review of Law Number 27 of 2022 concerning the Protection of Personal Data (UU PDP) on Tuesday (22/11/2022). The hearing led by Constitutional Justice Saldi Isra accompanied by Constitutional Justice Suhartoyo and Daniel Yusmic P. Foekh, was held for two cases at once, namely Case Number 108/PUU-XX/2022 which was filed by Leonard Siahaan and Case Number 110/PUU-XX/ 2022 requested by Dian Leonaro Benny.

Leonard in case Number 108/PUU-XX/2022 argued that Article 1 paragraph (4), Article 2 paragraph (2), and Article 19 of the Personal Data Protection Law were considered to be contrary to the 1945 Constitution. According to the Petitioner, the Personal Data Protection Law had not provided legal protection for data users, especially for household-scale e-commerce businesses. It is because the implementation of this business, said Leonard, is vulnerable to data leaks, especially during financial transactions, which could be carried out by hackers by carrying out the cybercrime economy for incidents of data leakage. The use of information technology eases a person's personal data to be collected and transferred from one party to another without the knowledge of the personal data subject so this threatens the constitutional rights of the personal data subject. In addition, the protection of personal data belongs to the protection of human rights.

Furthermore, Dian Leonaro Benny in case Number 110/PUU-XX/2022 argued Article 15 paragraph (1) letter of the Personal Data Protection Law. This article is considered to be contrary to Article 28D paragraph (1) and Article 28E paragraph (1) of the 1945 Constitution. That data protection is treated as part of privacy protection as an individual. According to the Petitioner, privacy is related to rights that are independent and do not depend on other rights, but these rights will be lost if someone publishes personal matters to the general public.

In violation of privacy, some losses are difficult to assess. The loss suffered can interfere with personal life. Thus, the victim is obliged to obtain compensation for the loss suffered. Whereas the provisions of Article 15 paragraph (1) of the Personal Data Protection Law do not clearly and clearly explain with certainty and accuracy what is meant by "national defense and security interests". Thus, a quo article has the potential to become an article that has multiple interpretations and problems in the future and is used as justification for excluding the rights of personal data subjects.

Responding to this petition, Constitutional Justice Suhartoyo stated that the petition for Case 108/PUU-XX/2022 was necessary for the Petitioner to complete some matters, including the inconsistent position and the norms that give the Constitutional Court authority in adjudicating the quo case. Furthermore, for the application for Case Number 110/PUU-XX/2022, the Petitioner was also expected to be able to describe the constitutional reasons for Article 15 paragraph (1) of the PDP Law. Then, Constitutional Justice Saldi saw that the application for Case 108/PUUXX/2022 needed to review the rules regarding personal data that were similar to the norm being tested. (Sri Pujianti/Lulu Anjarsari P./Fitri Yuliana)

ACTIVIST QUESTIONS AMBIGUOUS PROVISIONS ON CHILD EXPLOITATION

The Constitutional Court (MK) held the preliminary hearing of the formal and material judicial review of Law No. 35 of 2014 on Child Protection (UUPA Law) on Wednesday, November 23, 2022. North Lampung activist Merry filed Petition No. 113/PUU-XX/2022.

The Petitioner, who Gunawan Pharikesit represented, stated during the hearing chaired by Constitutional Judge Enny Nurbaningsih that she felt harmed by the formation of Article 76H of the Child Protection Law (UUPA), which she believes to be neither firm nor clear (lex certa and lex stricta) due to the ambiguous sentences or other parts of the article that are very open to multiple interpretations. As a result, the petitioner's ability to take action to shape her personal and social environment was harmed, and her personal rights, recognition, guarantees, protection, and the certainty of a just law and equal treatment before the law were not fulfilled.

The North Lampung police district identified the petitioner as a person of interest as a result of Article 76H of the Child Protection Law (UUPA). She was also declared a defendant by the public prosecutor of the North Lampung District Prosecutor's Office at the District Court of Kutabumi of North Lampung. In the petitum, the petitioner requested the Constitutional Court to grant the petition in its entirety and to rule that the words "…. and/or other purposes…." in Article 76H of the Child Protection Law (UUPA) are unconstitutional based on these issues.

Constitutional Judge Suhartoyo responded to the petition by advising the petitioner to revise it. According to Suhartoyo, there is a systematic format to a judicial review petition that must be followed. He also explained the format of a judicial review petition and asked the Petitioner to elaborate on the phrase she questioned as unconstitutional. (Utami Argawati/Nur R./Andhini SF)

TEMPORARY SUSPENSION OF CERTIFICATION ALLOWANCES QUESTIONED

Gunawan A. Tuada and Abdul Kadir B, who are civil servants (PNS) at the Ministry of Education, Culture, Research, and Technology, challenged Article 51 paragraph (1), along with the phrase "In carrying out professional duties" of Law No. 14/2005 on Teachers and Lecturers (Teacher and Lecturer Law) to the Constitutional Court (MK). The preliminary hearing for case No. 111/PUU-XX/2022 was presided over by Constitutional Justices Saldi Isra, Arief Hidayat, and M. Guntur Hamzah. It took place in the plenary courtroom on Thursday, November 24, 2022.

The Petitioners revealed a concrete case that the interpretation of the a quo article was implemented as the temporary suspension of the payment of lecturers' professional allowances from 2009 to 2022. As a result, the Petitioners lost their financial rights while they were in the period of pursuing further studies at various higher education institutions in Indonesia while taking study leave. This mere interpretation is not based on the best interests of lecturers who are on study leave, especially those who are currently pursuing or plan to pursue further studies at their own expense, partially or entirely with scholarships to support the smooth process of completing their studies, even while they still have some workload for their position. Ideally, as long as they have a workload for their lecturing position, they deserve lecturer certification allowances.

In response to this petition, Constitutional Justice M. Guntur Hamzah advised the Petitioners to elaborate on the types of allowances received by lecturers. Additionally, the Petitioners are expected to include institutions that provide allowances for lecturers taking study leave. He also asked for the lecturer workload (BKD) to be submitted as evidence of the implementation of the system to show that lecturers had finished their workloads and completed their study assignments in class, both online and offline. Meanwhile, Constitutional Justice Arief Hidayat stated that study leave and study permits were different things. He hoped they would describe the differences in treatment for civil servants taking those two, as well as their duties and benefits obtained from each of these systems. (Sri Pujianti/Lulu Anjarsari P./M. Halim)

CONSTITUTIONALITY OF THE OPEN PROPORTIONAL SYSTEM IN ELECTIONS QUESTIONED

The provision on the election system as regulated in Law No. 7 of 2017 on General Elections (Election Law) was challenged materially to the Constitutional Court (MK). Petition No. 114/PUU-XX/2022 was filed by two political party representatives, namely Demas Brian Wicaksono, an executive of the Indonesian Democratic Party of Struggle (PDI-P), and Yuwono Pintadi, a member of the National Democratic Party (Nasdem), as well as four ordinary citizens, namely Fahrurrozi, Ibnu Rachman Jaya, Riyanto, and Nono Marijono. They argued that Article 168 paragraph (2), Article 342 paragraph (2), Article 353 paragraph (1) letter b, Article 386 paragraph (2) letter b, Article 420 letter c and letter d, Article 422, Article 424 paragraph (2), Article 426 paragraph (3) of the Election Law are contrary to the 1945 Constitution or unconstitutional. The Petitioners' legal counsel Sururudin conveyed the petition at the preliminary hearing on Wednesday, November 23, 2022.

The Petitioners argued that the enactment of the norms of the articles relating to the proportional election system based on the majority votes had been violated by pragmatic electoral candidates who only have the popular capital and sell themselves without ideological connection, political party affiliation, and experience in managing any political party organization or socio-politics-based organizations. As a result, when elected as members of the House of Representatives (DPR) or the Regional Legislative Council (DPRD), they tend to act for their own interest instead of representing their part. As such, there should be a party authority that determines who is eligible to become a party representative in parliament after attending political training, regeneration, and coaching party ideology.

In addition, according to the Petitioners, the a quo articles had encouraged individualism among politicians, which had led to internal conflicts within the parties. This is due to the perception that proportional representation has led to political liberalism or free competition that emphasizes individual victory in elections. Election participants are affiliated with political parties, not individuals, as stated in Article 22E paragraph (3) of the 1945 Constitution; hence political parties should compete instead of individuals.

Regarding this petition, Constitutional Justice Arief Hidayat suggested that the Petitioners describe their legal standing, especially factual and concrete loss of their constitutional rights because they only explained philosophical losses due to the implementation of the Election Law. Meanwhile, Constitutional Justice Wahiduddin Adams asked the Petitioners, six Indonesian citizens, about the losses they had suffered from the enactment of the norms being petitioned. (Sri Pujianti/Lulu Anjarsari P./Tiara Agustina)

MANOKWARI REGENT REQUESTS THE RETURN OF FOUR DISTRICTS IN TAMBRAUW

The Constitutional Court (MK) held the preliminary hearing of the judicial review of Law No. 14 of 2013 on the Amendment to Law No. 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province (Tambrauw Law) on Thursday (1/12/2022). Manokwari Regent and Deputy Regent Hermus Indou and Edi Budoyo filed petition No. 115/PUU-XX/2022, challenging Article 3 paragraph (1) and Article 5 paragraph (1) of the Tambrauw Law. The enactment of the Tambrauw Law led to the transfer of four districts, namely Amberbaken District, Kebar District, Senopi District, and Mubrani District, from the administrative area of Manokwari Regency to the Tambrauw Regency. As a result, the aspirations of the indigenous people of the Meyah and Mpoor ethnic groups as customary landowners who live and settle in the four districts are restricted, as they do not share common ethnicity, language, culture, and customs with people in the other six districts: Fet District, Sausafor District, Kwoor District, Abun District, Yembun District, and Miyah District. Therefore, the Petitioners considered that the article had violated the provisions of Article 18B paragraph (1) and paragraph (2), Article 28D paragraph (1), Article 28I paragraph (3), and Article 28I paragraph (4) of the 1945 Constitution.

In response to the petition, Constitutional Justice Suhartoyo, in his advice, said that the regional government, in this case, should have involved the regency DPRD (Regional Legislative Council) as the Petitioner. The two elements of the regional head and the regency DPRD became one entity as the petitioner. Suhartoyo then asked the petitioners to reorganize the systematics of the petition, starting from the Petitioners' profile, an elaboration of the Court's authority in Constitutional Court Regulation (PMK No. 2 of 2021), the Petitioners' legal standing as the representatives of the local government who feel their rights and authorities were harmed by the enactment of PMK 2/2021, and the description of posita and petitum. In addition, the Petitioners were also asked to explain the DPD (Regional Representatives Council) and DPRD representing elements of the government in the said region so that the Court could see the regions involved in the case.

Constitutional Justice Saldi Isra also observed the Petitioners' legal standing. In many of the Court's decisions relating to the regional formation, regional authority, and the like, the regional government, i.e., the head of the region and the DPRD, have legal standing to file a petition. Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh suggested that the Petitioners renew the power of attorney and the legal standing, which is the entry point of the petition. This needs to be properly outlined. In this petition, Petitioner I is the Regent, and Petitioner II is the Deputy Regent, so the DPRD element has not been included. He advised them to invite the DPRD as Petitioner III to meet the legal standing. (Sri Pujianti/Nur R./Muhammad Halim).

NURUL GHUFRON CHALLENGES AGE LIMIT REGULATION FOR KPK LEADERS

Nurul Ghufron, the Deputy Chairman of the Corruption Eradication Commission (KPK), challenged the age limit regulation for KPK leaders as stipulated in Article 29 letter (e) of Law Number 19 of 2019 on the Second Amendment to Law Number 30 of 2002 on the Corruption Eradication Commission (KPK Law). The Constitutional Court (MK) held an on-site and virtual preliminary hearing in Case Number 112/PUUXX/2022 on Thursday (1/12/2022) at the Panel Courtroom.

According to Walidi, the Petitioner's legal counsel who attended the session virtually, the Petitioner is an individual Indonesian citizen and the Deputy Chairman of the KPK who had been appointed after meeting the qualifications based on Law No. 30 of 2002 (the first KPK Law). Walidi claimed that the adoption of Article 29 letter (e) of the KPK Law had harmed the Petitioner's constitutional rights. The provisions of the original a quo article required that a KPK leader has a minimum age of 40 years and a maximum age of 65 years. After the amendment, the age limit is at least 50 years and 65 years at most, thus restricting the Petitioner, who is not yet 50 years old being unable to run for the leadership of the KPK for the next period. This contradicts Article 34 of Law Number 30 of 2002.

The Petitioner explained in his petition that he has had his constitutional rights violated from running for KPK leadership for the next term of office. The Petitioner claimed in his petition that the age limit for government positions requires maturity. As a result, he believes that someone with experience in a position must also be "legally qualified" to fill the position. Walidi also stated that, as a result of the enactment of Article 29 letter (e) of the KPK Law, the Petitioner had lost his right to equality in government, fair legal certainty, and equality before the law, as well as the right to obtain a job with fair treatment. For this reason, he asked the Court to declare Article 29 letter (e) of the KPK Law conditionally unconstitutional and not legally binding as long as there is no requirement of "having experience as a KPK leader."

In response to the petition, Constitutional Justice M. Guntur Hamzah advised the Petitioner to examine the posita and petitum. Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh stated that posita point 5 on page 10 and the argument for posita point 21 on page 18 were redundant. "It is exactly the same, so choose either point 5 or point 21," he said. (Utami Argawati/Lulu Anjarsari P./Raisa Ayudhita)

CONSTITUTIONALITY OF PRESIDENTIAL REGULATIONS QUESTIONED

The Constitutional Court (MK) held a preliminary hearing of the judicial review of Law No. 12 of 2011 on Lawmaking (P3 Law) on Monday, December 5, 2022. Petition No. 116/PUU-XX/2022 was filed by Bonatua Silalahi and his company PT Bina Jasa Konstruksi.

Bonatua Silalahi questioned the norms of article 1 point 6 of Law No. 12 of 2011, Article 7 paragraph (1), and Article 13 of the Lawmaking Law (P3 Law) and its elucidation. In the hearing that was held virtually, the Petitioners argued that presidential regulations can be formed without any apparent reason or mandate from superior legislation. He further explained that the Lawmaking Law is problematic because it does not mention that the position of the presidential regulation differs from that in the 1945 Constitution.

The Petitioners explained in the petition that the a quo article, which states that the Presidential Regulation (Perpres) is a new statutory regulation directly under the Government Regulation (PP) and higher than the Provincial Regional Regulations and Regional/City Regency Regulations, may create legal uncertainty for the Petitioners regarding the basis for forming the presidential regulation, particularly those to exercise government power.

Constitutional Justice Enny Nurbaningsih responded by advising the Petitioners to reconsider their legal standing. She added that whether the Petitioners act as individuals or a legal entity must be clarified. Meanwhile, Manahan MP Sitompul, a constitutional justice, advised the Petitioners to follow the Constitutional Court Regulations (PMK). (Utami Argawati/Lulu Anjarsari P./Andhini S.F.)

INTERPRETATIONS OF STATUTE OF LIMITATIONS FOR LETTER FORGERY CRIMES

The Constitutional Court (MK) held the preliminary hearing of the material judicial review of the Criminal Code (KUHP) on Tuesday, December 13, 2022, in the panel courtroom. Petition No. 118/PUU-XX/2022 was filed by private employee Juliana Helemaya (Petitioner I) and Asril, a farmer (Petitioners II). The Petitioners challenge Article 79 point 1 of the Criminal Code. Constitutional Justices Suhartoyo, Saldi Isra, and M. Guntur Hamzah presided over the hearing.

The Petitioners expressed their concerns to legal counsels Faigi'asa Bawamenewi and Ridhuan Syahputra Notatema Zai. In one concrete case, investigators from Riau Regional Police and Pekanbaru Police only used Article 79 of the Criminal Code to prosecute letter forgery. They calculated the time lapse of forged letters from when they were used. In contrast, several court decisions and legal experts have different interpretations, such as Supreme Court Decision No. 2224 K/Pid/2009 and Bandung High Court Decision No. 261/Pid/2014/PT.Bdg, and Pekanbaru District Court Pretrial Decision No. 05/Pid.Pra/2018/PN.Pbr, according to Bawamenewi.

The Petitioners believe that such differences in time lapse interpretations among law enforcers, including the National Police, prosecutors, judges, and lawyers, have reduced the protection of the rights of victims, reporters, and/or injured parties, as they do not receive fair legal certainty, as guaranteed by Article 28D paragraph (1) of the 1945 Constitution.

Constitutional Justice Saldi Isra advised on the petition's systematic format and the Petitioners' profiles, which they can see on petitions uploaded to the Court's website. He also advised them to refer to the Constitutional Court Law and the Constitutional Court regulations, which establish the Court's authority over the judicial review of the norm sought in this case. He also suggested that they elaborate on their legal standing by describing who they are, the losses they have suffered, and the constitutional rights guaranteed by the Constitution that the enactment of this norm has harmed.

Constitutional Justice M. Guntur Hamzah stated that the Petitioners should elaborate on what they requested from the change from "the term of lapse of time commences on the day after the act has been committed" to "after the act has been discovered" because the legal uncertainty caused by the provision must be detailed along with supporting arguments.

Meanwhile, Constitutional Justice Suhartoyo made recommendations on other matters, including the Constitutional Court's authority in the a quo case, which is enshrined in the Constitutional Court Law, the Judiciary Law, and the Lawmaking Law. He also expected them to observe the Court-granted petitions. (Sri Pujianti./Nur R./Tiara Agustina)

PROVISION ON RETIREMENT AGE OF REGISTRARS CHALLENGED

The Constitutional Court (MK) held a preliminary hearing for the judicial review of Law No. 7 of 2020 on the Third Amendment to Law No. 24 of 2003 on the Constitutional Court on Tuesday, December 13, 2022. Petition No. 121/PUU-XX/2022 was filed by Syamsudin Noer (Petitioner I) and Triyono Edy Budhiarto (Petitioner II).

Both Petitioners are civil servants who serve as Case Registration Administrators and Junior Registrars at the Constitutional Court. They challenge Article 7A paragraph (1) of the Constitutional Court Law. Constitutional Justice Wahiduddin Adams presided over the hearing, which was accompanied by Constitutional Justice Enny Nurbaningsih and Suhartoyo. Muhammad Zen Al-Faqih, on behalf of the Petitioners, presented the legal fact relating to the difference in the retirement ages of the Constitutional Court and the Supreme Court registrars.

In the petition, the Petitioners argued that their constitutional rights had been harmed. Petitioner I will not be able to retire at the same age as those in the Supreme Court if he becomes a substitute registrar, junior registrar, or registrar in the secretariat-general of the Constitutional Court in the future. Meanwhile, Petitioner II will not be able to retire at the same age as Supreme Court junior registrars. Similarly, if he becomes a registrar in the future, he will not be able to retire at the same age as the Supreme Court's registrar. This is despite the fact that the Supreme Court and the Constitutional Court are judicial institutions with equal standing under Article 24 paragraph (2) of the 1945 Constitution.

In addition, the Petitioners believe the norm had discriminated against them regarding the retirement age of the Registrar, Junior Registrar, and Substitute Registrar at the Constitutional Court. Therefore, they requested that the Court declare Article 7A paragraph (1) of the Constitutional Court Law unconstitutional and not legally binding if interpreted to mean that chief registrars and junior registrars retire at 67 and substitute registrars at 65.

Constitutional Justice Enny Nurbaningsih requested the Petitioners to strengthen their argument on the constitutional impairment due to the ambiguity and discrimination. Constitutional Justice Suhartoyo said the same thing. He asked the Petitioners (Petitioner I and Petitioner II) to explain their legal standing. (Utami Argawati/Lulu Anjarsari P./Andhini S.F)

BERKARYA PARTY CHALLENGES PRESIDENT AND VICE PRESIDENT'S TERMS OF OFFICE

The Constitutional Court (MK) held a material judicial review hearing of Article 169 letter n and Article 227 letter i of Law Number 7 of 2017 on General Elections (Election Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution) on Thursday, December 15, 2022. The Berkarya Party's central executive board (DPP), represented by chairman Muchdi Purwopranjono and secretary-general Fauzan Rachmansyah, filed a petition with case No. 117/PUU-XX/2022.

During the hearing, the Petitioner, represented by legal counsel, M. Malik Ibrahim, argued that the Petitioner, as a political party, has the constitutional right to nominate presidential and vice-presidential candidates, including the incumbents or those elected in the previous elections. However, Article 169 letter n and Article 227 letter i of the Election Law have limited or reduced the Petitioner's constitutional right to nominate presidential or vice-presidential candidates by regulating the requirements for presidential or vice-presidential candidates. Specifically, the articles require that presidential and vice-presidential candidates cannot have served in the same position for two terms, as supplemented by a statement letter.

According to Malik, the provisions of Article 7 of the 1945 Constitution contain the word "and," which, according to the Great Dictionary of the Indonesian Language, includes the meaning of "a connecting unit of language (words, phrases, clauses, and sentences) that are equivalent, which belong to the same type and have no different functions." Thus, the word "and" connects the phrases/sentences before and after it. In the sense that the phrases/sentences before and after are interconnected or related to each other. In addition, the provisions of Article 7 of the 1945 Constitution also contain two commas (;) which, according to the General Guidelines for Indonesian Spelling System (PUEBI), the comma (,) is used for several things, including being used before a connecting word or used to enclose additional information or serves to connect appositives. As a result, it is clear that every phrase/sentence in Article 7 of the 1945 Constitution is interconnected and cannot be interpreted otherwise.

Constitutional Justice Manahan MP Sitompul advised the Petitioner to include Constitutional Court Regulation Number 2 of 2021. Meanwhile, Constitutional Justice Daniel Yusmic P. Foekh requested that the Petitioner clarify whether the Berkarya Party is a political party contesting in the election to strengthen its legal standing. According to Daniel, legal standing is an entry point for the reasons behind the petition (posita).

Constitutional Justice M. Guntur Hamzah acknowledged that the Petitioner had elaborated and concluded the norms in depth. However, he emphasized the connection between the challenged norms and the Petitioner's constitutional impairment. (Utami Argawati/Nur R./Raisa Ayuditha)

CONSTITUTIONALITY OF THE REQUIREMENTS FOR INDONESIAN MEDICAL DISCIPLINARY BOARD MEMBERS QUESTIONED

The case of alleged malpractice during Bariatric Surgery, which resulted in the death of Dr. Gerry Irawan, Sp.OG, has been brought before the Constitutional Court (MK). On October 21, 2022, The Indonesian Medical Disciplinary Board (MKDKI) issued a decision on dr. Gede Eka Rusdi Antara, who subsequently filed a material judicial review petition of the MKDKI's authority as regulated in Law No. 29 of 2004 on Medical Practice (Medical Law). The Petitioner challenged three articles of the Medical Law in his petition No. 119/PUU-XX/2022: Article 59 paragraph (1), Article 59 paragraph (2) letter g, and Article 69 paragraph (1) of the Medical Law.

At the preliminary hearing held on Thursday, December 15, 2022, legal counsels Viktor Santoso Tandiasa and Ardiyanto Panggeso, who represented the Petitioner virtually, argued that the articles were contrary to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution. In the concrete case, based on a decision by the MKDKI, the Petitioner's registration certificate (STR) was temporarily suspended for 12 months, from October 24, 2022, to October 24, 2023, during which his medical practice was suspended. Consequently, he was dismissed from Surya Husadha General Hospital, Sanglah Denpasar Central General Hospital, and Bali Royal General Hospital.

Following that, the Petitioner filed a civil lawsuit and a criminal report with the police. The MPD only held a disciplinary hearing, the outcome of which informed the MKDKI's decision, which informed the KKI's (Indonesian Medical Council) decision. The KKI's decision cannot be reviewed or appealed if there are errors or mistakes by the medical disciplinary board in examining and deciding on complaints of alleged disciplinary violations. Viktor said the Petitioner did not receive a competent and impartial assessment of his medical practice as a result of the enactment of the provisions of Article 59 paragraph (1) and Article 59 paragraph (2) letter g of the Medical Law.

Constitutional Justice M. Guntur Hamzah stated that because the Petitioner had been punished, the constitutional impairment caused by the phrases "graduates from law school" and "in law" needed to be elaborated. He also advised the Petitioner to explain the connection between the punishment and the phrases in question. He also asked the Petitioner to explain the meaning of the phrase "law graduates" and the Petitioner's interpretation of "could not be used as a basis for the civil and criminal lawsuit." (Sri Pujianti/ Lulu Anjarsari P./ Fitri Yuliana)

Catalog

PUBLISHER
KONSTITUSI PRESS (KONPRESS)

Gedung Mahkamah Konstitusi RI
Jl. Medan Merdeka Barat No. 6 Jakarta 10110
Telp. (021) 23529000, Ext. 18196
penerbitkonpress@gmail.com penerbitkonpress konpress

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Dasar Pembentuk, Kewenangan, dan Perbandingan dengan Negara Lain
Penulis : I D. G. Palguna
ISBN : 978-602-7995-28-9
Ukuran : 14,8 x 21 cm
Tebal : 382 Halaman
Terbit : 2018
Harga : Rp125.000

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Terbit : 2018
Harga : Rp108.000

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Penulis : Dr. Ahmad Basarah
ISBN : 978602779516 1
Terbit : Catakan ke-1, Juni 2017
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ISBN : 978027795547
Terbit : Catakan ke-1, Juli 2016
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Konsep Hukum [illegible]
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ISBN : 978027795514
Terbit : Catakan ke-1, Agustus 2016
Tebal : 231 Hlm
Ukuran : 14,8 x 21 cm
Harga : Rp63.000

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Penulis : Rita Triana Budiarti
ISBN : 978027795512 8
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Tebal : 258 Hlm
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Penulis : Prof. Dr. Fx. Adji Samekto, S.H., M.Hum.
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Terbit : Catakan ke-1, Februari 2015
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ISBN : 9786027995509
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Terbit : Catakan ke-1, Januari 2014
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Penulis : Rita Triana Budiarti
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ISBN : 9786027995420
Terbit : Catakan Pertama, Oktober 2012
Tebal : 312 Hlm
Ukuran : 14,8 x 21 cm
Harga : Rp53.000

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Ukuran : 14,8 x 21 cm
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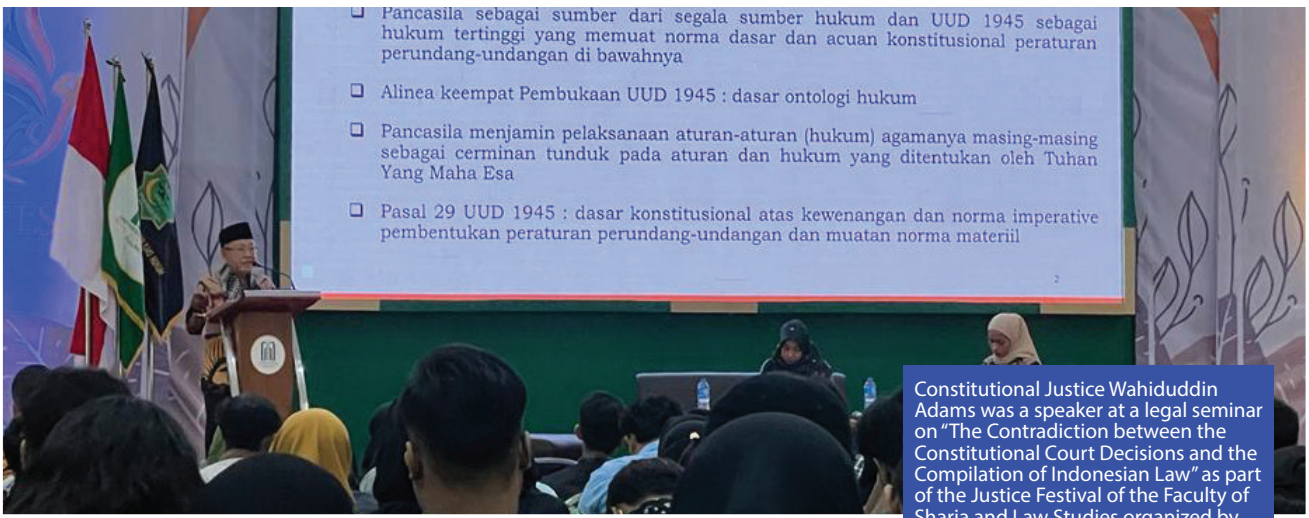
Constitutional Justices Discuss the Function and Role of the Constitutional Court

Wrapping up 2022, the Constitutional Justices continue to share their knowledge with students and academics by discussing various topics on law, elections, local elections, the constitution, democracy, and material related to the implementation of the citizen's constitutional rights. Here's a preview of the judges' activities with academics from various regions in Indonesia.

Constitutional Court's Function in Islamic Law



Constitutional Justice Wahiduddin Adams was a speaker at a legal seminar on "The Contradiction between the Constitutional Court Decisions and the Compilation of Indonesian Law" as part of the Justice Festival of the Faculty of Sharia and Law Studies organized by the Sayyid Ali Rahmatullah State Islamic University of Tulungagung on Friday, November 25, 2022.

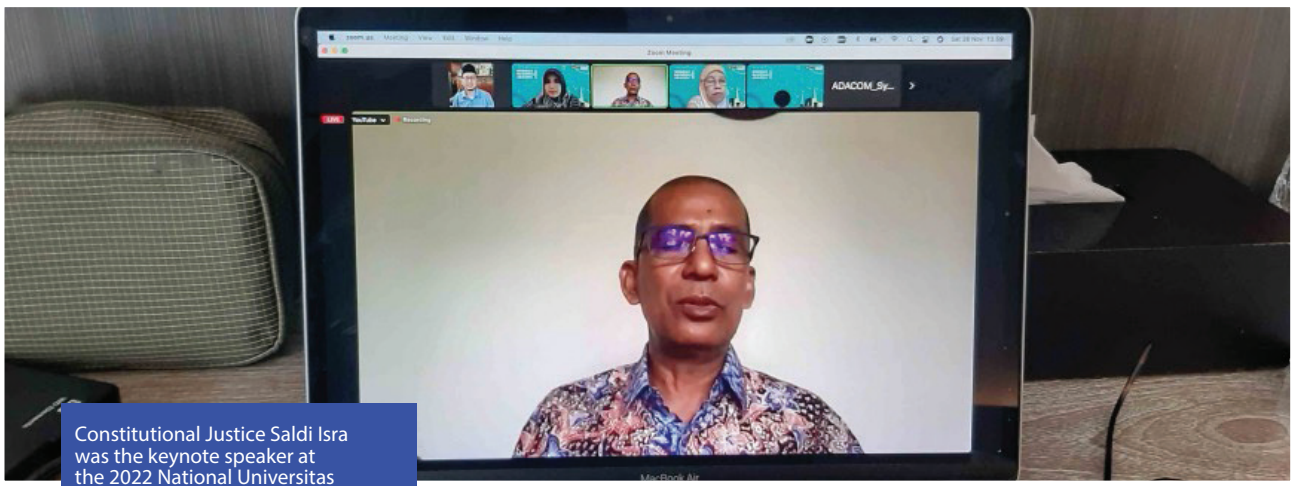
Constitutional Court Decisions Are Authoritative Interpretations of Constitution

Constitutional Justice Enny Nurbaningsih was a speaker at a Public Discussion on Drafting Policy Directions for the Internalization and Institutionalization of Pancasila in Law, Advocacy, and Regulatory Oversight organized by the Agency for Pancasila Ideology Education (BPIP) on Friday, November 25, 2022.

Pilkada Dispute is under Constitutional Court's Jurisdiction

Chief Justice of the Constitutional Court (MK) Anwar Usman was a speaker at a public lecture at the Faculty of Law of Al-Azhar Islamic University (FH Unizar) on Saturday, November 26, 2022, at the theater building of Al-Azhar Islamic University, Mataram, West Nusa Tenggara.

Improving Public Participation



Constitutional Justice Saldi Isra was the keynote speaker at the 2022 National Universitas Ahmad Dahlan Law Competition (ADACOM), organized by Lentera Law Community of Faculty of Law of Ahmad Dahlan University Yogyakarta on Saturday, November 26, 2022.

The Concept of Worker's Protection in the Constitution

Constitutional Justice Manahan M.P. Sitompul spoke at a National Seminar with the theme "The Constitutional Court and the Protection of the Constitutional Rights of Indonesian Workers/Laborers" on Saturday, December 10, 2022, at the Law Faculty of the University of Surakarta (FH UNSA). The Constitutional Court (MK) organized the event in collaboration with FH UNSA. Speakers from the Law Faculty of UNS (Sebelas Maret University) and UNSA, Sunny Ummul Firdaus and Al Ghozali Hide Wulakada, also spoke at the seminar.

Simultaneous Elections to Strengthen the Presidential System

Chief Justice of the Constitutional Court (MK) Anwar Usman spoke at the National Seminar on "The Constitutional Court's Challenge in Settling 2024 General and Regional Elections" at the Faculty of Law of the Islamic University of Indonesia (UII) on Saturday, December 10, 2022, in the 3rd floor east wing meeting room of the UII building, Yogyakarta.

Preparing for Simultaneous Festival of Democracy in 2024

Constitutional Justice Enny Nurbaningsih delivered a public lecture organized by Raden Patah State Islamic University on Friday, December 16, 2022, in Palembang. In her presentation on "The Urgency and Challenges of the 2024 Simultaneous General and Regional Elections," she invited the participants to prepare for the simultaneous festival of democracy in 2024.

Constitutional Court's Function as Guardian of Constitution

Constitutional Justice Enny Nurbaningsih in a public lecture on "The Constitutional Court's Role as the Guardian of the Constitution" on Saturday, December 17, 2022, at the seminar room of the Faculty of Law of IBA University.

Efforts to Strengthen International Cooperation

Constitutional Justices made official visits to several countries in order to expand and strengthen the role of international law. Here are some illustrations from Constitutional Justices gathering with officials from various countries.

MKRI Discusses Cooperation with the Mongolian Constitutional Court

The delegation of the Constitutional Court of the Republic of Indonesia (MKRI) led by Constitutional Justice Manahan Sitompul during his working visit to the Constitutional Court of Mongolia discussed activities after the fifth congress of the World Conference on Constitutional Justice (WCCJ) and the preparations for the Board of Members Meeting (BoMM) of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) at the Constitutional Court of Mongolia Building in Ulaanbataar, Mongolia, on Monday, November 28, 2022. The delegates were greeted warmly by Chinbat Namjil, Chief Justice of the Mongolian Constitutional Court, accompanied by Nandzaddorj Tsagaan, Constitutional Justice of the Mongolian Constitutional Court, and other officials from the Mongolian Constitutional Court.

Judges Oversight and Independent Judiciary in Judicial General Council of Mongolia

On Monday, November 28, 2022, a delegation from the Constitutional Court of the Republic of Indonesia (MKRI) led by Constitutional Justice Manahan M. P. Sitompul met with the Chairman of the Judicial General Council of Mongolia, Zumberellkham Dorjdamba, at the General Council of Mongolia. During the meeting, Justice Manahan discussed the oversight of judges and justices in Indonesia, as well as the Judicial Commission's position in the Indonesian administration. He also inquired about the Judicial General Council's jurisdiction over judicial power and an independent judiciary in Mongolia.

Protection of Citizens' Constitutional Rights at the National University of Mongolia

Constitutional Judge Manahan Sitompul gave a public lecture on the protection of citizens' constitutional rights at the Law School of the National University of Mongolia (NUM), Ulaanbaatar, Mongolia, on November 29, 2022. The Dean of the National University of Mongolia School of Law, Amarsanaa Batbold, and the Director of the Institute of Constitutional Law of Mongolia, Munkhsaikhan Odonkhuu, welcomed him.

MKRI and Constitutional Council of Algeria to Continue Cooperation

Chairman of the Algerian Constitutional Court Omar Belhadj warmly welcomed the delegation of the Constitutional Court of the Republic of Indonesia (MKRI) led by Constitutional Justice Daniel Yusmic Pancastaki Foekh at the Board Room of the Sheraton Club des Pins Resort, Algeria, on Sunday, December 4, 2022. The bilateral meeting took place in order to attend the invitation to the inauguration of the Algerian Constitutional Court, which was formerly the Constitutional Council. The MKRI delegation had previously been welcomed at the Houari Boumedi international airport by Constitutional Justice of the Algerian Constitutional Court Mosbah Menas and the Ambassador of the Republic of Indonesia to Algeria Chalief Akbar Tjandraningrat.

MKRI Establishes Cooperation with NCSC

The Constitutional Court of the Republic of Indonesia (MKRI) established cooperation with the National Center for State Court (NCSC) through the signing of a Memorandum of Understanding (MoU) on Monday, December 5, 2022, in Arlington, Virginia, United States of America, in an effort to increase the capacity and capability of its human resources. Heru Setiawan, Acting Secretary General of the Constitutional Court, and Jeffrey A. Apperson, NCSC Vice President in charge of international programs, signed the document, which Constitutional Justice Saldi Isra and Constitutional Justice M. Guntur Hamzah witnessed.

MKRI Joins Judicial Dialogue Program in the United States

The Constitutional Court of the Republic of Indonesia (MKRI) participated in the Judicial Dialogue Program facilitated by the National Center for State Courts (NCSC) to strengthen cooperation with institutions and courts in the United States. On Tuesday, December 6, 2022, the MKRI delegation led by Constitutional Justice Saldi Isra held a series of institutional meetings in Washington, D.C. Constitutional Justice M. Guntur Hamzah, Acting Secretary General of the Constitutional Court Heru Setiawan, Head of the AACC Permanent Secretariat and International Relations Department Sri Handayani, and Expert Assistant to Constitutional Justices Pan M. Faiz also attended the meeting.

William & Mary Law School Officially Becomes MKRI's Partner

WILLIAMSBURG, PR of MKRI - After sending Juris Doctor (J.D.) students for four consecutive years to take part in an international internship program at the Constitutional Court of the Republic of Indonesia (MKRI), William & Mary Law School has officially become the MKRI's partner in the United States. On Thursday, December 8, 2022, Heru Setiawan, Acting Secretary-General of the Constitutional Court, and A. Benjamin Spencer, Dean of William & Mary Law School, signed a Memorandum of Understanding (MoU) in Williamsburg, Virginia, United States.

Constitutional Court Recharging Program in 2022

On Friday, December 9, 2022, Constitutional Justice Enny Nurbaningsih officially concluded the 2022 Recharging Program organized by the Constitutional Court of the Republic of Indonesia (MKRI) in collaboration with The Hague University of Applied Sciences (THUAS). The event, titled "The Digital Transformation of Constitutional Adjudication in the Covid-19 Era: Legal and Ethical Dimensions," was deemed a success. The program had seven participants.

Improving Citizens' Understanding of Their Constitutional Rights

The Constitutional Court tasks Pancasila and Constitutional Education Center with promoting the values of Pancasila and the Constitution for Indonesian citizens. At the end of 2022, the Constitutional Court invited experts to meet to review and discuss various issues concerning citizens' constitutional rights. Here's a preview of the judges' activities in sharing their thoughts.

Public figures learn the Constitution

Chief Justice Anwar Usman opened a constitution awareness program to improve understanding of the citizens' constitutional rights (PPHKWN) for constitution village apparatuses and figures on Monday, November 28, 2022, at the Pancasila and Constitution Education Center, Bogor, West Java.

Development of Higher Legal Education

On Friday, December 16, 2022, the Constitutional Court organized a focus group discussion on "The Development of Higher Legal Education Toward a Legal System with Pancasila Character" at the Pancasila and Constitution Education Center, Cisarua, Bogor, West Java Province.

Concept of Legal Education with Pancasila Characters

The Constitutional Court (MK) organized a focus group discussion (FGD) for legal experts and academics on "The Development of Higher Legal Education Toward a Legal System with Pancasila Character," which entered the second day on Saturday, December 17, 2022, at the Pancasila and Constitution Education Center, Cisarua, Bogor, West Java Province. Experts presented concepts of higher legal education in Indonesia during the event.

FGD for Legal Experts

Constitutional Justice Arief Hidayat officially closed the focus group discussion for legal experts and academics at the Pancasila and Constitution Education Center, Cisarua, Bogor, West Java Province, on Saturday, December 17, 2022.

Mekar Sari Village in West Kalimantan Designated as Constitution Village

On Sunday, November 13, 2022, the Constitutional Court (MK) inaugurated Mekar Sari Village as a constitution village at the Mekar Sari Village hall, Sungai Raya Subdistrict, Kubu Raya Regency, West Kalimantan Province. The event was part of the Court's effort to create role models for constitutional enforcement.

Justice Manahan Receives Literary Award from National Library

On Monday, November 14, 2022, Constitutional Justice Manahan M. P. Sitompul was awarded the Best Literary Book of 2022 for his book *Perkembangan Hukum Ketenagakerjaan dan Perlindungan Hak-Hak Konstitusional Pekerja/Buruh Indonesia* ("The Development of Manpower Law and the Protection of the Constitutional Rights of Indonesian Workers/Laborers"). The award was presented by Ofy Sofiana, Chief Secretary of the National Library (Perpusnas), during the Printed and Recorded Works Handover Week at the National Library's auditorium.

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ELECTED TOPICS OF CONSTITUTIONAL LAW IN TWO DECADES OF CONSTITUTIONAL CHANGES

BISARIYADI

A conference on constitutional law was held some time ago, which was attended by scholars in the same field. The conference theme was "20 Years of Amendments to the 1945 Constitution." The main theme was divided into several sub-themes, which were used as discussion topics in the panelist session. The sub-themes formulated by the conference committee reflected the constitutional issues faced during the 20 years since the 1945 amendment to the Constitution. The formation of the conference proceedings inspired this brief article. Its division into several sub-themes must be critically reviewed. At first glance, it appears that the formulation of the problems in the conference was done for the sake of organizing it. Therefore, this article does not follow the conference's subthemes but instead formulates different subthemes.

One of the motivations for categorizing constitutional issues is to meet the need for problem mapping. It is hoped that by mapping, there will be a better understanding of the layers of problems, from basic to actual, but more technocratic and political in nature. Thus, the problem-solving approach becomes more targeted. If the problem is fundamental, the solution requires a philosophical theoretical framework. It is possible that the problem will not be solved right away but will require long-term planning. For example, the issue of the method of interpretation of the constitution, which has not been widely debated in academic spaces in the field of constitutional law, will have a different solution than the issue of adopting the method of omnibus law in drafting laws and regulations.

In addition, Indonesia's constitutional amendments have now entered two decades. During this period, there have been many constitutional dynamics that have occurred and are still happening today. Various problems arise due to the absence or ambiguity of norms in the constitution relating to policies taken by the state.

As a document that becomes the supreme law applicable in a country, it is natural that the content material of a constitution is not compiled in detail and rigidly. The formulation of such a construction is in order to anticipate the changes of the times so that its flexibility can guarantee its longevity. Although Thomas Jefferson, corroborated by the research of Elkins, Ginsburg, and Melton (2009), suggests that the average length of a constitution is only 19 years. Therefore, despite being the supreme law of the land, a constitution still has the potential to become outdated one day.

There are various methods used to keep a constitution from becoming outdated. One method is to empower state institutions to interpret. All problems arising from the absence or ambiguity of norms in the constitution are resolved through the process of interpretation by employing the applicable and recognized methods of interpretation in a country.

Debates about the method of interpreting the Constitution are rarely discussed in Indonesia. The widely held view generally refers to the writings of classical legal scholars on legal interpretation methods. Many Indonesian writers today identify with the use of legal interpretation methods such as literal, grammatical, systematic, historical, and other interpretations when writing about constitutional interpretation. In fact, there is a common misconception that conflates interpretation with construction.

The fundamental question in the issue mentioned above must begin with the formulation, "does interpreting constitutional text have to be different from interpreting laws and regulations?" The answer to this question is not always unanimous. A faction may believe that there should be a distinction between interpreting the constitution and interpreting laws and regulations. Alternatively, because both are legal products, the method of interpreting the constitution and laws and regulations is the same.

The prevailing view in Indonesian legal thought is that the method of interpreting the constitution is the same

as the method used for interpreting other legal products. To date, there have been no dissenting voices in Indonesia challenging this commonly held belief. However, there have been several studies that can serve as theoretical arguments for distinguishing between the interpretation of the constitution and other legal products if we look at legal doctrines developed in neighboring countries. Moreover, Indonesia should develop a distinctive style of constitutional interpretation that reflects the unique characteristics of Indonesian-style constitutional interpretation.

Nevertheless, over the last two decades, constitutional law issues have extended beyond the method of constitutional interpretation. The following is a categorization of constitutional issues based on the content of the constitution.

Issue Grouping

A country's constitution is similar to a legal entity's Articles of Association (AD/ART), such as an association or political party. As a result, the English equivalent of the term AD/ART of a political party is also referred to as a "constitution."

This view is based on the classical perspective that a state is a juristic person, and the debate about the state as a legal entity emerged with the narrative of the legal subject (person) being the core of the problem. While this article does not elaborate on this matter, those interested can read Hans Aufricht's (1943) article entitled "Personality in International Law," which discusses the state as a legal subject (person).

The articles of association document generally regulate the following (i) organization and (ii) the relationship between "administrators" and "members." Likewise, this is the case with the content material of a constitution. Issues regarding the organization and the relationship between the administrators and members (in this case, the relationship between the state and citizens) have inspired the grouping of issues in this article's preparation of the capita selecta.

This grouping is not standardized, and other parties can still put together different groups of issues by looking at them from different perspectives. At the very least, this grouping arrangement is based on clear arguments. Similarly, if other parties want to propose different groupings, they must be accompanied by arguments that serve as the foundation of their thinking.

State organization

The constitution's content includes, among other things, the organization of the state. The term "state organization" relates to state organs or institutions. In this context, the Constitution's arrangements cover, at the very least, (i) the existence and authority of state institutions, (ii) the relationship between state institutions, and (iii) the filling of positions in state institutions.

The purpose of this article is to highlight constitutional dynamics during the two decades after the 1945 Constitutional Amendment. However, the issues presented do not cover all of them, and this inventory of issues can be further developed. For the time being, the treasury of constitutional issues included in the list reviewed below is limited to the author's memory.

In the context of state organization, the first issue is the existence and authority of state institutions. There are numerous issues associated with this, such as the composition and position of the People's Consultative Assembly (MPR), which is no longer the highest state institution. One of the impacts of this is in terms of the authority to determine the State Policy. Until now, the issue of the absence of the Guidelines for State Policy (GBHN) is still being discussed. Unfortunately, the discussion in the political realm is more dominant, while legal studies (particularly constitutional law) are still not present as a reference.

In addition to the MPR, there are concerns about the Regional Representative Council's (DPD) position and authority. According to the constitution, the DPD is the second chamber of parliament. However, compared to the House of Representatives (DPR), the DPD's authority is very limited, particularly in carrying out legislative functions. In fact, in order to strengthen its legislative function, the DPD, as a state institution, has filed a constitutional judicial review case with the Constitutional Court. The DPD filed a case in 2012 to challenge the constitutionality of the Act in terms of its function and position, which the Court decided in Decision Number 92/PUU-X/2012.

Regarding legislative authority, an intriguing issue has emerged during the two decades since the 1945 Constitution amendment, namely lawmakers' initiative to draft laws using the omnibus law method through the issuance of the Job Creation Law.

The law that typically serves as a reference for forming laws and regulations does not mention the omnibus method of drafting laws. Additionally, the multitude of laws compiled for amendment under the Job Creation Law, encompassing a wide range of issues and topics, necessitates further refinement of the omnibus method.

In addition to the omnibus method, the Indonesian government has issued several Government Regulations in

Lieu of Laws (Perpu) during the COVID-19 pandemic, sparking a classic debate over the regulation of a "state of danger" or "state of emergency." The regulation of a state of emergency in Indonesia still refers to a law issued around the time of independence. Constitutional law studies have been caught off guard in an attempt to discuss it in depth. The regulation of a state of emergency plays a strategic role in anticipating changes in government regimes that may become authoritarian. History has shown how many state leaders have taken advantage of the momentum of a state of emergency to become unchecked rulers. The two central concepts in the constitutional arrangement related to the issuance of Government Regulation in Lieu of Law (Perpu) are "state of emergency" and "compelling urgency."

In the realm of judicial power, an interesting constitutional issue to discuss is the additional authority mandated to the Constitutional Court to resolve disputes over the results of regional head elections. Another constitutional issue is the existence and authority of the Judicial Commission to supervise judges. The issue of maintaining judges' dignity and independence in decision-making while preventing them from using their power to decide arbitrarily through supervisory mechanisms is a fascinating topic for a constitutional study that has always been interesting to examine in depth.

Not to mention the discussion of state organs that are not classified to carry out the main functions as main wheels of government but have an important role and only came into existence after the Constitutional Amendment, examples of such organs include the Financial Services Authority (OJK), the Corruption Eradication Commission (KPK), the National Human Rights Commission (Komnas HAM), the Ombudsman, election organizers and supervisors, and others.

The second issue pertains to the relationship between state institutions, with the constitutional amendment emphasizing the functional horizontal relationship between them. This impacts the pattern of relations with mutual supervision and checks and balances mechanisms. Although the political aroma remains strong, the relationship between the President and the DPR in the role of forming laws has become a constitutional issue. This includes the pattern of relations in the field of judicial power, where the constitutional design in challenging legislation is divided between the authority possessed by the Constitutional Court and the Supreme Court.

However, the issue of the pattern of relations between the central government and local governments is still under discussion. The regional autonomy policy has consequences for the emergence of constitutional issues from fundamental to technical issues. The tug of war over authority and the division of finances between the central and the regional governments still affects many regional autonomy policy issues. Not to mention, the asymmetrical decentralization issue applies to regions with special autonomy status, such as Aceh, Papua, Yogyakarta, and Jakarta. Additionally, the policy in the Joko Widodo administration to relocate the capital and the expansion of the number of provinces to 38 have created their own constitutional issues. This is certainly an interesting and actual field of constitutional studies.

Finally, the third issue is categorized as a problem in filling positions in state institutions. Logemann, a Dutch scholar who influenced Indonesian constitutional thought, once stated that "the state is an organization of positions (*ambtenorganisatie*)." These positions are filled by people in order to carry out the functions of the state organization. The state institution that functions to provide services for delivering justice, namely the court, is filled by someone called a "judge." Similarly, the function of leading the state is performed by a person known as the President.

The filling of these positions is regulated in constitutional law, including the issue of term limits. The mechanism for filling positions consists of two ways: appointment or election. The dynamics of Indonesian state administration regarding the appointment mechanism in the process of filling the position of deputy minister have been widely discussed. Not to mention that the position of judge is filled by appointment. The Constitution governs the appointment of Supreme Court justices through a proposal mechanism from the Judicial Commission to the DPR for approval and determination by the President (see Article 24A paragraph (3) of the 1945 Constitution). Meanwhile, Constitutional Justices in Constitutional Court is stipulated that "the appointment and dismissal of Constitutional Justices... shall be regulated by law" (see Article 24C paragraph (6) of the 1945 Constitution).

The most public attention has been focused on the election mechanism for filling positions. This is due to the fact that the election mechanism must go through a series of activities in order to ensure the principles of direct, free, general, confidential, honest, and fair. Scholars have paid close attention to discussions about electoral

activities. The amount of energy expended is significant, given the amount of attention paid to the issue of elections.

In reality, the goal is simple: ensure that people who hold positions through electoral mechanisms gain legitimacy. However, the focus on the electoral mechanism for filling positions has overshadowed the true essence of the function of filling the position itself. Many people examine and ensure that elections are well organized from upstream to downstream. Still, they fail to examine the people appointed to government positions to ensure they carry out their duties properly.

The mechanism for presidential, legislative, and regional head elections has been extensively studied in Indonesia's constitutional law. This includes examining the eligibility requirements for political parties, legislative candidates, and candidate pairs running in regional head elections, as well as the proportional system used to convert votes into seats. However, discussions often revolve around the technicalities of voting procedures rather than the quality of those elected or appointed to positions.

Due to many studies on elections, it has been assumed that constitutional law is generally concerned with this topic. When mapped, not all electoral issues have the same level of significance in the eyes of the constitution (constitutionally importance). What has not been done is a mapping of problems in order to categorize the spectrum of procedural problems in elections, from fundamental to technical-administrative. Thus, the legal channels for problem resolution can be regulated through the appropriate channels. Not all electoral issues become constitutional judicial review cases at the Constitutional Court simply because there are norms regulating them in the Election Law.

Relationship between the State and Citizens

Another content material regulated in the Constitution is in the context of the relationship between the state and its citizens. The classic constitutional law study on this topic is Soepomo's concept of "integralistic state theory." Padmo Wahjono, who coined the term "integralistic Indonesia," defended Soepomo's ideas. Soepomo's views may have been influenced by Rudolf Smend's writings, which proposed *integrationstheorie*. Some identify it with the organic theory (organicism), whose footsteps are traced by David Bourchier (2015) in a book entitled "Illiberal Democracy in Indonesia: the Ideology of the Family State." However, some criticize the integralistic theory as written by Marsillam Simanjuntak.

According to integralistic theory, the state and citizens are manifested (integrated) into one body. This view contradicts liberalism, which prioritizes citizens' interests as individuals. According to liberalism, each individual enters into a social agreement (or contract) with the state. According to this social contract, the state is obligated to protect every citizen.

These different perspectives result in different priorities. The integralistic theoretical approach prioritizes the state's interests, while liberalism prioritizes the protection of individuals as citizens. However, this does not mean that the adoption of integralistic theory forbids the recognition of constitutional rights. The impact lies in the different ways of interpreting and reasoning constitutional rights. German basic law still includes the protection of constitutional rights despite adopting an organic theory approach.

Unfortunately, this fundamental debate has been lost in the narrative of Indonesian constitutional law even after 20 years of constitutional change. The fundamental question of whether Indonesia maintains an integralistic approach or leads to liberal democracy that prioritizes individual interests has not concerned Indonesian legal scholars. The answer to the question does not lead to the truth but rather to the tendency to determine the right choice tailored to the characteristics of Indonesian society. The answer may split society into two factions, sparking an academic debate. However, remaining silent as if there is no problem is not the solution. In reality, ignorance is the root of the problem.

Suggestions

If constitutional law conferences are to be held as regular annual events, the focus should be on identifying and mapping the constitutional issues that need to be addressed. While addressing current issues is important for providing alternative solutions to policymakers, it is equally important to address fundamental issues in constitutional law. Therefore, it is necessary to establish a special forum comprising constitutional law experts to tackle these frequently overlooked issues. There is still much work to be done to address the fundamental issues of Indonesian constitutional law. At the very least, we must begin by engaging in preliminary discussions, as attempted in this brief article.

REVIEWING THE THEORETICAL AND PRACTICAL LEVEL OF ETHICS OF CONSTITUTIONAL JUSTICES: QUO VADIS JUDICIAL SUPERVISION?"

OLEH: ARTHA DEBORA SILALAHI, S.H., M.H.

The book ***Etik Hakim Konstitusi (Rekonstruksi dan Evolusi Sistem Pengawasan)*** / Ethics of Constitutional Justices (Reconstruction and Evolution of the Supervisory System) describes the ideal institutions that should be founded in order to maintain the authority, honor, dignity, and glory of constitutional justices. The central issue discussed in the book is related to the fundamental issue of the ethical supervision system for constitutional justices. The discussion in this book is based on the need for normative reconstruction of the ethical supervision system of constitutional justices, which was not explicitly regulated in the formulation of the norms in the Republic of Indonesia's 1945 Constitution. The concept of regulation regarding the ethical supervision system of constitutional justices, particularly the composition, organization, and

BOOK TITLE: ETIK HAKIM KONSTITUSI (REKONSTRUKSI DAN EVOLUSI SISTEM PENGAWASAN)/ETHICS OF CONSTITUTIONAL JUSTICES (RECONSTRUCTION AND EVOLUTION OF THE SUPERVISORY SYSTEM)

AUTHOR: DR.WIRYANTO, S.H., M.HUM.
PUBLISHER: RAJAWALI PRESS
YEAR OF PUBLICATION: 2019
ISBN: 978-623-231-110-7
PAGES: 303 PAGES

procedures for enforcing alleged ethical violations, still lacks legal certainty.

The book begins by describing the nature of the free and independent exercise of judicial power without any intervention from the power of other institutions, which is based on an understanding of the dimensions of judicial power independence. The book describes conceptually and contextually the categorization and explanation of the dimensions of judicial independence. The intended dimensions of judicial independence relate to the functional dimension in the process of examining, adjudicating, and deciding a case. This is followed by the structural or institutional dimension, which affirms that the judiciary must administer justice impartially and independently without intervention from other parties, and the personal dimension relating to freedom based on accountability, expertise, and adherence to the code of ethics and code of conduct of constitutional justices.

The book also discusses the demands of accountability, objectivity, and transparency as the key factors constitutional justices must consider to uphold their moral and ethical integrity. Due to this situation, it is necessary to work towards upholding judges' moral and ethical integrity, which is outlined in the standards of ethics for judge behavior as the minimum standard that judges must adhere to. The book's introduction is theoretically based on the theory of the rule of law, specifically the development of understanding and concept of the rule of law that evolves over the course of human history with a variety of characteristics as a result of historical situations influenced by the philosophy and ideology of the state. On the other hand, the theory of checks and balances aims to safeguard democracy by requiring that state power be divided or separated into several functions that check each other in state practice.

The intended state practice relates to the implementation of supervision of constitutional justices when carrying out their duties as judges and behavior in general. The book also discusses the theoretical underpinnings of authority, including the source of authority, defined as the right and power to take action, make decisions, give orders, and delegate responsibilities to others. In the field of judicial power or the power to adjudicate, the authority should be referred to as competence or jurisdiction, especially regarding legal liability (*rechterlijke verantwoording*) in the use of such authority.

The book's next section focuses on reconstructing the ethical supervision system of constitutional judges, emphasizing the importance of the ethical supervision of judges within the context of independent judicial power. Furthermore, it also discusses the relationship between the ethical supervision of constitutional judges and judicial freedom. Additionally, it explains the achievement of the noble goals of the framework of the ethical supervision system of constitutional judges for the realization of the enforcement of honor, dignity, and appropriate behavior of constitutional judges in a reflective and reconstructive manner. The ethical supervision system for constitutional judges can be reconstructed by reformulating the normative formulation of the Constitutional Court arrangements in the constitution and implementing regulations.

This book also includes a comparative study of the system of constitutional judge supervision in two other countries, South Africa and Macedonia. The system of supervision of constitutional judges in each country is explained using several indicators related to

the organization, authority, and supervision of the Constitutional Court.

The three indicators describe the constitutional provisions in each country related to the Constitutional Court's institutional arrangements in the practice of constitutional judicial proceedings in the two countries.

In a democratic and rule of law state, supervision or control is a normal, positive, and constitutional mechanism to ensure that political or legal power is not deviated or abused, whether intentionally, unintentionally, or due to negligence. Thus, norms and institutions of testing, control, or verification are established to prevent such deviations and ensure the proper exercise of law enforcement powers, promoting legal, social, and moral justice. The norms and institutions of testing, control, and verification are not intended to antagonize or demonize lawmakers, judges, or courts. On the contrary, they safeguard the dignity and honor of judges and courts. The aim is to ensure that legal certainty and justice can be realized and law enforcement powers are exercised properly and correctly.

This book's explanations emphasize that constitutional judges are the main pillars of judicial power actors within the scope of the constitutional court. In this book, independence is defined as independence that is not entirely independent but is included in judicial power that is still limited by a normative basis in the context of the need for constitutional judges to be overseen.

The power of the Constitutional Court as an independent judicial power should reflect the principles and rules of impartial and proportional rulings in deciding every constitutional lawsuit brought by the general public as justice seekers to the constitutional judges (the interpreters and guardians of the constitution). The content of each chapter in this book has also implicitly emphasized and highlighted the provisions of Article 24 paragraph (2) and 24 paragraph (3) after the third amendment of the 1945 Constitution of the Republic of Indonesia. These provisions state that judicial power is exercised by a Supreme Court and the subordinated judicial bodies in the realm of the general judiciary, religious judiciary, military judiciary, state administrative judiciary, and by a Constitutional Court and other bodies whose functions related to judicial power shall be regulated by law.

It can be concluded from the provisions of the article that the Constitutional Court, which has been mentioned in the provisions of the article, is a judicial body guaranteed in the Indonesian constitution, and as such, it must be able to apply the independence of a free and impartial judiciary. The obligation of constitutional judges to maintain the honor and dignity as well as the behavior of judges as specified in the legislation must be implemented concretely and consistently both in carrying out their judicial duties and outside of their judicial duties because it is closely related to efforts to uphold law and justice. Honor is the glory or good name that constitutional judges must always uphold and defend while doing their judicial duties. The decision a judge makes and the considerations that influence it, or the entire decision-making process, demonstrates the judge's honor because it is not only based on statutory regulations but also on a sense of justice and collective wisdom.

This book has provided an analytical explanation of how important it is to improve the overall supervision of constitutional judges. The book presents recommendations that legal professionals, especially constitutional judges, strengthen their commitment to constantly exercising their functions and authority in the corridors of law and the constitution. This book is highly recommended for constitutional activists, students, the general public, and legal practitioners.

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PROPOSED CHANGES TO JUDICIAL POWER PROVISIONS AND WORKING VISITS

LUTHFI WIDAGDO EDDYONO
Researcher at Constitutional Court

The amendment of judicial power is one of the core aspects of constitutional reform. The judicial power was frequently interfered with, and its independence was undermined throughout the New Order era. As a result, when the regime changed, amending the provisions relating to judicial power became a top priority, as this was a widely supported recommendation from the general public.

Based on the Comprehensive Manuscript of Amendments to the 1945 Constitution of the Republic of Indonesia, Background, Process, and Results of the Discussion, 1999-2002, Book VI Judicial Power (Jakarta: Secretariat General and Registrar of the Constitutional Court; Revised Edition, July 2010), the results of working visits by members of PAH I BP MPR to the various regions were officially used to gather public proposals regarding revisions to the title of the judicial power chapter and its articles during the amendment of the 1945 Constitution. The results of their visit were then discussed in the 11th PAH I Meeting of the People's Consultative Assembly on Friday, February 4, 2000.

According to Andi Mattalatta of F-PG, proposals were obtained by members of PAH I, among others, from Aceh and North Sumatra. These were the proposals: "Article 24, Judicial power to be emphasized, where the Supreme Court is an independent institution with authority to examine laws and regulations enacted by the law."

Hatta Mustafa of F-PG delivered the West Sumatra and South Sumatra proposals. The proposal reads as follows: "West Sumatra proposes to strictly separate the executive, legislative, and judiciary in order to optimize the constitutional role of the high state institutions."

Valina Sinka Subekti from F-UG reported her findings from West Kalimantan and West Java. The proposals were, according to Valina.

> "Similarly, there is a desire to empower the Supreme Court. Therefore, I believe those are the main takeaways we learned throughout our working visit. A resume will follow after this. Thus, there are three components: the resume, the full minutes of our working visit, and the transcripts of the discussions that took place during our meetings. These three parts will serve as our documentation for everyone involved. So, that's all."

Asnawi Latief from F-PDU, who had made working visits to East Kalimantan and North Sulawesi, stated:

> "Regarding the judiciary, it is indeed necessary to organize and clarify the state system, which reads: "The state is based on law and not on mere power, where will we put the article into...the opinion on position. The elucidation... regarding the judiciary is to be regulated in the 1945 Constitution."

Hamdan Zoelva from F-UN, who was assigned to East Nusa Tenggara, stated as follows:

> "There is a common interest among participants in empowering the Supreme Court and the Supreme Audit Agency, with some proposing the application of the pure Trias Politika principle." Many participants also proposed that the MPR elect the Chief Justice of the Supreme Court and the Chairman of the BPK.

Anthonius Rahail of the FKKI presented proposals obtained during the working visit to the Papua region.

> "Additionally, the Supreme Court and BPK should properly be established in the constitution as independent and impartial institutions because it is felt that so far the laws created as an implication of this constitution often allow for executive intervention in these institutions."

Meanwhile, Lukman Hakim Saifuddin from F-PPP reported the results of the working visit to Bali and East Java. According to the Comprehensive Manuscript, the report did not explicitly mention proposals on judicial power.

However, proposals related to the independence of the judiciary and the separation of judicial powers between the executive, legislative, and judicial branches were discussed. These proposals were eventually incorporated into Article 24 of the 1945 Constitution. The result is as contained in Article 24 of the 1945 Constitution. Article 24, paragraph (1) states, "The judicial power shall be an independent power in order to perform the judiciary in order to enforce law and justice."

What is judicial power? Article 24 (2) of the 1945 Constitution states that judicial power is exercised by a Supreme Court and the subordinated judicial bodies in the realm of general judiciary, the realm of religious judiciary, the realm of military judiciary, the realm of state administrative judiciary, and by a Constitutional Court. However, there are also other bodies related to judicial power. Therefore Article 24 paragraph (3) stipulates, "Other bodies whose functions are related to judicial power shall be regulated by law."

How to interpret the "independent power" in Article 24 paragraph (1) of the 1945 Constitution? It is not enough to simply look at the original intent; because it is a phrase that has become common and has the potential to become jargon, such interpretation must be supported by doctrine and practical experience.

Chief Justice of the Constitutional Court Anwar Usman, in a book review, "The Independence of Judicial Institutions in the Enforcement of Law and Justice," organized in collaboration with the Constitutional Court and the Faculty of Law (FH) Riau University on Friday, July 2, 2021, explained that the independence of the judicial power is an absolute requirement to the enforcement of law and justice. Without the independence of judicial power, the realization of law and justice is impossible to achieve. He also highlights, conceptually and practically, the close relationship between democracy, the rule of law, and independent judicial power.

Anwar asserted, as quoted by Nano Tresna Arfana on the page mkri.id, that judicial independence in Indonesia is philosophically state power that is free from all forms of intervention from within and outside the judicial power, except from Pancasila and the 1945 Constitution. Pancasila values, as the state ideology, within the 1945 Constitution and the legislation are the basic law and operational law for judicial independence and the enforcement of law and justice.

Historically and realistically, Anwar Usman explained, as reported by mkri.id, intervention in the judiciary is commonplace. However, along with the times and the increasing legal awareness of the people, such intervention has changed and developed. There are at least two dimensions of intervention that occur: diachronic and synchronic. Diachronic intervention occurs in the judge, where past events influence their views.

Anwar Usman further elaborated, "While synchronic intervention drives judges to follow public opinions and current trends. Judicial intervention may also come from the judges themselves and from within the judiciary. Internal intervention can undermine the judiciary due to weakness in organization and supervision, uncoordinated training, low integrity, and bad leadership management."

THE BATTLE FOR GEDUNG SATE ON DECEMBER 3, 1945: A SERIES OF SEIZURES OF THE FUTURE CAPITAL OF THE DUTCH EAST INDIES AND THE CENTRAL GOVERNMENT OFFICES

LUTHFI WIDAGDO EDDYONO
Researcher at Constitutional Court

The Dutch allied forces refused to acknowledge the Republic of Indonesia's declaration of independence on August 17, 1945. The independence of the Dutch East Indies, which had become Indonesia, was still disturbed, so battles erupted, resulting in casualties.

One of the battles recorded in history was in Bandung. According to merdeka.com, following the proclamation, Bandung youth formed the PU Youth movement organization, which succeeded in seizing Gedung Sate from Japanese hands. *"They fought the Allied troops as they began entering Bandung on October 4, 1945, armed with grenades, pistols, and firearms looted from Japanese soldiers. Following that, the Department of Transportation and Public Works offices, led by Ir Pangeran Noor, were frequently disrupted by Allied/Dutch/NICA soldiers."* Novi Fuji Astuti elaborated.

Furthermore, on November 24, 1945, a great battle erupted in the city's northern part. According to merdeka.com, at the time, Gedung Sate was defended by the PU Youth Movement, which was supported by Perjoangan Forces of about 40 people armed with a decent amount of weapons. However, the assistance provided did not last long, as troops were withdrawn from the Defense Headquarters of the Department of Transportation and Public Works on November 29, 1945.

According to Novi Fuji Astuti, only 21 personnel were defending the Department of Transportation and Public Works office on December 3, 1945, at 1:00 am, when the Allied forces began their attack. Despite the fact that the Allied soldiers were heavily armed, the PU youth did not give up. They desperately fought back, using their strength to defend the PU Building. The conflict didn't conclude until 14.00 WIB. Seven of the 21 youths were reported missing throughout the battle. Some people suffered minor injuries, while one person experienced a severe injury.

"The bodies of the seven young people were initially unknown. It wasn't until August 1952 that some of their former comrades-in-arms began looking for them near Gedung Sate, but only four bodies in the form of skeletons were found. The four skeletons of these martyrs were then moved to Bandung's Cikutra Heroes Cemetery," she elaborated.

Why Gedung Sate?

According to jabarprov.go.id page, it is revealed that Gedung Sate was known as the Dutch East Indies Gouvernements Bedrijven building, abbreviated as "GB," also known as the Central Government Offices, during the Dutch Colonial Era. On July 27, 1920, Miss Johanna Catherina Coops, the eldest daughter of Bandung Mayor B. Coops, laid the foundation stone for the structure, accompanied by Miss Petronella Roeslofsen, who represented the

Governor General in Batavia. The PTT Hoofdbureau Building was completed in early 1924, followed by the Sate Building and Southeast Asia's largest technical library in September 1942.

Gedung Sate was designed by Dutch architect Ir. J. Gerber of the Burau of State Buildings (*landsgebouwendients*), assisted by a team consisting of Col. Genie (Ret.) V.L. Slor from Genie Militair, Ir. E.H. De Roo and Ir. G. Hendriks representing *Burgerlijke Openbare Werken (B.O.W)* or the current DPU and *Gemeentelijk Bouwbedriff* (Municipal Building Company) Bandung. Italian Renaissance buildings inspired Gedung Sate's architectural style. Gedung Sate is the building's common moniker because the high top of the structure looks like a skewer.

According to the jabarprov.go.id page, Dutch architect maestro Dr. Hendrik Petrus Berlage stated during his visit to Bandung in April 1923 that the Gedung Sate building, along with the design of the Dutch East Indies Civil Government Agency Office Center complex in Bandung, was a masterpiece.

Gedung Sate is essentially only a small part or about 5% of the Dutch East Indies "Civil Government Office Center Complex," which occupies 27,000 square meters of North Bandung land provided by the Gemeente Van Bandoenglewat Raadbesluit approved on December 18, 1929.

The construction of Gedung Sate is closely related to the plan of the Dutch Colonial Government during the era of Governor General J.P. Van Limburg Stirum, who ruled between 1916-1921 to implement the proposal of H.F. Tillema in 1916, a Semarang-based environmental health expert, to relocate the capital of the archipelago—in this case, the Dutch East Indies—from Batavia or Jakarta to the City of Bandung.

Many government departments and agencies relocated from Batavia and established their offices near Gedung Sate. Among them was *Departement Verkeeren en Waterstaat* (Department of Traffic and Irrigation) or DPU today, *Hoofdbureau PTT* (Head Office of PTT), *Departement van Onderwijs en Eeredients* (Department of Education and Teaching), *Departement van Financien* (Department of Finance), *Departement van Binnenlandsch Bestuur* (Department of Home Affairs), *Departement van Economische Zaken* (Department of Economic Affairs), *Hoge Raad* (Supreme Court), *Volksraan* (People's Council), *Centraall Regeering* (Government Center), *Algemeene Secretarie* (General Secretariat), *Paleis van Gouverneur General* (Governor General's Palace), State Hall, Geological Laboratory Center.

According to the jabarprov.go.id page, the plan to relocate the state capital and central government offices from Batavia to Bandung was ultimately abandoned because of the great depression (malaise) in the 1930s. The *Verkeer en Waterstaat* Department Building (Gedung Sate), *Hoofdbureau PTT* (Post and Giro Head Office), Geology Laboratory and Museum, and the *Pensioen Fonds* (Pension Fund) building, which is now the *Dwi Warna* Building, were among the buildings that had been finished.

Gedung Sate is obviously important. In fact, Bandung was supposed to take Batavia's place as the Dutch East Indies' capital. Due to its significance as well as the data and information it contains as an icon of the government center, it is critical that the Dutch and the Allies quickly secure Gedung Sate.

THE ELIGIBILITY OF EX-CONVICTS TO RUN AS PUBLIC OFFICIALS IN THE HOUSE OF REPRESENTATIVES (DPR)/REGIONAL LEGISLATIVE COUNCIL (DPRD)

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

Public participation, qualified organizers, and qualified candidates are all essential for a high-quality election. In order to ensure the quality of contestants, it is necessary to implement a more rigorous candidate selection process and rule formulation. One effective strategy is to restrict the right of ex-convicts of corruption cases from running for general election positions such as President and Vice President, members of the Province DPR/DPRD and Regency/City DPRD, Governors and Vice Governors, Regents and Vice Regents, and Mayors and Vice Mayors. This measure can be seen as a legal-political move to ensure that candidates run with integrity.

The conduct of elections and the subject of human rights are intimately intertwined. When human rights are upheld, elections are said to be democratically conducted. Elections must be conducted with the utmost respect for political rights, such as the freedom of thought, conscience, and religion (which includes the freedom to hold beliefs), expression, association, and assembly; equality before the law and the government; and the right to vote. The 1945 Constitution embodies every citizen's right to be given equal and effective opportunities to vote and be elected. In order to draw candidates or public officials who are genuinely honest, reputable, authoritative, and morally upright, restrictions and distinctions on candidates for election are made. This restriction is a regulation as stipulated in Article 28J paragraph (2) of the 1945 Constitution, which states, "In exercising their rights and freedoms, every person shall abide by the limitations stipulated by the laws with the purpose of solely guaranteeing the recognition as well as respect for the rights and freedoms of others and in order to comply with just demands in accordance with considerations for morality, religious values, security, and public order in a democratic society."

It is further understood that without such limitations, it would be difficult to develop electoral laws that ensure an honest and fair election with credible results. The absence of an explicit electoral legal foundation that regulates certain restrictions can lead to unfair competition, resulting in an unrestrained struggle for state power. One example of restrictions on political rights as regulated in the norm provisions of Article 240 paragraph (1) letter g of Law Number 7 of 2017 (Law 7/2017) states, "Candidates should not have been criminally punished by a verdict of a court with a binding legal power due to committing a criminal act punishable by incarceration of 5 (five) or more years unless the individual openly and honestly announces to the public that they have served their time as a convict." This article does not explicitly regulate ex-convicts who want to run as candidates for election. The Constitutional Court issued its ruling in Constitutional Court Decision Number 87/PUU-XX/2022, dated November 30, 2022, in response to a judicial review request on the requirements of candidates for election participants.

Constitutional Court Decision Number 87/PUU-XX/2022

In Constitutional Court Decision Number 87/PUU-XX/2022, dated November 30, 2022, filed by the Petitioner: Leonardo Siahaan, S.H., acting as

an individual Indonesian citizen, has the right to vote during the election contestation.

The Petitioner, who has the right to vote, feels there is a fear of direct or indirect loss or at least the potential. Furthermore, the norm provision of Article 240 paragraph (1) letter g of Law 7/2017 related to the phrase "... unless the individual openly and honestly announces to the public that they have served their time as a convict" is unconstitutional. The Petitioner claimed that this provision could lead to abuse of power, create a high abstention rate, and the nomination of former convicts as legislative members increase the possibility of corruption occurring to other legislative members or even repeating corrupt practices that have previously occurred, which is also contrary to Article 18 of Law No. 31/1999.

In its legal consideration, the Court is of the opinion that the model or governance of organizing the election, known as the general election regime and the regional head election regime, cannot be separated from public positions obtained through elections (elected officials), specifically in this case the election of the President, legislative members, and regional heads. Elections for the President, Vice President, and Members of the DPR, DPRD, and DPD are all examples of general elections. In contrast, the election of regional heads comprises the election of Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors. In this regard, the Court has confirmed that there is no longer a distinction between the two regimes (general and regional head elections regime), as stated in its Constitutional Court Decision Number 85/PUU-XX/2022 issued on September 29, 2022. Therefore, with regard to one of the requirements to run for public office elected through general elections, specifically the President/Vice President, members of the DPR/Provincial DPRD, Regency/City DPRD, as well as Governors/Deputy Governors, Regents/Deputy Regents, and Mayors/Deputy Mayors who have been convicted of a crime as specified in Article 240 paragraph (1) letter g of Law 7/2017 for candidates members of the DPR, Provincial DPRD, and Regency/City DPRD, as well as DPD, and candidates for regional heads as stipulated in Article 7 paragraph (2) letter g of Law 10/2016, The court stated that it will take into account any conflicts between the norms that regulate the formal qualifications for running for both elected positions.

In its legal consideration, the Court elaborated on the provisions of the norms of Article 240 paragraph (1) letter g of Law 7/2017 as requested for judicial review by the Petitioner. These provisions essentially regulate the requirements of ex-convicts who run as candidates for members of the DPR, Provincial DPRD, and Regency/City DPRD. Meanwhile, the norm provision of Article 7 paragraph (2) letter g of Law 10/2016 regulates matters that are essentially identical to the norm provision of Article 240 paragraph (1) letter g of Law 10/2016, namely the requirement of ex-convicts for candidates for regional heads, Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor. Hence, when carefully examined, the two formal requirements for becoming a candidate for an elected position, while essentially regulating the same thing, differ in treatment. The most fundamental difference concerns the provisions of the norm of Article 240 paragraph (1) letter g of Law 7/2017, which is still an alternative, namely for candidates for members of the DPR, Provincial DPRD, and Regency/City DPRD with the status of former convicts can directly run for office as long as they openly and honestly announces to the public that they have served their time as a convict. Meanwhile, the norm provision of Article 7 paragraph (2) letter g of Law 10/2016 regulates the requirements for former convicts running for regional heads, candidates Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor are cumulative. This means that ex-convicts must wait five years after they have completed their sentence and openly and honestly announces to the public that they have served their time as a convict.

Furthermore, it was explained that this difference was caused by the conditional constitutional interpretation of the provisions of the norms of Article 7 paragraph (2) letter g of Law 10/2016 by the Constitutional Court. In relation to one of the requirements to become a candidate for regional head for ex-convicts, the Constitutional Court, through its decisions and most recently through Constitutional Court Decision Number 56/PUU-XVII/2019, dated December 11, 2019, has held, against the norms of the law whose material essence/content partially contains clauses or phrases as contained

in Article 7 paragraph (2) letter g of Law 10/2016, namely the phrase "having not been criminally punished by a verdict of a court with a binding legal power or for ex-convicts openly and honestly announces that they have served their time as a convict," namely along the phrase "having not been criminally punished by a verdict of a court with a binding legal power."

The Court has consistently reaffirmed its stance through several decisions, including Constitutional Court Decision Number 14-17/PUU-V/2007, which was later reaffirmed in Constitutional Court Decision Number 4/PUU-VII/2009, Constitutional Court Decision Number 120/PUU-VII/2009, and Constitutional Court Decision Number 79/PUU-X/2012. The point of the Court's opinion in these decisions is that the norms of the Law whose material/content such as contained in Article 7 letter g of Law 8/2015 is conditionally unconstitutional. The Court has specified the requirements that must be met, which include: (1) it does not apply to elected officials; (2) having passed 5 (five) years after they have served their time as a convict by a verdict of a court with a binding legal power; (3) being open and honest of their status as a former convict; (4) and is not a repeat offender.

The Court's stance is the most fundamental of all these decisions because it aims to impose strict requirements for regional head candidates. A regional head candidate must have sufficient character and competence, personality traits and integrity, honesty, responsibility, social sensitivity, spirituality, life values, and respect for others, among other traits. Therefore, in essence, when associated with the requirement of "having not been criminally punished by a verdict of a court with a binding legal power due to committing a criminal act punished by incarceration of 5 (five) or more years," the goal to be achieved is that the regional head has integrity and honesty. This is the goal to be achieved by the previous decisions of the Court, especially in interpreting the requirements related to "having not been criminally punished by a verdict of a court with a binding legal power due to committing a criminal act punished by incarceration of 5 (five) or more years," which is an inseparable requirement. Therefore, both legal considerations and rulings in the decisions, as stated above, cannot be separated from the spirit of presenting leaders who are genuinely honest, reputable, authoritative, and morally upright. In order to produce leaders who are genuine, honest, and have integrity, all four requirements have to be fulfilled cumulatively when electing regional leaders.

The Court also needs to consider Decision Number 14-17/PUU-V/2007 concerning the abolition of legal norms that contain a quo requirements that cannot be generalized to all public offices but only to elected officials. This is because it is related to general elections, where the principle is universally adopted that the deprivation of the right to vote is only due to considerations of incompetence, for example, due to age (still under legal age allowed by the Election Law) and mental illness, as well as an impossibility, for example because they have been deprived the right to vote by a court decision that has permanent legal force.

For elected officials, the Court, in the Legal Consideration of Decision No. 14-17/PUU-V/2007, stated, "It is not entirely left to the people without any requirements at all and solely on the grounds that it is the people who will bear all the risks of their choice." Therefore, to enable the public to evaluate the election candidates, there should be a provision requiring candidates who have been convicted of a criminal offense with a sentence of imprisonment of 5 (five) years or more to explain their identity openly to the public and not conceal or hide their background. Moreover, to avoid undermining public trust, as stated in Court Decision Number 14-17/PUU-V/2007, it is necessary to ensure that the person concerned is not a repeat offender and has undergone a process of reintegration into society for at least 5 (five) years after serving a prison sentence imposed by a court with permanent legal force. This period of social reintegration corresponds with Indonesia's five-year electoral mechanism for Legislative Elections, Presidential and Vice Presidential Elections, and Regional Head Elections. In addition, it is also in accordance with the phrase, "punished by incarceration of 5 (five) or more years."

The Court considers the legal norm in Article 12 letter g and Article 50 paragraph (1) letter

g of Law 10/2008 and Article 58 letter f of Law 12/2008 that states "having not been criminally punished by a verdict of a court with a fixed legal power due to committing a criminal act punished by incarceration of 5 (five) or more years" to be conditionally unconstitutional.

The Court has ruled that certain legal norms are unconstitutional unless they meet specific requirements. Firstly, these norms do not apply to elected officials who have not been subject to an additional punishment of revocation of the right to vote by a court with a fixed legal power. Secondly, five years must have passed since they served their time as a convict by a verdict of a court with a binding legal power. Thirdly, they must be open and honest about their status as a former convict. Finally, they cannot be repeat offenders.

Furthermore, the Court is also of the opinion that as long as with regard to public offices which are filled through election (elected officials), the imposition of requirement, the substance of which is as contained in the formulation of the sentence or phrase, "having not been criminally punished by a verdict of a court with a fixed legal power due to committing a criminal act punished by incarceration of 5 (five) or more years" is unconstitutional if such requirement is imposed without restriction to ex-convicts, in this case without considering that an ex-convict who wants to run for public office has declared openly and honestly to the public that they have served their time as a convict. The Court's decision upheld the spirit of Article 28J of the 1945 Constitution seriously and did not deviate from it. The Court affirms that limitations on human rights are constitutional and justifiable in a democratic society after carefully examining the legal factors that the Court took into account in its rulings. These limitations also apply when establishing the requirements needed to fill public offices. The Court also emphasized the significance of a particular moral standard in the process or mechanism of filling these public offices. At the same time, the Court also emphasized that the requirement "never sentenced to a certain punishment" is an important and necessary moral standard in that process or mechanism. However, the Court also affirmed that such a requirement cannot be applied simply as a general provision that applies to all public offices, given the different nature or character of these public positions. Therefore, it is in line with the principle of judicial accountability, which requires judges or courts to explain the reasons for their decisions.

Furthermore, in its legal considerations, the Court is of the opinion that after examining the excerpts of legal considerations in the above decisions, because the empirical facts show that candidates for members of the DPR, provincial DPRD, and regency/city DPRD who have undergone imprisonment of 5 (five) years or more unless they openly and honestly announces to the public that they have served their time as a convict as stipulated in the norm of Article 240 paragraph (1) letter g Law 7/2017 has turned out to be inconsistent with the spirit of the requirements to become a candidate for regional head as stipulated in the norm of Article 7 paragraph (2) letter g of Law 10/2016 as conditionally constitutionally interpreted by the Court, even though both are one of the formal requirements to hold the position of elected officials. This distinction results in disharmony in the application of the norms to legal subjects who have the same goal, namely being elected in an election. Therefore, the distinction between the requirements to become candidates for members of the DPR, provincial DPRD, and regency/city DPRD and candidates for regional heads, namely candidates for Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor for former convicts as discussed above, may result in the violation of citizens' constitutional rights as stipulated in Article 28J paragraph (1) of the 1945 Constitution. The factual difference is in the norm of Article 240 paragraph (1) letter g of Law 7/2017 along the phrase "unless the individual openly and honestly announces to the public that they have served their time as a convict," which is no longer in line with the interpretation that the Court has made in its decision on the norm of Article 7 paragraph (2) letter g of Law 10/2016 which reads:

> "Candidates for Governor and Deputy Governor, Candidates for Regent and Deputy

Regent, and Candidates for Mayor and Deputy Mayor," as referred to in paragraph (1), must fulfill the following requirements:

…g. (i) they have not been convicted of a criminal act punishable by incarceration of 5 (five) or more years, except for criminal acts of negligence or political criminal acts; (ii) for ex-convicts, they must have completed a 5 (five)-year waiting period after serving their time as a convict, have received a verdict from a court with permanent legal force, and openly and honestly disclose their status as a former convict; and (iii) they must not be repeat offenders."

Thus, based on the descriptions of these legal considerations, the Court believes that the provisions of the norms of Article 240 paragraph (1) letter g of Law 7/2017 must be harmonized, and the five-year waiting period must apply to the former convict after they have served their time as a convict based on a court decision that has permanent legal force and openly and honestly announces to the public regarding their background as a former convict as a requirement for candidates for members of the DPR, Provincial DPRD, and Regency / City DPRD, in addition to other requirements that are also added as a conditional constitutional interpretation contained in Article 7 paragraph (2) letter g of Law 10/2016. Because, as has been stated in the previous legal consideration, the five-year waiting period after they have served their time as a convict is a time that is considered sufficient to conduct self-introspection and reintegration into the community for candidates for regional heads, including, in this case, candidates for members of the DPR, provincial DPRD, and regency/city DPRD. Similar requirements include explaining their identity openly to the public and not concealing or hiding their background in order to give potential voters something to think about when evaluating or making their decision. This is so that voters can evaluate the candidates they will support critically, both of whom have drawbacks and advantages that the public should be aware of (*notoir feiten*). Hence, it is up to the community or the voters to decide whether or not to support candidates who have served time in prison. Furthermore, for positions filled through elections (elected officials), the people with the highest sovereignty will ultimately determine their choice.

Furthermore, the Court needs to reaffirm the requirement of not being a repeat criminal offender because empirical facts show that numerous candidates for regional heads have served criminal sentences and were not given enough time to adjust and demonstrate that they had reintegrated into the community. Instead, they were trapped back in dishonorable behavior, even repeating the same criminal acts (in factual cases, especially corruption), which moves the goal of presenting genuine, honest leaders with integrity even further away. Therefore, in order to protect the greater interest, in this case, the interests of the community for leaders who are genuinely honest, reputable, authoritative, morally upright, and capable of providing good public services and bringing prosperity to the people they lead, the Court sees no other option but to impose cumulative requirements as stated in the legal considerations of the Constitutional Court Court decisions that have been mentioned above and finally emphasized in the ruling of the Constitutional Court Decision Number 56/PUU-XVII/2019. The Court considers such a step to be necessary in order to provide legal certainty and restore the essential meaning of the election of candidates for members of the DPR, provincial DPRD, and regency/city DPRD, namely to produce people with quality and integrity to become public officials while not eliminating citizens' political rights to continue to participate in government.

Based on the legal considerations outlined in the preceding paragraphs, the Court has concluded that the provision of Article 240 paragraph (1) letter g of Law 7/2017, which regulates the requirements for former convicts running for election as members of the DPR, Provincial DPRD, and Regency/City DPRD, has constitutional issues and violates Article 28J of the 1945 Constitution. Therefore, the Court has ordered that the a quo norm be synchronized with the spirit of Article 7 paragraph (2) letter g of Law 10/2016, as interpreted in Constitutional Court Decision No. 56/PUUXVII/2019.

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

RETROSPECT

Immanuel B.B. Hutasoit
Head of the International Affairs Division

One day, in retrospect, the years of struggle will strike you as the most beautiful.
(Sigmund Freud)

The year 2022 was a landmark year for the Constitutional Court as it marked the most international year in its history. The Court focused all its attention, energy, and effort on international cooperation throughout the year. This year was meaningful as MKRI hosted the largest constitutional justice forum in the world, the World Conference on Constitutional Justice (WCCJ) Congress, in October, which had been a long-awaited event since 2016.

MKRI has been widely praised for staging the event in such a professional and elegant way. Furthermore, congress came up with an agreement that is heavily influenced by the current state of the Constitutional Court, where the court is mandated to contribute to justice and peace. Looking back, we must acknowledge several key achievements of MKRI's international cooperation efforts in 2022:

Indonesia's Free and Active Foreign Policy in Russia - Ukraine Issue

The International Conference on Constitutional Justice (WCCJ) Bureau meeting in March 2022 at the Scuola Grande Building in Venice, Italy, including a presentation of MKRI's preparation to host the WCCJ's 5th Congress as well as a discussion of the position of the Russian Constitutional Court's membership in the WCCJ. This discussion was based on the actual conditions surrounding the political situation in Russia and Ukraine. All of the WCCJ Bureau's members were asked to submit proposals regarding the issue. On that occasion, MKRI stated that as the congress host, Indonesia fully submitted the decision to the WCCJ Bureau. With a note, Indonesia suggested and requested that the WCCJ Bureau make decisions by consensus or deliberation rather than by voting. MKRI also reminded the WCCJ Bureau that the position of the Russian Constitutional Court's membership in the WCCJ would be discussed first at the AACC meeting, as the Russian Constitutional Court is a member of the AACC.

At the next bureau meeting held online in June 2022, Indonesia reiterated its position that MKRI is a judicial institution that serves to safeguard democracy and uphold human rights. Therefore, Constitutional Courts around the world are also obliged to contribute to the realization of global peace. This can only be done by prioritizing universal values and equality before the law.

Furthermore, Indonesia is committed to taking the role of upholding international peace in accordance with the preamble of the 1945 Constitution. Hence, the concept of "participating in maintaining world peace" serves as the foundation for MKRI's active participation in several forums that are critical to the global advancement of democracy, human rights, and law enforcement.

The Constitutional Court of the Republic of Indonesia (MKRI) considers the Constitutional Courts of Ukraine and the Russian Federation to be great friends. It is hoped that these friendships will only grow in the years to come. Peace must therefore be the best course of action. Indonesia also emphasized its desire for the WCCJ to continue serving as a platform that values constructive discussion. As a result, MKRI insists on continuing to invite and facilitate dialogue between Russia and Ukraine, which is expected to result in suggestions or recommendations that must be presented to the governments of each nation.

MKRI has successfully conveyed an important message that the Constitutional Court must remain focused on humanitarian issues and maintain transparency in the execution of its duties and authorities rather than getting involved in issues motivated by political aspects.

Realizing Asia - Africa and Islamic World Cooperation in the Field of Law

Indonesia has remained committed to advancing the development of Asia and Africa since organizing the first Asia-Africa Conference (AAC) in 1955 in Bandung. Particularly under the

current administration, Indonesia has continued to demonstrate its commitment to growing its economy and improving the lives of its citizens by participating in numerous international conferences and bilateral cooperation.

Concretely, this commitment is just what the Indonesian government attempts to emphasize through the G-20 presidency's overarching theme of "recover together, recover stronger."

Looking back at the Asian-African Conference (AAC) in 2015, the meeting that lasted for eight days resulted in an agreement to advance Asia-Africa cooperation in the social, economic, and cultural sectors, fight against imperialism, uphold human rights, and actively participate in the creation of world peace. The Asian-African Conference (AAC), which agreed on the ten principles of the "Declaration on The Promotion of World Peace and Cooperation" better known as the "Ten Principles of Bandung" (Dasasila Bandung), successfully boosted Indonesia's name in the eyes of the world, despite the fact that it has only been independent for ten years.

Sixty-seven years later, on October 4, 2022, in Bali, Indonesia, amid global challenges in the fields of law, democracy, and human rights, especially in Asian and African countries that are very different from Western countries, the Joint Conference of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) and the Conference of Constitutional Jurisdictions of Africa (CCJA) was held at the Bali Nusa Dua Convention Centre (BNDCC), Bali, as the first Asian-African Constitutional Court Conference.

Indonesia understands that addressing the differences between Asian and African countries that tend to be communalist requires a different approach. New paths for collaborative work by Constitutional Courts to provide solutions are essential.

Asia-Africa is different, but so is the Islamic World. In the inauguration of the Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I) on the 23rd and 24th of December 2022 in Istanbul, Turkey, a working committee consisting of five countries (Indonesia, Turkey, Pakistan, Gambia, and Algeria) was established. Indonesia emphasized that as a country with the largest Muslim majority population in the world and with a series of experiences in various regional and international forums, MKRI is ready to support the continuity of CCJ-I. In the inaugural meeting attended by 32 participating countries, the Conference of Constitutional Jurisdictions of the Islamic World (CCJ-I), which has been discussed and initiated since 2018, eventually concluded the statutes, with 30 countries approving and signing as members of CCJ-I.

The Constitutional Court of the Republic of Indonesia has succeeded in accomplishing the founding fathers' dream of turning Indonesia into a pioneer of progress in Asia and Africa, as well as the unity of Islam in the context of advancing law enforcement and human rights.

International Cooperation for MKRI Employees

Amid MKRI's hectic international schedule, which included organizing the WCCJ Congress and the Asia-Africa Constitutional Court Conference, both of which attracted hundreds of participants from abroad to Indonesia, MKRI's International Cooperation team also started to carry out its overall function for the implementation of the Recharging Program. This is an ongoing employee development program used to provide employees with knowledge and insights in accordance with developments in the scope of the legal field. The Employee Recharging Program is an attempt to provide an endeavor to provide capacity building and capabilities of employees, in collaboration with partners who have a world-class reputation in providing education and training in the field of law. The uniqueness of this program is that it provides not only theory but also knowledge about the practice of case handling and law enforcement in various countries.

This year's Recharging Program took place from October 31 to December 9 at The Hague University of Applied Sciences (THUAS) in the Netherlands, with the theme "The Digital Transformation of Constitutional Adjudication in the Covid-19 Era: Legal and Ethical Dimensions." The theme fits the Court's annual report, which focused on the Court's digital transformation in the implementation of the Constitutional Court's duties and authority.

MKRI expanded its reach by collaborating with William & Mary Law School and NCSC (National Center For State Court) at the end of 2022. The collaboration is intended to support the development and implementation of training programs, as well as to promote best practices in modern court administration and judicial management.

Retrospect

At the very least, the three missions mentioned above were successfully completed in 2022, along with other accomplishments by MKRI in terms of organizing international activities, international work/visits, and contributions to strengthening multilateral cooperation. This final edition of 2022 raises an interesting question: So, what's next?

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