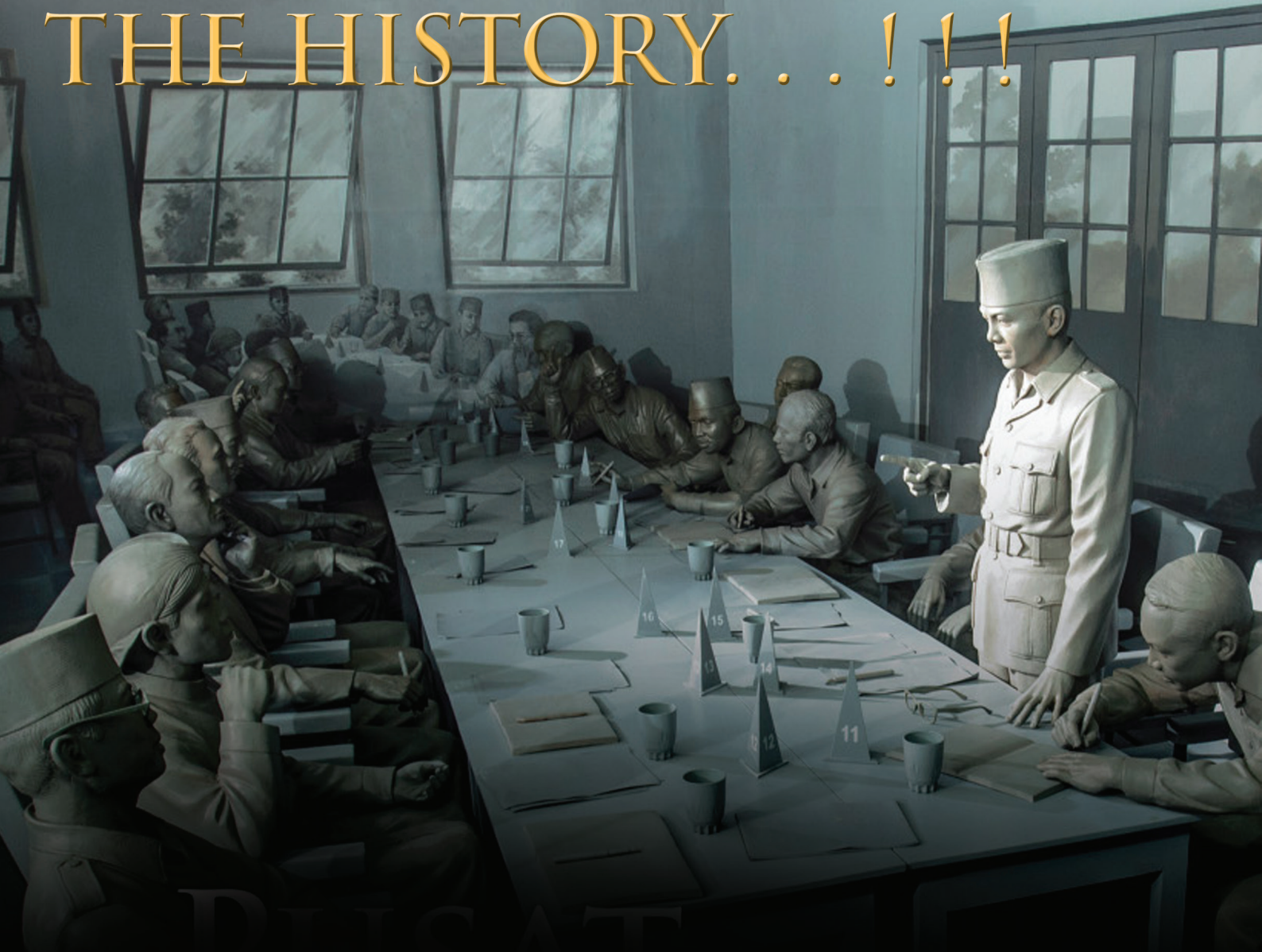


# KONSTITUSI



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Are Still Managed by  
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The Headline News of the October 2021 Edition of Konstitusi Magazine discusses the Decision of the Constitutional Court (MK) No. 72/PUU-XVII/2019 and 6/PUU-XVIII/2020 regarding the judicial review of the Law on the Social Security Agency (BPJS) regarding the rules for transferring the management of pension funds. We have summarized the two reports on the judicial review of the BPJS Law chronologically, including explaining the statements of the Government, House of Representative, Petitioners' Experts, Presidential Experts, and Related Parties.

In addition, there is a special rubric that readers are waiting for, namely Editorial as the opinion of the editor and the mainstream of Constitutional Court activities. Furthermore, there is Vox Pop rubric containing comments and public opinion on the Constitutional Court. A distinctive rubric is Window in the form of writings on the views of I Dewa Gede Palguna on current issues. Next, the Opinion rubric contains the public's critical view of the Constitutional Court, the Constitutional Court's decision, or state administration (related to digital culture to strengthen constitutional culture).

Another routine activity, the Constitutional Court often displays non-trial news related to the inauguration of the latest and sophisticated remote court tools, SmartBoard Courtrooms which are placed on several campuses and also in one of the Constitutional Villages, Galesong in Takalar Regency, South Sulawesi. It includes news of the Constitutional Court hearings, visits the Constitutional Court, technical guidance events as well as activities to increase the understanding of citizens' constitutional rights and others. This is the introduction from the editor. Finally, we wish you a enjoy reading!



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## HEADLINE NEWS

### THE BPJS LAW HAS REGULATED THE PARTICIPATION CONDITIONS OF CONTRIBUTION ASSISTANCE RECIPIENTS

The Constitutional Court declared to reject the application for judicial review of Law Number 24 of 2011 concerning the Social Security Agency (UU BPJS). This application for judicial review was submitted by Koko Koharudin by postulating the norm of Article 18 paragraph (1) of the BPJS Law which reads, "The government registers Contribution Assistance recipients and their family members as Participants to BPJS."

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## ACTION



### CONSTITUTIONAL JUDGES REVIEW THE LAW OF THE CONSTITUTIONAL COURT PROCEDURE

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# POLITICS OF NEW LAW SOCIAL SECURITY AND RETIREMENTS

According to Article 57 and Article 65 of Law 24/2011, PT Dana Tabungan dan Asuransi Pegawai Negeri or PT. TASPEN (Persero) and PT Asabri (Persero) would be merged or transferred to The Workers Social Security Agency (BPJS Ketenagakerjaan). Recently, the Constitutional Court (MK) has affirmed a new line of legal politics. Through the constitutional mandate in the Constitutional Court Decision Number 72/PUU-XVIII/2019 and Decision Number 6/PUU XVIII/2020, the Constitutional Court emphasized that both of them still exist as they have been. The Constitutional Court declared unconstitutional Article 57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Agency (BPJS).

Previously, Law 24/2011 was tested and decided by the Court several times. In the previous verdict, the Constitutional Court only emphasized the constitutional mandate that social security should be used by all Indonesian people. Meanwhile, regarding the transfer of the old-age/retried worker insurance and pension programs from PT TASPEN (Persero) and PT Asabri to The Workers Social Security Agency (BPJS Ketenagakerjaan), the Court has never provided a legal assessment. It is through this decision that the Court provides a legal assessment.

So, what is the Constitutional Court's argument? There are 2 (two) main arguments: (i) the design of the transformation of the two PTs to The Workers Social Security Agency BPJS Ketenagakerjaan containing uncertainty, mainly because it is inconsistent with the choice of institutional design; and (2) there is no certainty regarding the fate of the participants, especially the scheme that should reflect the guarantee and the potential for reduced benefits for the participants.

From the two main arguments, at least the main points can be described as follows. First, the Constitutional Court emphasized that the institutional design of Social Security Agency/BPJS as desired by the legislators is not just one legal entity, but can be two, three, four, or more. Thus, the Constitutional Court interprets the definition of Article 1 number 6 of Law 40/2004, "Social Security Administering Agency is a legal entity established to administer social security programs".

Second, in the limits of reasonable reasoning, according to the Constitutional Court, the transfer or consolidation of PT. TASPEN and PT Asabri to The Workers Social Security Agency (BPJS Ketenagakerjaan) will certainly cause the loss of both entities. Switching them with other companies into one The Workers Social Security Agency is contrary to or not in line with the policy choices of the Lawmakers when enacting Law 40/2004. This is because the transition has implications for the application of the concept of a single institution in the implementation of the employment social security system.

Third, in terms of the institutional design of running social security providers, it has met the social security standards for people who choose jobs. Furthermore, it is changed by liquidating and merging the institutions into one entity causes legal uncertainty for people who have chosen to participate in the old-age insurance program and pension funds at the existing institutions/agencies.

At the time the legislators transferred a limited liability company by combining with another company with a different character. It has the potential to harm the rights of participants in the old-age savings program and pension payments that have been made by the company before being transferred. The loss or potential loss is since when a merger is carried out, it is very likely that there will be uniformity in service standards and work accident insurance

programs, old-age, pension and death benefits for all participants. The uniformity will place all participants in the same position, even though each of them departs from jobs with different characteristics and work risks.

Fourth, even though the choice to transform from PT TASPEN (Persero) and PT Asabri to The Workers Social Security Agency (BPJS Ketenagakerjaan) is the policy of the legislators, the transformation must be carried out consistently with the concept of many institutions. Thus, it is able to provide legal certainty guarantees for the rights to social security of citizens who are members of the two PTs as guaranteed in Article 28D paragraph (1), Article 28H paragraph (3), and Article 34 paragraph (2) of the 1945 Constitution.

Fifth is related to the principle of mutual cooperation. To fulfill the principle of mutual assistance/*gotong royong*, according to the Constitutional Court, the legislators do not have to transform all state-owned social security providers in the labor sector into one body. However, by maintaining the existence of each company and transforming them into social security administering bodies, the principle of *gotong royong* can still be fulfilled properly.

From the description above, it is clear that the Constitutional Court has drawn up a new legal-political route for the management of old-age insurance and pension programs, especially regarding PT. TASPEN (Persero) and PT Asabri. The new legal politics should be written to straighten the path of implementing Law 24/2011. Thus, it is in line with the mandate of the 1945 Constitution, especially regarding institutional transformation that is consistent with the choice of Social Security Agency BPJS institutional design. Hence, all interested parties must submit to the new legal-political path according to the Constitutional Court's Decision. We should not talk about winning or losing business, profit or loss. This is a more substantive matter; our reverence for the law and constitution in the Indonesian state of law, because the Constitutional Court as the Sole Interpreter of the Constitution has decided. Long Live Constitution!





# GANDHI

I D.G.Palguna

*“If Gandhi is not the most logical candidate for the Nobel Prize, then the popular idea of the function and purpose of the Prize needs to be revised”*

**Hilwiah Roche**, Tamil Nadu journalist citing editorial  
The Christian Century News Paper, 1934.



**B**irla, New Delhi (India), January 30, 1948. That evening, the sun had recently dipped in the western horizon. In a house with a spacious yard, a skinny old man with round glasses, dressed only in a long white cloth wrapped around his body, was walking and helped by several people. The frail man is getting ready to perform the evening puja (prayer): a prayer that is performed with adherents of various religions. As usual, because the mansion was always full of visitors, the old man walked over to greet them—most of whom were admirers. Suddenly, from the crowd appeared a man with a gun. “Boom, bang, bang,” the man shot the old man in the chest three times at the point-blank range. The old man could only be heard saying, “Sai Ram, my God,” before finally drooping and dying. That day the world – not just India – mourned the loss of a warrior who was a role model for humanity and true universal brotherhood. The person who was shot and killed was Mohandas Karamchand Gandhi—whom his admirers called “Mahatma” aka “The Great Soul”.

How could anyone be able to kill someone who couldn't even step on an ant? Gandhi was a man who

made the service of his fellow human beings, especially those who were poor and despised, service to God. He called and treated the poor and suffering people as Harijans, children of God. Almost all of Gandhi's life was devoted to the struggle for humanity and peace through ahimsa or non-violence. In this way, he succeeded in liberating India. For Gandhi, all humans are brothers. *Vasudaiva kumbakam*, this world is one family—a phrase he quoted from the Upanishads and he adhered to throughout his life, not just as a slogan. Gandhi was one of the few human beings—if not the only one—whom we truly find the only thought, word, and deed (*manacika, wacika, kayika*) that begins with faith. “Be careful with your beliefs because they will become your thoughts. Be careful with your thoughts because they will become your words. Be careful with your words because they will become your deeds. Be careful what you do because it will become your habit. Be careful with your habits, because they will become your value. Be careful with your value because it will be your luck.” Not a day went by Gandhi without the memory of truth, peace, and brotherhood in humanity.

Thus, it is not at all surprising that so many activists and world leaders are competing to nominate him as a person worthy of the Nobel Peace Prize—he was nominated five times as a candidate for the Nobel Peace Prize: 1937, 1938, 1939, 1947, and 1948 (a few days before he was killed), but for some reason, until now the prize had failed to get him?

Journalist - culturalist Mochtar Lubis (deceased), in his foreword to the book about Mahatma Gandhi, *All Humans Brothers, Mahatma Gandhi's Life and Ideas as Told in His Own Story* (originally entitled *All men are brothers: life and thoughts of Mahatma Gandhi as told in his own words*), wrote a bit of his experience when, as a reporter

for the Antara News Agency, he was included in a group of Indonesian delegates attending the First Asian Conference in New Delhi (1946). In the group, there were Sutan Sjahrir and Ali Sastroamidjojo. according to Indian tradition, the conference was held in a giant tent. The Indonesian delegation received a warm welcome. Sutan Sjahrir had the opportunity to speak after Pandit Jawaharlal Nehru (who later, after India's independence, was elected prime minister), alternated with other Asian leaders. However, what impressed him the most was a thin man of not very tall stature and dressed only in a white cloth wrapped around his body. This man sat cross-legged on the rug, speaking in a soft voice, calm, not impassioned, but very mesmerizing. “Not only was I mesmerized by it, but all the participants in the tent listened to it with great attention. That person is Gandhi,” said Mochtar Lubis. “This very simple man, whose appearance is far from the image of a hero in my mind as a teenager ... is a human child of India who has led the nation to regain the independence of his nation, not by violence, and not by using any weapon, destroyer of any kind. Even if he uses a weapon, the weapon used is non-violent. The ahimsa movement has succeeded in igniting great inspiration in the hearts of millions of Indians who long for the independence of their homeland again”.

No one thought that the man who was born in Porbandar Calcutta, India, October 2, 1869, would be incarnated as a central figure in India's struggle for independence, especially in a “strange” way without using weapons (ahimsa). The turning point in Gandhi's awareness of the importance and seriousness of the war against injustice occurred when he experienced unfair treatment just because he was an Indian. The incident occurred in June 1893, when he was

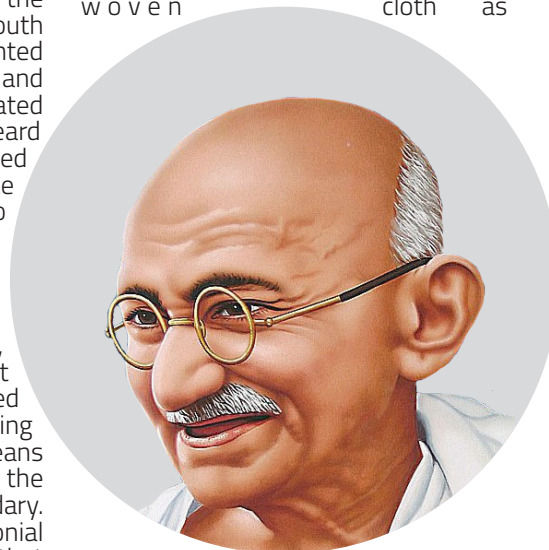
young (23 years old), practicing as a lawyer in South Africa—a country that at that time implemented apartheid, the separation of the population based on skin color. He was thrown from a train because as an Indian descendant, he had “dared” to sit in the first-class compartment even though he was holding a first-class ticket—similar to the Rosa Parks story that sparked the Boycott Bus incident in Montgomery, Alabama, United States, 1956.

This incident was used as a starting point to “attack” the country’s legal system which is biased against people of color, especially of Indian descent. He also raised protests through non-violent means to end this discriminatory practice. After repeated detentions and after the protests drew the attention of the international community, the South African government finally granted part of the demands of Gandhi and people of Indian descent to be treated more fairly. The struggle was heard as far as India. Gandhi was called home to fight for the independence of his country. He began to mobilize the struggle through non-violent means demanding India’s independence. At first, the British colonial government did not underestimate. However, when the non-violent movement rolled like a snowball, followed by millions of people and chanting Swaraj alias self-government, it means independence from British rule, the British government was in a quandary.

Unfortunately, the British colonial government faced it with violence that came to be known as the “Amritsar Massacre” in 1919. During a peaceful demonstration, thousands of people joined in Jallianwala Bagh, Amritsar, Punjab, who protested the detention of Indian freedom fighters, among them Dr. Saifuddin Kitchlew and Dr. Satya Pal, were met with gunfire by the British Royal Army led by Brigadier General Dyer. About 1500 people were killed and thousands more were seriously injured in the tragedy. The event that shocked the whole world had undermined the credibility of the British colonial government not only for the Indians but also in the perspective of the world. England was cornered. It was because the incident was used by Gandhi as a reinforcement of the non-cooperative movement and civil disobedience that he initiated. The most famous act of civil disobedience was the one that came to be known as the Salt March, which was nonviolent civil disobedience in the form of a symbolic journey of hundreds of kilometers in search of a pinch of salt.

This was a protest movement against the imposition of a salt tax as part of the salt monopoly politics imposed by the British colonial government.

In that movement, Gandhi led thousands of people to walk for 24 days covering a distance of 390 kilometers from Sabarmati Ashram to Dandi (now in Gujarat). At first, only 78 loyal followers of Gandhi attended. Along the way, the number continued to grow and by the time the long journey reached its end on April 6, 1930, the number of followers of the Salt March had already become in millions. England was flabbergasted. Coupled with the *swadesi* movement, namely Gandhi’s call for Indians to weave their own cloth, and he made himself an example by wrapping his w o v e n c l o t h a s



clothes on his body (until the end of his life), the British became increasingly desperate. The Indian population is the largest market for British textile production. It was completely unimaginable by the British colonial government that its power in the land of Bharatawarsa would end in such a “moderate” manner. It’s true what the great physicist Albert Einstein said, if history didn’t record it, future generations of humans might not believe that this person (meaning Gandhi) lived on this planet.

Back to the question earlier, how can anyone be “capable” of killing Gandhi? The answer to this question may also be found in the foreword of Mochtar Lubis earlier. “Gandhi strongly opposed the splitting of India into two states and did not relentlessly advocate that Hindus should love Muslims, and Muslims should love Hindus and that the two should live together in peace and independence in one independent country. But many Muslims became angry with Gandhi for misinterpreting Gandhi’s attitude

as disapproving of the existence of a Pakistani state. On the other hand, many Hindu militants also became angry with Gandhi and accused Gandhi of being too partial to Muslims.” Gandhi’s assassin, Nathuram Vinayak Godse, was the latter type of person.

However, the story of Gandhi is not only about “serious” and gloomy matters. There’s also a funny side to it. Gandhi once said, “If I had not had a sense of humor, I might have committed suicide long ago.” That sense of humor or antics often showed Gandhi’s ingenuity. This is one example. It is said that when Gandhi studied law at the University College of London, there was a lecturer who hated Gandhi so much because Gandhi never bowed his head before the lecturer—who was only mentioned by his last name, Peters. However, Gandhi never turned to hate him but responded to the professor’s hatred with ingenuity and antics that ultimately made Professor Peters speechless. One day Professor Peters was having lunch in the university dining room. Not long after, Gandhi came with his tray of food and sat down to eat beside the professor. Professor Peters arrogantly said, “Mr. Gandhi, don’t you know that a pig and a bird never sit together to eat?” Gandhi lightly replied, “Don’t worry Professor, I will fly right now.” Professor Peters immediately wrinkled his face and planned “revenge”. Through the exam questions, but Gandhi was always able to answer very well. Feeling embarrassed, Professor Peters finally asked Gandhi, “Mr. Gandhi, if on the way you came across a package containing one bag of wisdom and another bag full of money, which bag would you take?” Quickly, as if without thinking, Gandhi replied, “Of course I will take the bag containing the money”. Satisfied and feeling that he has succeeded in getting his revenge, with a sardonic smile Professor Peters said, “If I were in your position I would take the bag of wisdom, wouldn’t you Mr. Gandhi?”

Gandhi quickly and nonchalantly replied, “Everyone takes what he doesn’t have.” Again the professor’s face turned red. I was so irritated that he was always less intelligent than Gandhi, Professor Peters wrote the words “Idiot” on Gandhi’s exam answer sheet and quickly handed it to Gandhi. Gandhi accepted it and sat down immediately. However, a few minutes later he met the professor with the answer sheet for the exam. Gandhi said, “Prof, you have signed this answer sheet for my exam but you forgot to give a grade.” ■

# TRANSITIONAL REGULATIONS FOR THE MANAGEMENT OF PENSION FUND FROM PT TASPEN TO BPJS IS UNCONSTITUTIONAL

The rules regarding the transfer of pension fund management from PT TASPEN (Persero) to The Workers Social Security Agency/BPJS Ketenagakerjaan are reviewed. Many retired government employees and active government employees were registered as Petitioners for Case Number 72/PUU-XVII/2019.



Illustration of A Health Care and Social Security Agency (BPJS Kesehatan). (Photo: Antara)

In the inaugural hearing which took place on November 20, 2019, 15 of the Petitioners represented by their attorney Andi Muhammad Asrun said that Article 1 number 1, Article 5 paragraph (2), Article 57 letter f, Article 65 paragraph (2), and Article 66 of the Law number 24 of 2011 concerning the Social Security Administering Body (UU BPJS) is detrimental to their constitutional rights. This is because a quo article demands that TASPEN no longer hold the “Pension Payment Program and Old Age Savings Program” no later than 2019 which created uncertainty for the Petitioners regarding the implementation of their constitutional right to obtain social security as regulated in Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution. In addition, the Petitioners also argue that they feel that their constitutional rights have been impaired due to a decrease in benefits and services due to the transfer of TASPEN program services to Social Security Agency/ BPJS which has been benefited by the Petitioners. “This law has the potential to cause constitutional losses in the future if the TASPEN program is transferred to BPJS,” he said.

Asrun explained that according to the Petitioners, the policy or legal politics of the government adheres to the separate management of social security management between workers who work for state administrators and workers who work other than state administrators. This is stated in PP 45/2015 in conjunction with PP 46/2015. It confirms that the Implementation of the Old Age Security Program and Pension Security for Participants at state administrators is excluded from the PP and is mandated to be



Andi Muhammad Asrun as the Petitioner’s attorney while conveying the main points of the petition for the judicial review of the Social Security Agency (UU BPJS), Tuesday (3/12) in the Plenary Session Room of the Constitutional Court Building. Public Relations/Gani’s photo

regulated in separate government regulation.

Thus, according to the petitioners, the legislators want the implementation of the Pension Security program and the old-age security program for civil servants and state officials (employees who work for state administrators), to be held separately from the management of the Pension Security and Old Age Security programs for employees who work. to non-state (private) employers.

Therefore, the Petitioners feel that there is a potential loss of rights related to the benefits that have been obtained through participation in the Social Security and Old Age Savings Program will be lost in line with the enactment of the provisions of Article Law 24/2011. The Constitutional Court (MK) canceled the application of the rules regarding the transfer of pension fund management from PT Dana Tabungan dan Asuransi for Civil Servants or PT TASPEN (Persero) for short to BPJS Ketenagakerjaan. These rules are contained in Article

57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Agency (UU BPJS).

**Granted**

After conducting many hearings, the Constitutional Court stated that the two articles were contrary to the 1945 Constitution and had no binding legal force. The decision was read out by the Chief Justice of the Constitutional Court Anwar Usman accompanied by other constitutional judges on Thursday (30/9/2021) followed by the parties online.

Constitutional Justice Saldi Isra stated that the Court’s legal considerations related to the institutional transition of PT TASPEN (Persero) into The Workers Social Security Agency/ BPJS Ketenagakerjaan. Whereas the Court considers that every citizen has the right to get a decent living and choose a job according to his abilities as guaranteed by Article 27 paragraph (2) and Article 28C paragraph (1) of the 1945 Constitution. In this case,

he continued, when a person has chosen to work in a certain job, then all rights, obligations, and risks for the choice of work will be fully borne by the person concerned.

Meanwhile, Saldi continued, if it is related to the state's mandate to develop this social security system, the implementation of the social security system can also vary according to the character of each job chosen by citizens. Therefore, changing the institutional design of the existing social security provider by liquidation or merging into one such entity, will result in the emergence of legal uncertainty for people who have chosen to participate in the old-age insurance program and pension fund at the existing institution.

"Thus, the Court emphasized that even though Law 40/2004 requires institutions engaged in the administration of social security to be transformed into social security administering bodies, it does not mean that the agency is abolished with other models with different characters. It is enough to transform the form of the legal entity by adjusting and strengthening regulations that

mandate the obligations of social security providers to be regulated by law," said Saldi.

In addition, the Court stated that when the legislators transfer a limited liability company by combining with another company with a different character, the rights of the participants in the old-age savings program and pension payments that have been made by the company will be impaired before the transfer. Because, when the merger occurs, there may be uniformity in service standards and work accident insurance programs, old-age benefits, pension benefits, and death benefits for all participants, he added.

"Hence, even though the choice to transform from PT TASPEN (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan) is a law-making policy, the transformation must be carried out consistently with the concept of many institutions. Therefore, they are still able to provide legal certainty for the rights to social security of citizens who are members of PT TASPEN (Persero)," stated Saldi.

### **The Principle of Mutual Cooperation (*kegotongroyongan*)**

Furthermore, regarding the principle of mutual assistance in the context of social security, Saldi said, Law 24/2011 has defined it as the principle of togetherness among participants by bearing the burden of social security costs through contributions paid according to the level of salary, wages, or income. Then, the old-age insurance program and the pension payment program for government employees have actually been regulated in Article 1 of Law Number 11 of 1969 concerning Employee Pensions and Employee Widows/Widower Pensions (Law 11/1969) and contained in Government Regulation Number 20/2013 concerning Insurance Civil Service Social Security and Government Regulation Number 70/2015 concerning Work Accident Insurance and Death Security for State Civil Apparatus (ASN).

Therefore, Saldi said that in the concrete case experienced by the Petitioners for the design of The Workers Social Security Agency (BPJS Ketenagakerjaan) to organize a pension fund program and an old-age insurance program for all levels of society as an embodiment of the principle of mutual assistance, it can't be used as a basis for justification. Although The Health Care and Social Security Agency (BPJS Kesehatan) and The Workers Social Security Agency (BPJS Ketenagakerjaan) both charge contributions to their participants, they can't be considered as the same concept as Government Employee contributions.

"Hence, according to the Court, it would be unfair if a retired government employee who always contributes monthly in the hope of enjoying the savings he has accumulated in his old age has to



President Director of PT Taspen A.N.S. Kosasih stated a related party in the hearing of Law No. 24 of 2011 concerning the Social Security Agency, Wednesday (5/2) in the Court's Meeting Room. Public Relation: Ifa's photo.

share it with others in the name of mutual assistance. Although the Court strongly supports the principle of mutual assistance in achieving community welfare, in the context of the old-age insurance program and pension payments, it is not appropriate for this principle of mutual assistance to be applied to government employees for their old age,” said Saldi.

## Multiple Institutions

Regarding to the fulfillment of the principle of mutual assistance/*gotong royong* with the incorporation of institutions for administering social security in the field of manpower, the Court gave directions so that the chosen institutional design is a plural institution and not a single institution. It also does not make all the state companies administering social security in the field of employment into one body. Because such a design transformation contains uncertainty, both due to the inconsistency of the institutional design choices taken, as well as uncertainty over the fate of the participants.

“Thus, the Petitioners’ argument regarding the transfer of PT TASPEN (Persero) as referred to in a quo article is contrary to the right of everyone to social security as stipulated in Article 28D paragraph (1) of the 1945 Constitution is legally grounded,” Saldi said.

It is important to note that the Petitioners postulate these articles because they are considered to have the potential to cause harm to the constitutional rights of the Petitioners who have a background as TNI (Indonesian national army) soldiers. The Applicants assessed that they had an assignment risk that was directly related to loss of life, disability, death, or disappearance in the area of operation. In addition,



The Panel of Constitutional Justices reads Verdict Number 72/PUU XVII/2019 on September 30, 2021.

applicants also have a high mobility risk while still on active duty. While retiring, it is expected that the pension payment program from PT Asabri which has been running

so far will not be diverted. Mainly regarding the confidentiality of positions and personal data that must be maintained. ■

UTAMI ARGAWATI/SRI PUJIANTI

## DECISION

### Number 72/PII-XVII/2019

Decision on the Judicial Review of Law Number 24 of 2011 concerning Social Security Agency (UU BPJS) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)

#### Petitioner

Prof. Dr. H. Mohammad Saleh, S.H., M.H., Prof. Dr. Ir. Mohammad Noor Salim, S.E., M.M., Dr. Iman Bastari, Ak., M.Acc., CA., QIA., Drs. Achyar Hanafi, M.S., Dr. Drs. Raden Sulakmono Kamso, S.H., M.BA., M.M., Dr. Ir. Iskandar Andi Nuhung, M.Sc., Mula Pospos, S.E., M.M., Drs. Miduk Purba, M.A., Ph.D., Dr. Dwi Satriany Unwidjaja, M.Sc., Dra. Iis Ukhiyawati., Esti Yogyawati., Ruhendo Saputra., Ruhendo Saputra., Nurhasanah., Drs. Djalu Sugiarto, M.Sc., Drs. Sutanto Herujatmiko., Ahmad Imberan., Afrilita.

#### Verdict

1. Granted the petition of the Petitioners in its entirety.
2. To state that Article 57 letter f and Article 65 paragraph (2) of Law Number 24 of 2011 concerning the Social Security Agency (the Republic of Indonesia of 2011 Number 116, Supplement to the Republic of Indonesia Number 5256) are contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
3. Order the decision-making in the State Gazette of the Republic of Indonesia as appropriate.

#### Verdict Declaration:

Thursday, September 30, 2021

# GOOD RESULT: FOUR RETIRED MILITARY OFFICERS' LAWSUITS



Bayu Prasetyo as the Petitioner's attorney while delivering the main points of the petition for the UU BPJS review case, Monday (27/1/2019) in the Plenary Session Room of the Constitutional Court Building.

**The review of Law Number 24 of 2011 concerning the Social Security Agency (UU BPJS) proposed by Endang Hairudin and three other Petitioners was fully granted by the Constitutional Court (MK) on Thursday 30 September 2021. Then, what is the chronology of the petition for judicial review of the UU BPJS submitted by the retired military officer? Check out this news.**

**E**ndang Hairudin, M. Dwi Purnomo, Adis Banjere, and Adieli Hulu as TNI retirees and as participants in the Social Insurance program for the Indonesian Armed Forces (ASABRI) feel that their constitutional rights have been violated with the enactment of Article 57 letter e and Article 65 paragraph (1) of Law no. 24/2011 concerning the Social Security Agency (BPJS). They feel that they can't be considered as ordinary workers as participants of

The Workers Social Security Agency (BPJS Ketenagakerjaan), who should be entitled to special facilities and treatment to obtain the same opportunities and benefits to achieve equality and justice.

#### Assignment Risk

As a result of this constitutional loss, Endang Hairudin and three other people filed a petition for a judicial review of Law no. 24/2011 to the Constitutional Court. The Clerk of the Constitutional Court registered their application as Case

No. 6/ PUU-XVIII/2020 on January 15, 2020. The hearing for the preliminary examination of the examination of Law no. 24/2011 was also held on Monday, January 27, 2020. In a trial led by the Chair of the Panel, Constitutional Justice Suhartoyo, the Petitioners examined Article 65 paragraph (1) of the BPJS Law which states, "PT. ASABRI (Persero) has completed the transfer of the Indonesian Armed Forces Social Insurance program and the pension payment program to The Workers Social Security Agency (BPJS Ketenagakerjaan) no later



Bayu Prasetyo selaku kuasa hukum saat menyampaikan pokok-pokok perbaikan permohonan perkara pengujian UU BPJS, Senin (17/2/2019) di Ruang Sidang Pleno Gedung MK.

than 2029.”

Bayu Prasetyo as the attorney while conveying the main points of improvement of the request for the BPJS Law review case, Monday (2/17/2019) in the Plenary Session Room of the Constitutional Court Building.

The Petitioners argued that the background of the establishment of PT ASABRI (Persero) is to provide specialized insurance for members of the Armed Forces of the Republic of Indonesia as referred to in Article 2 of Government Regulation Number 44 of 1971 concerning Armed Forces Social Insurance (PP ASABRI). Each member of Indonesian Armed Forces (ABRI) and government employee is required to be participant of ABRI Social Insurance from the date of appointment. Except if the appointment is not on the first day, in which case the participation starts from the first day of the following month.

Represented by Bayu Prasetyo’s attorney, the Petitioners argued that Article 65 paragraph (1) of the BPJS Law has the potential to cause harm to the constitutional rights of the Petitioners whose backgrounds are TNI soldiers. Bayu explained that the background of the Petitioners who were formerly Indonesian National Army/TNI soldiers with the risk of the assignment was directly related to the loss of life, disability, death,

or loss in the area of operation, as well as the high mobility risk of the Applicants when they were active. Thus, when retiring, the Petitioners hope that what has been owned so far from PT ASABRI regarding the pension payment program will not be diverted. Especially regarding the confidentiality of positions, personal data which according to the Petitioners according to the soldier’s oath must still be maintained.

In addition, the Petitioners asserted that they are entitled to social security that allows their full development as useful human beings. So far, the Petitioners have received benefits as participants from the ASABRI program, experiencing legal uncertainty due to the potential for a decrease in benefits that will be received if the program is transferred to BPJS. In addition, the Petitioners are worried about the sustainability of the benefits to be received, considering that the receipt of benefits from the ASABRI program managed by PT ASABRI (Persero) is carried out with a pay as you go system sourced from the APBN. Meanwhile, the system adopted by The Workers Social Security Agency (BPJS Ketenagakerjaan) is carried out with a defined benefit system.

The trial of the petition for judicial review of Law no. 24/2011 continued on Monday, February 17, 2020. Bayu Prasetyo as the

attorney for the Petitioners conveyed the improvement by adding one article, namely Article 57 of the BPJS Law which regulates PT. Askes (Persero) is recognized for its existence and continues to implement the health insurance program, including accepting new participant registrations until the operation of A Health Care and Social Security Agency (BPJS Kesehatan). In the revision of the petition, the Petitioners also include data regarding the current benefits received by the Petitioners. Considering the profession of the Petitioners as soldiers with high risk. The program at ASABRI is indeed to fulfill the distinctive character of the TNI.

The hearings of the BPJS Law testing continue. After the trial for amending the petition, the Constitutional Court then held a trial of evidence by presenting the House of Representative, the Government, Related Parties (The Workers Social Security Agency/ BPJS Ketenagakerjaan, Indonesian Armed Forces Insurance/ASABRI, Civil Servant Insurance Savings/ Taspen), the Petitioner’s Expert and the President’s Expert. The Plenary Judges also brought the results of the judicial review of the BPJS Law to the Judges Consultative Meeting (RPH) for further discussion regarding the decision to be handed down.

**Granted for All**

The result came to the top when the Constitutional Court held a hearing to declare the verdict on Thursday, September 30, 2021. The review of Law no. 24/2011 on Social Security Agency BPJS, which took almost two years to end in the Constitutional Court’s Decision which granted a quo testing in its entirety. “The decision to adjudicate, grants the Petitioner’s request in its entirety,” said Plenary Chairman Anwar Usman who was accompanied by other constitutional judges.

The Court is of the view that the policy of transferring by merging it with other companies into one

The Workers Social Security Agency is contrary to the policy choices of the legislators when forming Law no. 40/2004. Because the transition actually has implications for the application of the concept of a single institution in the implementation of the labor social security system. In fact, according to the decision of the Constitutional Court and Law no. 40/2004 does not choose a single institutional model or institutional design, but follows the concept of many institutions or multiple institutions. The choice of policy with a single institution is not in line with the concept of transformation of the social security administering body as enshrined in Law no. 40/2004.

### Changes in Legal Form

In addition, the Constitutional Court Decision No. 72/PUU-XVII/2019 states, even though Law no. 40/2004 requires agencies/institutions engaged in the administration of social security to transform into social security administering bodies, but that does not mean that the agency is abolished by modeling or combining with other companies with different characteristics, but only by making changes to the legal form of the entity. the law in question and make

adjustments to the legal position and strengthen regulations that mandate the obligations of social security providers to be regulated by law.

“This is to avoid potential loss of rights of participants in the old-age savings program and pension payments that have been made by the company before being transferred, especially concerning the value of benefits. Therefore, even though the choice of transforming into The Workers Social Security Agency/BPJS Ketenagakerjaan is a law-making policy, the transformation must be carried out consistently with the concept of many institutions which can’t be separated from the character and specificity of each different social security administering body. Thus, it is able to provide legal certainty guarantees for the rights to social security of citizens. Especially the participants who are members of it as guaranteed by the 1945 Constitution,” explained Constitutional Justice Suhartoyo, who read out the legal considerations of the Constitutional Court’s Decision.

Although it is not explicitly argued by the Petitioners in their petition, the Court needs to affirm its stance regarding the fulfillment of the principle of mutual assistance/

*gotong royong* in the administration of social security as considered in the Decision of the Constitutional Court Number 72/PUU-XVII/2019 that basically states to fulfill the principle of *gotong royong*. In fact, legislators do not have to transform all state-owned social security providers in the field of employment into one body. Thus, even though by maintaining the existence of each company and transforming them into Social Security Agency, the principle of *gotong royong* can still be fulfilled properly. Therefore, the design of the transformation of the social security administering body into The Workers Social Security Agency (BPJS Ketenagakerjaan) contains uncertainty, either because of the inconsistent institutional design choices taken or because of the lack of certainty regarding the fate of the participants in it, especially the scheme that should reflect the existence of guarantees and the potential for reduced benefits for the participants.

Based on the description of the legal considerations, according to the Court, the arguments of the Petitioners regarding the transfer of PT ASABRI (Persero) as referred to in Article 57 letter e and Article 65 paragraph (1) of Law No. 24/2011 is contrary to the right of everyone to social security that allows their full development as a dignified human being as stipulated in Article 28D paragraph (1) of the 1945 Constitution and the mandate for the state to develop a social security system for all people and empower the weak and vulnerable. unable to comply with human dignity as stated in Article 34 paragraph (2) of the 1945 Constitution.

This is also the spirit contained in the Constitutional Court Decision No. 72/PUU- XVII/2019. Thus, the legal considerations in Decision No. 72/PUUXVII/2019, this *mutatis-mutandis* becomes part of the legal considerations for a quo case decision. Therefore, the Court believes that the petition of the Petitioners has legal grounds. ■

NANO TRESNA ARFANA

## DECISION

### Number 6/PUU-XVIII/2020

Decision on the Judicial Review of Law Number 24 of 2011 concerning the Social Security Agency against the 1945 Constitution of the Republic of Indonesia.

#### Petitioner

1. Major General TNI (Ret.) Endang Hairudin.
2. Admiral TNI (Ret.) M. Dwi Purnomo, S.H., M.M.
3. Marsma TNI (Ret.) Adis Banjere, S.H., M.H.
4. Colonel CHB (Ret.) Ir. Adieli Hulu, M.M.

#### Verdict

1. Granted the petition of the Petitioners in its entirety.
2. To state that Article 57 letter e and Article 65 paragraph (1) of Law Number 24 of 2011 concerning the Social Security Administering Body (State Gazette of the Republic of Indonesia of 2011 Number 116, Supplement to the State Gazette of the Republic of Indonesia Number 5256) is contrary to the Constitution of the Republic of Indonesia Year 1945 and has no binding legal force;
3. Order the loading of this decision in the State Gazette of the Republic of Indonesia as appropriate.

# VARIOUS OPINIONS ABOUT BPJS LAW JUDICIAL REVIEW

Various opinions developed in the hearing process for judicial review of Law Number 24 of 2011 concerning the Social Security Agency (BPJS Law). Responses were submitted by the House of Representatives and the Government. BPJS Employment, PT ASABRI (Persero) and PT TASPEN (Persero) also gave statements at the hearing. In fact, to strengthen the argument of the petition, the Petitioners appointed a number of experts. Likewise, the President (Government) also presents experts.



Member of Commission III of the House of Representatives, Arteria Dahlan, gave a statement from the House of Representatives in the hearing of the BPJS Law judicial review case, Wednesday (7/8/2019) in the Plenary Session Room of the Constitutional Court Building.

**Arteria Dahlan** (Member of Commission III of House of Representatives)

### **Transition Does Not Interfere With Retirement Rights**

Member of Commission III of the House of Representatives of the Republic of Indonesia, Arteria Dahlan, emphasized that the transfer of pension payments to Social Security Agency/BPJS would not harm retirees. “The transfer of the insurance program for the payment of pensions from PT ASABRI to The Workers Social Security Agency (BPJS Ketenagakerjaan) will not interfere with the pension rights of retired retirees,” said Arteria. She delivered the House of

Representatives’ statement in the follow-up hearing of the judicial review of Law No. 24/2011 on Wednesday, July 8, 2020.

The House of Representatives is of the opinion that the provision transferring PT ASABRI (Persero)’s social insurance program and pension payments from PT ASABRI (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan) is a policy form of choice for legislators in order to develop a national social security system. The House of Representatives emphasizes that there is no loss of the specific constitutional rights and or authorities of the Petitioners as argued by the

Petitioners regarding the norms being tested. According to the House of Representatives, this is clearly only an assumption of the Petitioners. In addition, the Petitioners can't prove that the benefits received by the peyyitioner will be lost by transferring the social insurance program from PT ASABRI (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan).

Arteria also explained that the provisions of the articles in the 1945 Constitution of the Republic of Indonesia used as touchstones by the Petitioners has no connection with constitutional losses as argued by the Petitioners as participants in the insurance program of PT ASABRI (Persero). The provisions in Article 57 letter e and Article 65 paragraph (1) of the BPJS Law do not reduce the constitutional rights and or authorities of the Petitioners in obtaining rights in the form of recognition, guarantees, protection, fair legal certainty, equal treatment before the law, convenience and special treatment to obtain the same opportunities and benefits. The provisions of Article 57 letter e and Article 65 paragraph (1) of the BPJS Law have fulfilled the provisions of Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia by providing fair legal certainty in the form of a PT. ASABRI (Persero) and the Workers Social Security Agency (BPJS Ketenagakerjaan) pension program no later than 2029.

**Haiyani Rumondang** (Director General of Industrial Relations Development and Social Security)

### **Program Transfer Does Not Disadvantage Petitioner**

The government, through the Director General of Industrial Relations and Manpower Social Security at the Ministry of Manpower, Haiyani Rumondang, explained that the Petitioners, as retired Indonesian National Army/TNI officers, are currently retired. Thus, they are only recipients of pension benefits from PT ASABRI (Persero). Haiyani emphasized that the Petitioners are not participants in the benefits of work accident insurance, old age insurance, and death insurance from PT ASABRI (Persero). Therefore, the position of the Applicants who are not beneficiaries of work accident insurance, old age insurance, death insurance, then the Petitioners do not have losses to the beneficiaries of work accident insurance, old age insurance, and death insurance from PT ASABRI (Persero).

In addition, Haiyani also explained the Petitioners are given pension benefits in the form of defined benefits with a funding system funded by the State Budget. This is as regulated in Law no. 6/1966 concerning Provision of Pensions, Retirement Allowances and Allowances to the Voluntary Military and Government Regulation Number 102/2015 concerning Social Insurance for Indonesian National Armed Forces Soldiers, Members of the Indonesian National Police and State Civil Apparatus

Employees within the Defense and State Police of the Republic of Indonesia. According to the Government, in 2029 the Petitioners will not suffer any losses due to the transfer of the program from PT ASABRI (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan). Therefore, according to the Government, the Petitioners have no legal standing.

The government also responds to the Petitioners' argument that the enactment of Article 57 letter e and Article 65 paragraph (1) the BPJS Law has the potential to cause constitutional harm to the Petitioners if the PT. ASABRI (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan) no later than 2029. The government is of the opinion that the Preamble to the 1945 Constitution mandates the state's goal to improve people's welfare. In the Amendment to the 1945 Constitution, the goals of the state are emphasized through a social security system for all the people. In addition, in the Decree of the People's Consultative Assembly (TAP MPR), the President mandates the existence of a comprehensive and integrated national social security.

### **Explanations of The Related Party**

Related Parties in this case BPJS Employment, PT ASABRI (Persero) and PT TASPEN (Persero) also provided information. BPJS Employment Strategic Plan and IT Director Sumarjono said that the concept of transferring the pension payment program from PT ASABRI (Persero) to The Workers Social Security Agency (BPJS Ketenagakerjaan) departed from the principles of mutual cooperation, non-profit, trust funds and others. Therefore, the concept of social security can't be managed by a profit-oriented state-owned enterprises/BUMN, but is implemented by a public legal entity whose profits are obtained, used, and returned to the benefits received by The Workers Social Security Agency (BPJS Ketenagakerjaan) participants.

In addition, Sumarjono said that the aim of the state is to improve the welfare of the people. This goal is further emphasized by developing a social security system for all Indonesian people. The national social security system is a state program that aims to provide certainty of social protection and welfare for all people as mandated in the 1945 Constitution Law Number 40 of 2004 concerning the National Social Security System has fulfilled Article 34 Paragraph (2) the 1945 Constitution, that the state has an obligation to develop a social security system that is capable of empowering the weak. However, related to the regulation and institutional mechanism of Social Security Agency/BPJS, it is a policy of the legislators (open legal policy).

Meanwhile, Director of PT ASABRI (Persero) Sony Wijaya explained that the implementation of social

insurance for the Indonesian National Army (TNI) and Indonesian National Police (Polri) as well as State Civil Apparatus within the Ministry of Defense and Polri has a history of institutions and special considerations due to its specific nature and unique characteristics. The history of the organization providing social insurance for ASABRI members began with the establishment of Taspenmil in 1964 as a special branch of TASPEN for military affairs. Therefore, there is a distinctive characteristic, namely the high risk of assignment when carrying out duties, namely dying while carrying out duties or dying. Therefore, there is special compensation for those who died and special compensation for those who died while carrying out their duties. The ASABRI program includes an old-age savings program, work accident insurance, death insurance and a pension program. In addition, there are mortgage loan down payment programs, policy loans, Taspen Life scholarship protection and others. Meanwhile, ASABRI participants consist of members of the TNI and Polri as well as State Civil Apparatus within the Ministry of Defense and Polri, both active and retired. PT ASABRI (Persero) has two strategic goals going forward, namely to transform into Social Security Agency /BPJS for TNI or Polri no later than 2029. Second is to design programs that have benefits commensurate with the risks faced by participants.

Furthermore, the President Director of PT TASPEN (Persero), A.N.S Kosasih explained about the government's firmness that the form of social security for state administrators is managed alone, not combined with public workers or private parties. PT TASPEN (Persero) and PT ASABRI (Persero) as the social security managers of the Petitioners are institutions appointed by the government to administer social security. The tasks assigned to PT TASPEN (Persero) are also carried out by countries that are socially, politically, demographically, prosperously and others similar to Indonesia, for example Malaysia, Philippines, Thailand and South Korea.

**Petitioner's Expert Description**

In order to strengthen their petition, the Petitioners for testing the BPJS Law presented two experts who gave virtual statements. One of the experts, Imam Supriadi revealed, being a TNI soldier or a member of the National Police requires one's awareness to serve the nation and state for life, as the Petitioners did. This is conducted not only when they are still active in the service, but also when they are not in the service. This lifelong service distinguishes the status of the petitioners as retired ASABRI participants from The Workers Social Security Agency (BPJS Ketenagakerjaan) pensioners.

Implicitly, Imam said that the government admits that the Petitioners can't be equated with workers in general. Thus, the Petitioners need to be given different social security as a form of appreciation for the lifelong service of the Petitioners from entering military service until death. Military members have different characteristics compared to civilian workers. This is evidenced by the Minister of Defense/Commander of the Armed Forces, which outlines the policy regarding the need to establish an ABRI internal insurance institution that is more suitable for the high-risk tasks of the TNI and Polri. So. based on Government Regulation No. 45 In 1971, Perum Asabri was established which manages social security for TNI soldiers, members of the National Police and civil servants of the Ministry of Defense and the National Police. It is natural for the Petitioners to receive different social security compensation due to lifelong service to the nation and state. The benefits that the Applicants currently receive from social security are death benefits for the Applicants and their families. In addition, the Petitioners received the 13<sup>th</sup> pension benefit.

Another Petitioner's expert, Joko Sungkono, responded by affirming that the huge risk of the TNI and Polri's duties required a social security value called void. It is not included in The Workers Social Security Agency (BPJS Ketenagakerjaan). The program guarantees that are currently the focus of the Petitioners' application are pension and old-age benefits. This is closely related to the condition of the Petitioners as retired. Based on Government Regulation No. 45/2015 concerning the Implementation of the Pension Guarantee Program, that pension insurance is a social security that aims to maintain a decent standard of living for participants or their heirs, by providing income after the participant enters retirement, experiences total disability or dies.

On the other hand, Joko revealed that the value of the death benefit benefits provided by PT ASABRI (Persero) includes Indonesian National Army /TNI soldiers, members of the National Police, government employee of the Ministry of Defense and the National Police for active participants, pensioners and families. Meanwhile, BPJS Employment is limited to active workers only. Some characteristics inherent in PT ASABRI (Persero) participants that cannot be considered small, such as the existence of a 13th pension that has not been implemented by The Workers Social Security Agency (BPJS Ketenagakerjaan). In certain cases, such as the retirement age of enlisted soldiers, non-commissioned officers and officers as well as government employee of the Ministry of Defense and the National Police, can it be the same as the retirement age in The Workers Social Security Agency (BPJS Ketenagakerjaan) which is increased by one year every three years? The

implementation of defined benefit pension guarantees, such as for workers, must compare the existing pension funds with the obligation to pay long-term benefits.

## Explanation of Government's Expert

In addition to the Petitioners' Experts, there are two Presidential Experts (Government) who provided information related to the judicial review of the BPJS Law. It is the Director of the Center for Anti-Corruption Studies at Gadjah Mada University, Oce Madril, who said that Article 65 paragraph (1) of the BPJS Law does not contradict the 1945 Constitution. This provision actually guarantees legal certainty for the social insurance program that is being run by PT ASABRI (Persero). Article 65 paragraph (1) of the BPJS Law guarantees the long-term sustainability of a social security system that applies in Indonesia. The transfer of the social insurance program from the The Workers Social Security Agency (BPJS Ketenaga Kerjaan) is a government policy related to the implementation of the SJSN Law and the BPJS Law

Regarding transfer management, Oce explained that currently the status of the social insurance program organized by PT ASABRI (Persero) and PT TASPEN is in a transitional position. The transition process has occurred since the Court in the Constitutional Court Decision Number 007/PUU-III/2005 stated the provisions of Article 5 paragraph (2) and paragraph (3) of Law Number 40 of 2004 (UU SJSN). It regulates the four companies (Jamsostek, Asabri, Taspen, and Askes) as Social Security Agency/BPJS is contrary to the 1945 Constitution and has no binding legal force. Furthermore, after the establishment of BPJS based

on the National Social Security System/SJSN Law, the transition still continues. Currently, the focus of the transition is the social insurance program run by PT ASABRI (Persero) to Social Security Agency/BPJS.

Another expert on the President, the Director of the Center for the Study of Pancasila and the Constitution of the University of Jember, Bayu Dwi Anggono, revealed that Article 34 Paragraph (2) of the 1945 Constitution is basically an open legal policy. Because in Article 34 Paragraph (2) as well as other articles in the 1945 Constitution there is not a single provision that explains, regulates, or provides clear boundaries regarding what kind of social security system should be developed by the state, except that only constitutional criteria are stated in developing the system. This is a system that covers all people and empowers the weak and incapable in accordance with human dignity. Furthermore, Bayu conveyed the comparison of several countries in developing social security systems. He gave an example of all the organizing bodies being made into one organizing body in South Korea, namely the National Health Insurance Corporation. The agency as an independent, non-profit autonomous public legal entity within the practical scope of the entire population. Furthermore, in the United States, the social security system is organized under one law and administered by one government agency, namely the Social Security Administration which is national and administered by the federal government. While in Germany there are a lot of social security providers, which were originally 5,000 institutions, now only 200 are left. It means that each country has a choice of different models. ■

NANO TRESNA ARFANA



Director of Strategic Planning and IT of The Workers Social Security Agency (BPJS Ketenaga Kerjaan) Sumarjono and President Director of PT Asabri (Persero) Sony Wijaya (left to right) as related parties gave information at the continued trial of the examination of the Law on the Social Security Administering Body, Thursday (7/23) in the Court's Meeting Room.

# CONSTITUTIONAL COURT TRIAL PROTOCOLS



IT IS OBLIGATORY TO WEAR MASKS, GLOVES, CHECK BODY TEMPERATURE, AND KEEP A DISTANCE



THE PARTIES CAN ATTEND THE HEARING THROUGH REMOTE OR VIRTUAL HEARING



IMPLEMENTING ATTENDANCE RESTRICTIONS IN THE COURTROOM FOR THE PARTIES WITH A MAXIMUM OF TWO PEOPLE



SPRAYING DISINFECTANT ON ALL COURT FACILITIES AND INFRASTRUCTURE, INCLUDING THE COURTROOM, COURT WAITING ROOM, COURT RECORDING ROOM, TOILET, AND ALL EQUIPMENT.



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## RULES REGARDING STATE CIVIL APPARATUS MUST RESIGN IF THEY WANT TO BECOME ELECTION ORGANIZER, WAS TESTED TO THE CONSTITUTIONAL COURT

TWO State Civil Apparatuses (ASN) who are domiciled in Jakarta submitted a judicial review of the rules regarding ASN must resign if they wish to register as election organizers in Law Number 7 of 2017 concerning General Elections (UU Election). The application registered under Number 39/PUU-XIX/2021 was submitted by Siti Warsilah and Evarini Uswatun Khasanah as ASN. The Petitioners questioned the norms of Article 21 letter j and Article 117 letter j of the Election Law.

In the hearing chaired by Constitutional Justice Saldi Isra, Waway Warsiman as the attorney conveyed the phrase "resigned from the position in the government when

registering as a candidate" as regulated in Article 21 letter j and Article 117 letter j of the Election Law contrary to Article 28D paragraph (1) UUD 1945. According to the Petitioners, the interpretation of the provisions of Article 21 letter j and Article 117 letter j of the Election Law, that legal subjects who nominate themselves as members of General Election Commissions (KPU), Provincial KPU, Regency/Municipal KPU and Bawaslu, Provincial Election Supervisory Agency/Bawaslu, Regency/City Election Supervisory Agency, Sub-district Election Supervisory Committee/Panwaslu, and Subdistrict/Village Panwaslu as well as Supervisory Committee of pool/TPS, must resign from their positions in government at the time of registration, constitutionally it would be detrimental or at least reduce the constitutional rights of the Petitioners.

Therefore, in its petition,, the Petitioner asked the Court to prioritize examining the Petitioner's application before the start of the selection stage for the General Election Commissions (KPU)/ Provincial Election Supervisory Agency (Bawaslu) commissioner candidates for the 2022-2027 term. Furthermore, the Petitioners asked the Constitutional Court to state that the phrase "Resign from office in the government when registering as a candidate" as referred to in Article 21 letter j and Article 117 letter j of the Election Law, is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted " Resign from office in government after being elected". (Utami Argawati)

## THE CONSTITUTIONALITY OF THE 14 DAY TIME REVIEWING LEGISLATION REGULATIONS UNDER LAW

THE hearing for the preliminary examination of the examination of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (UU MA) was held by the Constitutional Court (MK) on Monday (6/9/2021). This application which is registered under Number 43/PUU-XIX/2021 was submitted by Vikash Kumar Dugar as the President Director of PT Realindo (Principal Applicant).

Eddy Christian as the Petitioner's attorney explained that the Petitioner conducted a judicial review of Article 31A paragraph (4) of the Supreme Court Law which states, "The application for review as referred to in paragraph (1) is carried out by the Supreme Court no later than 14 (fourteen) working days from the date of receipt of the application. " The applicant is a private legal entity in the form of a Limited Liability Company (PT) that runs the business of managing and leasing the Sainath Tower office building. The Petitioner feels aggrieved by the enactment of the provisions of Article 31A paragraph (4) of Law no.



3/2009 which resulted in the Petitioner not getting his constitutional rights as referred to in Article 24 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution.

The Petitioner argues that he has tested the Supreme Court because he has suffered a constitutional loss on a regulation that has been revoked, even though the regulation has been revoked and declared invalid. However, in the previous period when it was still in effect, it had been used as a tool for determining tax law by the

legislators which had caused constitutional losses to the Petitioner. Thus, the Petitioner had an interest in being able to examine the material at the Supreme Court.

Therefore, in its petition, the Petitioners requested that the Court declare Article 31A paragraph (4) of the Supreme Court Law not binding as long as the phrase “a maximum of 14 (fourteen) working days is not interpreted

as the time for completion of the petition for review”. The Petitioner stated that the constitutional rights damages argued by the Petitioner could be recovered, ordered the Supreme Court to re-examine Article 7 paragraph (4) and paragraph (6) of the Regulation of the Minister of Finance Number 31/PMK.03/2014. (Nano Tresna A.)



## REGARDING THE CONSTITUTIONALITY OF RULES FOR THE CANDIDATES FOR THE PRESIDENT AND VICE PRESIDENT SHOULD BE BROUGHT BY POLITICAL PARTIES

Ahead of the general election in 2024, the rules regarding the nomination of the president and vice president are again being tested materially to the Constitutional Court (MK). This time, a number of Petitioners from NGOs and individuals examined 18 articles in Law Number 7 of 2017 concerning General Elections (Election Law). The articles tested are Article 221, Article 222, Article 223, Article 224, Article 225, Article 226, Article 227, Article 228, Article 229, Article 230, Article 231, Article 232, Article 233, Article 234, Article 235, Article 236, Article 237, and Article 238 of the

Election Law. The Petitioners for Case Number 44/PUU-XIX/2021, namely Martondi (Petitioner I) and Naloanda (Petitioner II) as the General Chair and Treasurer of the NGO Rumah Rakyat (Rura), M. Gontar Lubis (Applicant III) and Muhammad Yasid (Petitioner IV) as individual citizens who work as private employees and entrepreneurs.

The Petitioners stated that the articles being tested were contrary to the 1945 Constitution. According to the Petitioners, as citizens, they had the constitutional right to vote and be elected in general elections, including the presidential and vice-presidential elections. In addition, the Petitioners are of the view that the constitutional rights of citizens to be elected president and vice president contained in Law 7/2017, only contain the constitutional rights of some people who are members of political party groups. In fact, the Constitutional Court in its Decision Number 011-017/PUU-I/2003 and Number 102/PUUVII/2009 states that every Indonesian citizen has the constitutional right to vote and be elected in the presidential and vice presidential elections.

Hence, in the petition, the Petitioners request that the Court cancel the Election Law as long as the provisions concerning “Proposal of Candidates for President and Vice President and Determination of Pairs of President and Vice President” are regulated in CHAPTER VI Article 221 to Article 238. (Sri Pujianti)



## REGARDING THE ADDITION OF PEOPLE'S CONSULTATIVE ASSEMBLY'S AUTHORITY IN THE MD3 LAW

THE Constitutional Court (MK) held a hearing on the petition for reviewing the provisions of the People's Consultative Assembly's duties in Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council (UU 17/2014 or the MD3) Law on Monday (13/9/2021). The application registered under Number 45/PUU-XIX/2021, was submitted by two individuals named Ahmad Ridha Sabana and Abdullah Mansuri who declared themselves to be the General Chair and Secretary General of the Central Executive Board of the Indonesian Party (Partindo).

The Petitioners said that the constitutional rights of

the Petitioners had been harmed or at least the potential according to reasonable reasoning could be ascertained by the enactment of Article 5 of the MD3 Law. According to them, the People's Consultative Assembly is deemed necessary to have another task, namely to compile and determine the State Policy Guidelines (PPHN) which are the government's guidelines in carrying out national development in all fields; ideology, politics, economy, social, culture, defense and security.

According to the Petitioners, the Government uses the National Long-Term Development Plan (RPJPN) as the basis for national development which is valid for 20 (twenty) years. The technical implementation is made in National Mid-Term

Development Plan (RPJMN) which is valid for 5 (five) years. The RPJPN used is not effective enough considering the emphasis of the RPJPN is in the realm of the executive. Thus, to protect the constitutional rights of the Petitioner, a PPHN is needed which is part of the duties of the MPR institution.

Therefore, the Petitioners ask the Court to declare Article 5 of the MD3 Law contradicts the 1945 Constitution and has no binding legal force if the a quo article does not add point e which reads "to compose and stipulate PPHN which is the government's guideline in implementing national development". (Utami Argawati)



## RULES FOR INTEGRATION OF RESEARCH INSTITUTIONS INTO NATIONAL RESEARCH AND INNOVATION AGENCY IS SUED

ON the commemoration of the 26<sup>th</sup> National Technology Awakening Day that took place on 10 August 2021, President Joko Widodo asked the National Research and Innovation Agency (BRIN) to immediately consolidate and integrate the power of national research and innovation. This is as regulated in Article 48 paragraph (1) and Elucidation of Article 48 paragraph (1) of Law Number 11 of 2019 concerning the National System of Science and Technology (National System of Science and Technology Law). Regarding the integration of research institutions as regulated in those articles, two researchers proposed a material review of the two provisions above. The petitioner for the case Number 46/UU-XIX/2021, namely Heru Susetyo who is a researcher at the Research and Publication Institute of the Faculty of Law, University of Indonesia and as a Member of the Regional Research Council of DKI Jakarta Province.

In the trial held on Tuesday (21/9/2021) afternoon, the Petitioners were represented by Zainal Arifin Husein, et al., as legal counsel. The Petitioners test materially the word "integrated" in Article 48 paragraph (1) and the phrase "among others" in the Elucidation of Article 48 paragraph (1) of the National Science and Technology System Law. The Petitioner considers that his constitutional rights have been impaired by the enactment of the provisions of Article 48 paragraph (1) of the National Science and Technology Law as amended by Article 121 of Law no. 11/2020 (Job Creation Law) because the phrase "integrated" in a quo article is considered to have multiple interpretations. This results in legal uncertainty because the phrase "integrated" has an unclear interpretation whether it is only integrated coordination of planning, program, budget, and scientific and technological resources in the fields of research, development, study, and application to produce inventions and innovations as a basis scientific research in the formulation and stipulation of national development policies or institutional fusion.

Therefore, said Zainal, if it is related to Article 48 paragraph (1) of the National Science and Technology Law as amended in Article 121 of the Job Creation Law related to BRIN which states that to carry out research, development, study, and application, as well as inventions and innovations that are integrated formed by BRIN. The word "integrated" gives rise to various interpretations, namely whether it is interpreted as coordination so that the existence and function of the institution still exists as stated in Article 42 of the National Science and Technology Law or the word "integrated" is defined as the fusion of the various government research institutions into one institution, namely the National Research and Innovation Agency. (Nano Tresna A.)



## PAPUA PEOPLE'S ASSEMBLY SUING REVISION OF PAPUA'S SPECIAL AUTONOMY LAW

LAW Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for the Province of Papua (Otsus Papua Law) was tested materially to the Constitutional Court (MK). The Papuan People's Assembly (MRP) represented by Timothy Murib (Chairman), Yoel Luiz Start (Vice Chair I), and Debora Mote (Vice Chair II) were listed as Petitioners Number 47/PUU-XIX/2021.

In the inaugural session which was held on Wednesday (22/9/2021) online, the Petitioners argued the norms in the provisions of Article 6 paragraph (2), Article 6A, Article 28, Article 38, Article 59 paragraph (3), Article 68A, Article 76 and Article 77 of the Special Autonomy Law for Papua violates their constitutional rights as indigenous Papuans (OAP). The Petitioners are OAP's cultural representations in the context of protecting the rights of indigenous Papuans based on respect for customs and culture, empowering women, and strengthening the harmony of religious life who have a direct interest in the birth of a Quo Law.

In the hearing chaired by the Deputy Chief Justice of the Constitutional Court Aswanto, Timotius Murib said the Petitioner submitted the request because he had observed the amendments to the Papua Special Autonomy Law because there were clauses that actually harmed the interests and constitutional rights of the Petitioner and in particular the interests and constitutional rights of the indigenous Papuan people (OAP). He explained the changes and additions to new norms as regulated in Article 6 paragraph (4) and paragraph (5) of the Papua Special Autonomy Law concerning the Position, Composition, Duties, and Authorities of Rights and Responsibilities of Leadership Membership and Completeness of Papuan People's Representative Council/DPRP and DPRK in accordance with the provisions of the legislations that actually create legal uncertainty.

Therefore, in its petition, the Petitioners request that the Court declares that Article 6A paragraph (1) letter b and paragraph (2), Article 6A paragraph (1) letter b and paragraph (2), Article 28 paragraph (1) and

paragraph (2), and paragraph (4), Article 38 paragraph (2), Article 59 paragraph (3), and Article 68A, and Article 76 paragraph (1) and paragraph (2) of Law Number 2 of 2021 contradicts the 1945 Constitution and does not have binding legal force. Then, the Petitioners requested that the Court declare that the norms of Article 6 paragraph (4) and Article 6A paragraph (4) are contrary to the phrase in accordance with statutory regulations that do not have binding legal force as long as the meaning of 'the legislation in question is the Special Regional Regulation /perdasus and Provincial Regulations/perdasi of the Papua Province. The Petitioners also requested that the Court declare that the norms of Article 28 paragraph (1) and paragraph (2) as stated in Law No. 21 of 2001 should be reinstated. Furthermore, stated that the norms of Article 7 of Law No. 21 of 2001 have no binding legal force as long as it is interpreted that the proposed amendment to this law must be submitted by the people of the Papua Province through the MRP and DPRP.

## CONSTITUTIONAL COURT'S VERDICT IN SEPTEMBER 2021

No	Case Number	Subject Matter of the Case	Appellant	Verdict
1	60/PUU-XVIII/2020	Formal Judicial Review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining against the 1945 Constitution	Dr. H. Alirman Sori, Tamsil Linrung, Dr. H. Erzaldi Rosman Djohan, Syarikat Islam (represented by Dr. H. Hamdan Zoelva), Dr. Marwan Batubara, Ir. Budi Santoso, Ilham Rifki Nurfajar, and M. Andrian Saefudin	Completely Rejected
2	59/PUU-XVIII/2020	Formal judicial review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining against the 1945 Constitution	Kurniawan, S.IP. and Dr. Arif Zulkifli, S.E., M.M.	Completely Rejected
3	64/PUU-XVIII/2020	Material test of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining against the 1945 Constitution	Dr. Drs. Helvis, S.Sos., S.H., M.H. and Muhammad Kholid Syeirazi, M.Sc.	<ol style="list-style-type: none"> <li>1. To declare that the applications of Petitioner I and Petitioner III can't be accepted;</li> <li>2. Granting the petition of Petitioner II in part;</li> <li>3. Stating the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) along the phrase " given a guarantee" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can be given";</li> <li>4. Stating the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), as long as the word "guaranteed" contradicts the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can";</li> </ol>

				<p>5. Stating the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) reads in full, "KK and PKP2B as referred to in Article 169 may be granted an extension to become IUPK as Continuation of Contract/Agreement Operations after fulfilling the requirements with the following conditions: ...";</p> <p>6. Stating the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), in full it reads: "contracts/agreements that have not yet received an extension can get 2 (two) extensions in the form of IUPK as a Continuation of Operations for each Contract/Agreement for a maximum period of 10 (ten) years as a continuation of operations after the end of the operation. KK or PKP2B by considering efforts to increase state revenues. Contracts/agreements that have obtained the first extension may be given a second extension in the form of an IUPK as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of the CoW or PKP2B taking into account efforts to increase state revenues".</p> <p>7. Rejected Petitioner II's application for in part;</p>
4	81/PUU-XVIII/2020	Material Testing of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions against the 1945 Constitution	1. Arnold Belau; 2. The Alliance of Independent Journalists (AJI), represented by Abdul Manan (Chairman) and Revolution Riza Zulverdi (Secretary General)	Completely Rejected

5	85/PUU-XVIII/2020	Material test of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption against the 1945 Constitution	<ol style="list-style-type: none"> <li>1. Sumali, S.H., M.H. and</li> <li>2. Hartono, S.H.</li> </ol>	<ol style="list-style-type: none"> <li>1. Granted the petition of the Petitioners in part;</li> <li>2. Stating Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2009 Number 155, Supplement to the State Gazette of the Republic of Indonesia Number 5074) is contrary to the 1945 Constitution of the Republic of Indonesia and does not has legally binding legal force conditionally as long as it is not interpreted, "ad hoc judges as referred to in paragraph (4) are appointed for a term of office of 5 (five) years and may be reappointed for 1 (one) term of office without re-selection as long as they still meet the requirements. legislation, and can be appointed for a term of office of the next 5 (five) years by first following the re-selection process in accordance with the applicable laws and regulations. Thus, Article 10 paragraph (5) of Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2009 Number 155, Supplement to the State Gazette of the Republic of Indonesia Number 5074) which originally read "ad hoc judges as referred to in paragraph (4 ) is appointed for a term of office of 5 (five) years and may be reappointed for 1 (one) term of office"; which reads in full, "Ad hoc judges as referred to in paragraph (4) are appointed for a term of office of 5 (five) years. and can be reappointed for 1 (one) term of office without re-selection as long as it still meets the requirements of the legislation, and can be reappointed for another 5 (five) year term by first following the re-selection process in accordance with the prevailing laws and regulations. applies";</li> </ol>
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3. Stating the phrase "not an object of a lawsuit that can be submitted to the state administrative court" in Article 27 paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and System Stability Finance for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability Becomes Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is contrary to the 1945 Constitution of the Republic of Indonesia and has no conditionally binding legal force as long as it is not interpreted, "is not an object of a lawsuit that can be submitted to the state administrative court as long as it is related to the handling of the Covid-19 pandemic and carried out with good faith and in accordance with p statutory regulations".

Thus, Article 27 paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In the context of facing threats that endanger the national economy and/or financial system stability, it becomes a law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "All actions including decisions taken based on this Government Regulation in Lieu of Law are not objects of a lawsuit that can be submitted to the state administrative court", which reads in full, "All actions including decisions taken based on this Government Regulation in Lieu of Law are not The object of a lawsuit that can be submitted to the state administrative court as long as it is carried out is related to the handling of the Covid-19 pandemic and is carried out in good faith and in accordance with statutory regulations.

				<p>4. Stating Article 29 Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats Which Endangers the National Economy and/or Financial System Stability Becomes Law (State Gazette of the Republic of Indonesia Year 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "Government Regulation in Lieu of Law shall come into force on the date of promulgation" contrary to the 1945 Constitution and has no legal force conditionally binding as long as it is not interpreted, "This Government Regulation in Lieu of Law shall come into force on the date of its promulgation and must be declared null and void since the President officially announced that the status of the Covid-19 pandemic has ended in Indonesia. and the status h currents are declared no later than the end of the 2nd year. In the fact that the Covid-19 pandemic has not ended, before entering the third year, a quo Law can still be applied, but the allocation of the budget and the determination of the budget deficit limit for handling the Covid-19 pandemic, must obtain the approval of the House of Representatives and the consideration of the Regional Representative Council.</p>
6	39/PUU-XIX/2021	Examination of Law Number 7 of 2017 concerning Elections	1. Siti Warsilah, S.E., M.Sc.; 2. Evarini Uswatun Khasanah, S.E.	Unacceptable
7	40/PUU-XIX/2021	Material test of Law Number 40 of 2007 concerning Limited Liability Companies	Ignatius Supriyadi, S.H., LL.M., as Petitioner I; Sidik, S. H.I., M.H., as Petitioner II; and Janteri, S.H., as Petitioner III.	Unacceptable

8	45/PUU-XIX/2021	Material Review of Law No. 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council	Ahmad Ridha Sabana and Abdullah Mansuri, who respectively act as the General Chair and Secretary General of the Partindo Indonesia Party DPP	Unacceptable
9	50/PUU-XIX/2021	Material test of Law Number 7 of 2017 concerning General Elections	Herifuddin Daulay	Rejected completely
10	37/PUU-XVIII/2020	Formal and Material test of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	1. Indonesian Community Participation, Initiative and Partnership Strengthening Foundation (YAPPIKA) in this case represented by Fransisca Fitri Kurnia Sri as Executive Director; 2. Desiana Samosir; 3. Muhammad Maulana; 4. Syamsuddin Alimsyah.	In Formal Testing: Reject the petition of the Petitioners in its entirety or completely; In Material Testing: 1. Granted the petition of the Petitioners in part; 2. Stating the phrase "not a state loss" Article 27 paragraph (1) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic ( Covid-19) and/or In the Context of Facing Threats That Endanger the National Economy and/or Financial System Stability Become Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) contrary to the Constitution of the State Republic of Indonesia in 1945 and does not have legally binding conditionally as long as it is not interpreted, "it is not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations".

				<p>So Article 27 paragraph (1) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In the context of Dealing with Threats That Endanger the National Economy and/or Financial System Stability, it becomes a law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "Costs incurred by the Government and/or institutions KSSK members in the context of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs of saving the economy from the crisis and not is a loss n state", which reads in full, "Costs that have been issued by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in regional finance, financing policies, financial system stability policies, and The national economic recovery program is part of the economic costs to save the economy from the crisis and is not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations.</p>
11	43/PUU-XVIII/2020	<p>Formal and Material Test of Law 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing the Threats Endangering the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution</p>	<p>H. Ahmad Sabri Lubis, H. Munarman, S.H., Khotibul Umam, S.Ag., Ir. Ismail Yusanto, Hasanudin, S.H., M.M., M.Sc., Muhammad Faisal Silenang, Drg. Madi Saputra, Sp. Pros., Irfianda Abidin, Timsar Zubil, and Dr. H. Sugianto, M.M.</p>	<p>In Formal Testing: Rejecting the Petitioners' application for entirely or completely rejected; In Material Testing: 1. Stating the petition of the Petitioners as long as Article 27 paragraph (1) and paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (Covid-19) and/or in the context of facing threats that endanger the national economy and/or financial system stability into law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) cannot be accepted; 2. Rejected the petition of the Petitioners for another petition.</p>

12	75/PUU-XVIII/2020	Formal and Material testing of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	Prof. Dr. M. Sirajuddin Syamsuddin, Prof. Dr. Sri Edi Swasono, Prof. Dr. HM. Amien Rais, MA., et al.	<p>In Formal Testing: To declare a request for a formal review of Law Number 2 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats Which endangers the national economy and/or financial system stability into law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) cannot be accepted;</p> <p>In Material Testing: Stating the petition of the Petitioners as long as Article 27 paragraph (1) and paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (Covid-19) and/or in the context of facing threats that endanger the national economy and/or financial system stability into law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) cannot be accepted; · Rejected the petition of the Petitioners for another petition;</p>
13	42/PUU-XVIII/2020	Formal and Material Testing of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	Ir. Iwan Sumule, et al	Unacceptable

14	45/PUU-XVIII/2020	Formal and Material testing of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	Sururudin, S.H., LL.M.	<ol style="list-style-type: none"> <li>1. Stating the Petitioner's application as long as Article 27 paragraph (1) and paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic (Covid-19) and/or in the context of facing threats that endanger the national economy and/or financial system stability into law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) cannot be accepted;</li> <li>2. Rejected the Petitioner's application for other than and the rest.</li> </ol>
15	47/PUU-XVIII/2020	Formal and Material testing of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	Triono, S.T., dan Suyanto	Rejected the application in its entirety

16	49/PUU-XVIII/2020	Formal and Material Testing of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in Facing Threats That Endangers the National Economy and/or Financial System Stability Becomes Law against the 1945 Constitution	H. Damai Hari Lubis,S.H., M.H.	<ol style="list-style-type: none"> <li>1. Stating the Petitioner's application as long as Article 27 paragraph (1) and paragraph (3) Attachment to Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic (Covid-19) and/or in the context of facing threats that endanger the national economy and/or financial system stability into law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) can't be accepted;</li> <li>2. Rejected the Petitioner's application for other than and the rest.</li> </ol>
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## VERDICT OF PETITION FOR DISPUTE ON THE RESULTS OF THE ELECTION OF REGIONAL HEAD IN OCTOBER 2021

No	Case Number	Subject Matter of the Case	Appellant	Verdict
1	151/PHP.GUB-XIX/2021	Disputes over the results of the 2020 South Kalimantan gubernatorial election	Khairil Anwar	To declare that the Constitutional Court is not authorized to hear the petition of the Petitioner



## CONSTITUTIONAL JUDGES REVIEW THE LAW OF THE CONSTITUTIONAL COURT PROCEDURE

Chief Justice of the Constitutional Court, Anwar Usman, gave a Public Lecture on Constitutional Law Faculty of Sharia Islamic Religious Institutions of Kediri, with the theme "Strengthening Constitutional Law Values in Building an Inclusive Academic Culture" which took place online, Friday (9/24/2021). Public Relations: Ilham WM.'s photo

The pandemic has forced the Constitutional Court (MK) to be smart in using technology to continue to carry out its duties, functions, and roles for justice and society. Throughout the end of September to mid-October 2021, the constitutional judges continued to share various knowledge for socialization for the rule of law.

### Interest in Constitutional Law Enhances Drastically

Chief Justice of the Constitutional Court Anwar Usman was the guest speaker for the online "General Lecture on Constitutional Law (HTN) IAIN Kediri" on Friday (24/9/2021). The theme was "Strengthening the Scientific Values of Constitutional Law in Building an Inclusive Academic Culture." Anwar said that since the Constitutional Court was established in 2003, the commitment to disseminate and understand the Constitution to every citizen and all

levels of society has always been carried out. Because since the Constitutional Amendment in 1999, Indonesia's state administration has undergone many significant changes.

"These changes are not only related to the presence of new state institutions or the disappearance and changing functions of state institutions, but also substantially many important changes that every citizen must understand. In short, if previously interest in studying the Constitution as an object of constitutional law was less popular, now it is the opposite," said Anwar. He also congratulated IAIN Kediri for adding the Constitutional Law Study Program in 2021.

Anwar explained, interest in studies in the field of constitutional law can be said to have enhanced dramatically, because the values contained in it are inclusive (open). This directly or indirectly has an impact on academic culture in life in the higher education environment in particular and social culture in general. This change is very reasonable because in the past discussing the Constitution, let alone its amendments, became a very taboo subject, and even the risk of repression had to be faced if the idea of changing the Constitution or interpreting the Constitution was expressed openly. ■



Constitutional Justice Saldi Isra was a speaker for the Advocate Profession Special Education organized by the Faculty of Islamic Religion 45 Islamic University, Bekasi in collaboration with the National Leadership Council of the Indonesian Advocates Association, on Saturday morning (25/9/2021) online. Public Relations/Hamdi's photo.

## How to Be a Good Lawyer

Constitutional Justice Saldi Isra shared the story of how to be a good lawyer. Saldi said that when he was a speaker for the Advocate Profession Special Education (PKPA) which was held online by the Faculty of Law, Andalas University (FH Unand) in collaboration with the National Leadership Council of the Indonesian Advocates Association (DPN Peradi) on Saturday (25/9/2021).

Saldi said that after high school, he and his school friends had no intention of pursuing a career in law. Most of his friends prefer to study medicine, engineering, army and so on. "It turned out that none of my friends chose to study at the law faculty," recalled the man who was born on August 20, 1968.

Long story short, Saldi was accepted to study at FH Unand, even though at that time he never imagined what profession he would pursue after graduating from college. Whether to become a lawyer, judge, lecturer, activist, and others. Years later, after the 1998 reform, Saldi realized that choosing a profession in the legal field was no less prestigious than other professional fields such as medicine and engineering.

Talking about the profession of lawyer (lawyer), Saldi started by describing popular quotes about lawyers. Among them the quote "only lawyers and painters can turn black into white" produced by a poet from Japan.

"For some people portrayed as a strong lawyer, he can turn white into black or black into white. So, people look from the optimistic side. But there are also some people who say the quote

is a satire for lawyers," said Saldi who brought the material "How to be a Good Lawyer".

Saldi continued, for the profession of lawyer or advocate, there is a legal protection, namely Law no. 18 of 2003 concerning Advocates. A quo law states that advocates are free, independent and responsible professions in enforcing the law. Advocates belong to other powers related to judicial power. The Law on Advocates also states that an advocate is a profession that provides legal services both inside and outside the court. Saldi said, a lawyer does not always have to appear in court. There are also advocates who take up professions whose work does not reach the litigation process. He only works non-litigation, works outside the court, no less successful than the lawyers present at the trial. ■



Constitutional Justice Suhartoyo delivered material on the Procedural Law of the Constitutional Court in the Special Advocate Profession Education activity held by the Faculty of Law, Andalas University-DPN Peradi, Saturday (9/25/2021). Photo: Public Relations/Illham WM's

## The Government and House of Representatives are Only Information Providers

Various questions were asked by the participants of the Advocate Profession Special Education (PKPA) activity held online by the Faculty of Law, Andalas University (FH Unand) in collaboration with the National Leadership Council of the Indonesian Advocates Association (DPN Peradi) on Saturday (9/25/2021).

One of the PKPA participants asked about all the articles in the 1945 Constitution of the Republic of Indonesia (NRI) guaranteeing the constitutional rights of citizens. Regarding this question, Constitutional Justice Suhartoyo, who was the resource person for PKPA, confirmed that the constitutional rights of citizens were guaranteed from the implementation

of the articles in the Constitution.

"Although the articles do not emphasize the content of constitutional rights. Certain contents are emphasized in certain articles. But in my opinion, the articles can't be separated from one another. Overall, if examined, there must be a wedge related to the constitutional rights of citizens," Suhartoyo explained.

In addition, there are questions about whether the articles that have been tested in the Constitutional Court can be retested or not. Answering this question, Suhartoyo said that Article 60 paragraph (1) of Law no. 8/2011 concerning the Constitutional Court. "Thus, articles that have been tested before the Constitutional Court can be reviewed on a different basis. Even now there is a new provision that it can be re-examined with different reasons for the application," said Suhartoyo.

Furthermore, there is a question about the role of the Government and the House of Representatives in the trial of the Constitutional Court. So far,

it is possible for the Government and the House of Representatives to play other roles, for example defending the Respondent. Regarding the role of the Government and the House of Representatives, Suhartoyo explained that the character of law testing is voluntary. It means that there is an Petitioner but no Respondent. The capacity of the Government and the House of Representatives while providing information is not that of the Respondent, whose direct interests are only for the Constitutional Court Justices. ■

## Characteristics of the Judicial Review Procedure at the Constitutional Court

Procedural law can't be separated from the life of advocates in the Constitutional Court and other courts in Indonesia. Thus, an advocate's weapon is a procedural law used to

settle various matters in court. This was the introductory sentence delivered by Constitutional Justice Suhartoyo in the Special Advocate Profession Education (PKPA) activity organized by the Law Faculty of the Indonesian Christian University with the DPC Peradi East Jakarta on Saturday (9/25/2021).

When talking about procedural law at the Constitutional Court, Suhartoyo said that there was a difference in principle in the case of the Constitutional Court's authority to conduct judicial review (PUU). In the settlement of this case, neither the parties were sued nor the defendant. Meanwhile, for the Constitutional Court's procedural law on the authority to settle disputes over the authority of state institutions, the dissolution of political parties, and the resolution of presidential and regional election disputes, the procedural law is the same but has its own character. In addition. Another special characteristic of the PUU session is the presence of the President, House of Representative, Regional Representative Council, People's Consultative Assembly or parties who make laws not against the Petitioners. Rather, it is to provide information on the history of the proposed law for review to the Constitutional Court.

"So, in terms of fulfilling the summons to provide information, it is to provide information to the constitutional judges and not to argue or even fight the Petitioners," explained Suhartoyo in front of a number of 73 PKPA participants who took part in this online activity.

## Hearing Process at Constitutional Court

Constitutional Justice Saldi Isra was a speaker for the Advocate Profession Special Education (PKPA). This activity was organized by the Faculty of Islamic Religion 45 Bekasi Islamic University in collaboration with the National Leadership Council of



Constitutional Justice Suhartoyo became a speaker in the Advocate Special Education activity, a collaboration between the Faculty of Law, the Christian University of Indonesia and the DPC Peradi East Jakarta which took place online, Saturday (25/09/2021). Photo: Public Relations/Illham WM



Constitutional Justice Saldi Isra was a speaker for the Advocate Profession Special Education organized by the Faculty of Islamic Religion, Islamic University 45 Bekasi in collaboration with the National Leadership Council of the Indonesian Advocates Association, on Saturday morning (9/25/2021) online. Photo: Public Relations/Hamdi.

the Indonesian Advocates Association (DPN Peradi), on Saturday morning (9/25/2021) online.

In this activity, Saldi discussed the process of judicial review of the law (UU) at the Constitutional Court (MK). Saldi said that in the judicial review there was only one party, namely the petitioner. However, in practice, the Constitutional

Court requires information from the DPR and the President or other parties as lawmakers.

Furthermore, Saldi explained about the process of filing a case to the Constitutional Court. After the applicant submits an application to the Constitutional Court, the Registrar of the Court will check the application whether

the evidence from the application is sufficient or not. If the evidence is not complete, then the Registrar will ask the applicant to complete the application. After being completed by the applicant, the application was re-entered and the case or application was registered in the Constitutional Case Registration Book (BRPK). The registered application is then submitted to the Chief Justice of the Constitutional Court and then the Chief Justice of the Constitutional Court will appoint a panel of judges to conduct a preliminary hearing.

Before examining the main points of the case, Saldi continued, the Constitutional Court held a preliminary hearing with the agenda of examining the completeness and clarity of the application material, in a panel trial by three constitutional judges. In the preliminary hearing, the Law requires the Court through a panel of judges to provide advice to the applicant.

With respect to the application, within a period of no later than 14 (fourteen) days, the Constitutional Court shall give the applicant or his proxies the opportunity to make repairs/ completeness. After the revision of the application is submitted to the Court through the Registrar's Office, the Court will then hold a hearing for the revision of the application.

## The Law Should be Treated with Sense and Soul

The Constitutional Court (MK) is as a judicial state institution participates in carrying out the role of organizing the nation and state. The Constitutional Court performs its functions; as the guardian of the Constitution, the guardian of Pancasila as the state's ideology, the sole interpreter of the Constitution, the protector of the citizen's constitutional rights, the protector of citizen's constitutional



Constitutional Justice Suhartoyo was the keynote speaker in the Webinar Vol. 2 Volume #5 Center for Legal and Development Studies, State University of Surabaya, Saturday (9/25/2021). Photo: Public Relations/Illham WM

rights and the protector of human rights.

This was conveyed by Constitutional Justice Suhartoyo when giving a keynote speech in the National Webinar of the Center for Legal Studies and Development, State University of Surabaya Vol. 2, Saturday (9/25/2021). Suhartoyo explained the theme "Legal and Ethical Relations: Implementation in the Life of the Nation and State.

Suhartoyo said that the Constitutional Court as part of law enforcement agencies tries to see the law as not merely a collection or group of norms contained in the formulation of the law. However, the law should be treated as something that has taste and soul. Thus, the law must be enforced in accordance with the values that are considered appropriate by the hearts and souls of mankind, which in fact are also represented in the law itself.

"The rule of ethics (code of ethics) in law enforcement must also be interpreted as an attitude that underlies how law enforcers can treat the law

properly as values that are considered good in the life of society, nation and state," he explained online.

## Aswanto, Oration of "Socio Equilibrium" in Unhas Alumni Event

Deputy Chief Justice of the Constitutional Court Aswanto delivered a scientific oration "Socio Equilibrium on the Existence of the Constitutional Court" during the online "Inauguration of the Hasanuddin University Alumni Association for the Southeast Sulawesi Region 2021-2025" online on Saturday (9/25/2021).

"Socio equilibrium in the legal world is defined more as checks and balances. One of the objectives of the establishment of the Constitutional Court after the amendment to the 1945 Constitution is to strike a balance between the power holders who determine the norms or legal rules in the life of the nation and state on

the one hand. On the other hand, the constitutional rights granted by the Constitution to citizens,” said Aswanto.

In that context, the presence of the Constitutional Court (MK) is a balance between government power and social power. Regarding the role of the Constitutional Court as a counterweight, this can be seen from the duties and functions of the Constitutional Court. Referring to the 1945 Constitution of the Republic of Indonesia (NRI), there are four powers and one obligation of the Constitutional Court.

In addition to the four powers, Aswanto continued, the Constitutional Court also has one obligation. It is to follow up on the impeachment of the House of Representatives to the President and/or Vice President if they are suspected of having violated the law. If the impeachment process is brought to the Constitutional Court, then the Court decides on it, then the House of Representatives is obliged to implement the decision.

## Indonesia Is A Democratic and Godhead State of Law

Indonesia is not a secular country or based on a particular religion, but a constitutional democracy with a belief in God. This was conveyed by Constitutional Justice Arief Hidayat in the event “Progressive Tunnel of Research and Scientific Work Program Student Executive Board of the Faculty of Law, Diponegoro University 2021 (RISKEL BEM FH UNDIP 2021), Saturday (9/25/2021).

Arief said that in managing the state, three principles of the state administration system are needed, namely theocratic, democratic and nomocratic. According to him, the three principles must be read in one breath because they can't be separated. Furthermore, Arief said, in developing



Deputy Chairperson of the Constitutional Court, Aswanto delivered an online scientific oration at the Inauguration of the Hasanuddin University Alumni Family Association, Southeast Sulawesi Region, Saturday (9/24). Photo: PR/M. Nur.



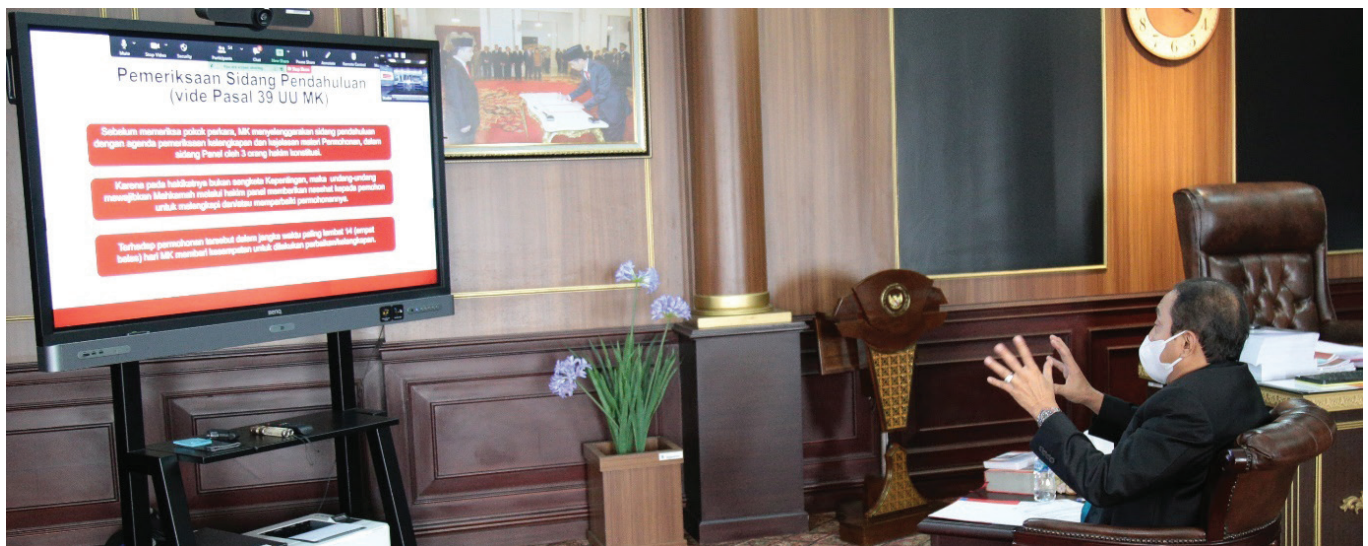
Hakim Konstitusi Arief Hidayat menjafi narasumber kegiatan yang diselenggarakan oleh Mahasiswa Fakultas Hukum Universitas Diponegoro, Sabtu (25/09) secara daring. Foto Humas/Bayu.

legal science, one must look at the three principles of implementation. According to him, not many people have spoken about this because in the books they only mention democracy and nomocracy, but forget the preamble to the Constitution with the five precepts, of which the highest principle is Belief

in One God, then democracy.

“So, what needs to be rethought is the principle of state administration which in my opinion is the best in concept and principle by putting it into practice,” he said.

Constitutional Justice Suhartoyo delivered material on the Procedural



Hakim Konstitusi Suhartoyo menyampaikan materi Hukum Acara Mahkamah Konstitusi dalam kegiatan Pendidikan Khusus Profesi Advokat yang diselenggarakan oleh Universitas Pamulang bekerja sama dengan DPN Peradi yang berlangsung secara daring, Senin, (27/09/2021). Foto Humas/ Ilham WM.

Law of the Constitutional Court in the Advocate Profession Special Education event organized by Pamulang University in collaboration with the DPN Peradi which took place online, Monday, (9/27/2021). Photo: Public Relations/ Ilham WM.

## Mechanism of The Judicial Review

Constitutional Justice Suhartoyo was the keynote speaker in the Special Advocate Profession Education (PKPA) II activity organized by Pamulang University in collaboration with the National Leadership Council of the Indonesian Advocates Association (DPN Peradi) on Monday (9/27/2021). In this activity, Suhartoyo explained the authority of the Constitutional Court mandated by the constitution. One of them is the authority of the Constitutional Court to examine the law (PUU) of the 1945 Constitution.

In front of the online PKPA participants, Suhartoyo explained, guided by Article 51 of the Constitutional Court Law, the parties who can file a petition are individual Indonesian citizens whose constitutional rights have been violated due to the application of a norm. In addition, customary law community

units, public or private legal entities, and state institutions can also carry out PUU. In submitting an application, the parties can submit it online on the Constitutional Court's website or come directly to apply to the Constitutional Court Building.

Regarding the application format, Suhartoyo recommended that the applicant/petitioner learn from the applications that have been submitted to the Constitutional Court. However, Suhartoyo explained, the applicant does not need to worry about the imperfections of the application which will be submitted to the Constitutional Court. Because, in the Constitutional Court there are several stages of trial that will make it easier for the applicant to complete his application.

"Indeed, the applicant does not have to have any doubts about the terms of the application because in the end there is a forum for the judge's advice to correct the petition submitted by the applicant. With a note, the advice is not binding. It means that it can be followed and it may not be followed because the applicant may have a different interpretation and the one

made in the application already meets the rules in the PMK" Suhartoyo said from his office in the Constitutional Court Building, Jakarta. (Sri Pujianti/Nur R.)

## Constitutional Right During Pandemic

Chairman of the Constitutional Court Anwar Usman was a speaker at the 62<sup>nd</sup> Anniversary of Tarumanagara University (Utar) held by the Utar Law Faculty on Tuesday (28/9/2021) online. The activity with the topic "Ruling in Indonesia Post-Covid-19" was also attended by the Chairman of the People's Consultative Assembly of Republic of Indonesia Bambang Soesatyo, Chairman of the Judicial Commission Mukti Fajar Nur Dewata, Deputy Regent of Indramayu Nina Agustina Da'i Bachtiar, Rector of Utar Agustinus Purna Irawan, and the Dean Faculty of Law Utar Amad Sudiro.

In this online presentation, Anwar said that the amendments to the 1945 Constitution were carried out four times were the beginning for law enforcement in Indonesia. Without the constitution, it is impossible for a country to be in order.

This is because the main content of the constitution relates to the constitutional rights of citizens. During this Covid-19 pandemic, continued Anwar, many citizens' constitutional rights must be protected. One of them is the security and safety of the people which is none other than the highest law that must be enforced at this time.

"Indeed, the security and safety of the people is the goal of the establishment of a state government. However, the issue of a pandemic is not a simple matter because this pandemic has a wide impact and permeates various aspects of life. Even without an epidemic, the implementation of health insurance for the state is a complicated and complicated matter," said Anwar in an activity moderated by Wilma Silalahi from the Constitutional Court.

Anwar sees that this pandemic period has had a profound impact on various aspects of social and state life, ranging from politics, economics, social, law, knowledge, technology and others. Thus, the state must be present in fulfilling the constitutional rights of these citizens so as to create a just, prosperous and prosperous national and state life.

"Thus, all state administrators must obey the constitution. Because, when the constitution is set aside or not implemented, then a nation will be destroyed and it has been proven since ancient times. For that, let's obey the constitution," said Anwar as his closing remarks when ending his presentation in this event. (Sri Pujianti/Nur R)

## Independent Judiciary

Deputy Chief Justice of the Constitutional Court (MK) Aswanto was the keynote speaker at the National Working Meeting (Rakernas) of the Indonesian Advocates Association - the Joint House of Advocates (Peradi RBA) in 2021, on Friday (1/10/2021) online. In this activity, Aswanto explained



Chief Justice of the Constitutional Court Anwar Usman was a speaker at the online Tarumanegara University Faculty of Law Anniversary event, Tuesday (9/28). Photo: Public Relations/Ifa.

about the philosophy of *rechtsstaat* and the rule of law. Aswanto said that conceptually, many experts think that there are philosophical differences between *rechtsstaat* and the rule of law.

"But actually, besides the differences in these two principles, there are things that are philosophically the same, namely there must be an independent, impartial and judicial judiciary that can truly provide substantive justice," explained Aswanto in front of the General Chairperson of Peradi RBA Luhut. MP Pangaribuan. According to Aswanto, this is a

consequence of the rule of law.

Aswanto further said that the existence of a judiciary is expected to provide justice for justice seekers impartially. In the law enforcement process, there are advocates. In exercising judicial power, advocates must be placed in the right place. Aswanto said, advocates function to assist clients who are considered to feel that their justice has been ignored. However, the most prominent function



Deputy Chief Justice of the Constitutional Court, Aswanto, gave a keynote speech at the opening of the online Peradi RBA National Working Meeting, Friday (10/1/2021). Photo: Public Relations/Hamdi

is that advocates must participate in system updates or improvements. Other than that,

Aswanto said all institutions involved in a case settlement must have the same view to uphold justice. "Advocates, judges, prosecutors, must have the same concept that the goal is to conduct discussions or discussions about justice that can be realized," he added. (Utami Argawati/ Nur R)

## The Importance of Mastering Procedural Law

Prospective advocates must understand a procedural law. Procedural law relates to the means or instruments that must be understood when becoming an advocate who will deal with the problems faced by the principal. Without mastering this, an advocate or legal representative may not be able to do anything and even fight for constitutional rights and justice for the principal he is assisting. This

is the opening statement expressed by Constitutional Justice Suhartoyo in the Special Education for the Advocate Profession Batch III organized by the Iblam School of Law (Iblam School Law) with the Peradi DPN on Saturday (9/10/2021) via Zoom Meeting.

In the Constitutional Court, continued Suhartoyo, the procedural law is slightly different with each of the accompanying authorities. The Constitutional Court's several powers referred to in the constitution include reviewing laws against the Constitution, deciding disputes over the authority of state institutions, deciding on the dissolution of political parties, and deciding disputes over general election results, while the Constitutional Court's obligation is to provide an opinion on alleged violations by the president according to the 1945 Constitution. In addition, there is also additional authority granted by the 1945 Constitution, but not derived from the constitution, namely handling disputes over the results of regional head elections (PHP Kada).

In relation to the procedural law for judicial review (PUU), Suhartoyo explained that with regard to PUU, what must be understood is that there is a formal and material test. In this PUU, the nature of the case is not a contentious, adversarial case, and a case in which there are no parties and there is only the Petitioner and no Respondent. If anyone submits a request for judicial review at the Constitutional Court, there may be a related party, and the Government and the House of Representatives in this case are only providing information.

"Thus, the government and the House of Representatives also explained everything at the request of the Constitutional Court. On the basis of the Petitioner's request so that the Constitutional Court summons the House of Representatives/Government regarding the existence of a formal and material review, there is a legal product made by the legislators," explained Suhartoyo. ■

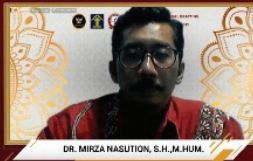
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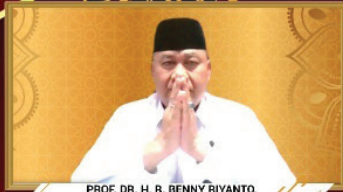
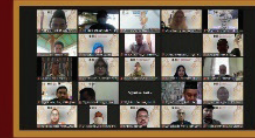
Constitutional Justice Suhartoyo became a speaker in the Special Advocate Profession Education Program Batch III organized by the Iblam School of Law (Iblam School Law) with the Peradi DPN, Saturday (9/10). Photo: Public Relation/Bayu



DR. ANWAR USMAN, S.H., M.H.



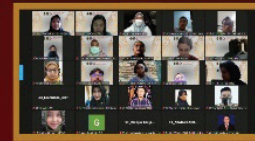
DR. MIRZA NASUTION, S.H., M.HUM.



PROF. DR. H. R. BENNY RIYANTO,  
S.H., M.HUM., C.N.



NURVANTI W., S.H., M.M., SPN



IMAM MARGONO, S.E., M.M.



The Chief Justice of the Constitutional Court, Anwar Usman, was accompanied by the Head of the Education and Training Center, Imam Margono, the Director General of Legislation, Benny Riyanto, and the Chairman of the APHTN-HAN Central Executive Board, Dr. Mirza Nasution, SH., M.Hum., and Director of Facilitation of the Drafting of Regional Regulations and Development of Legislative Designers Nuryanti Widyastuti when opening the online Legal Drafting Technical Guidance for APHTN-HAN Batch 4 online, Monday (21/9). Photo: Public Relations/Teguh

# KNOWING THE STEPS FOR THE DEVELOPMENT OF LAW AND CONSTITUTIONAL RIGHTS BETTER

The law is an important instrument for the Constitutional Court in carrying out one of its authorities, namely to examine the law against the 1945 Constitution. In this regard, the Constitutional Court considers it necessary to provide guidance for the parties to understand the guidelines for the preparation of various legal products, starting from the law, local laws, regulations, etc. On this occasion, the Constitutional Court collaborated with related institutions to provide technical guidance on the mechanism for the preparation of a statutory norm.

## Understand The Constitution Before Drafting a Legal Norm

The Pancasila and Constitutional Education Center again held Legal Drafting Technical Guidance for the 4th Batch of the 4th Batch of the Association of State Administration Law Lecturers (APHTN HAN) online on Monday (9/20/2021). This activity was officially opened by the Chief Justice of the Constitutional Court Anwar Usman accompanied by Head of Education Center Imam

Margono, Director General of Legislation Benny Riyanto, Chairman of APHTNHAN Central Management Mirza Nasution and Director of Facilitation of Regional Regulation Design and Development of Legislative Drafters Nuryanti Widyastuti.

In his remarks on this activity, Anwar said that drafting laws and regulations is an important part in the process of forming laws and their derivative regulations. The draft legal documents that have been prepared will not only be used as a medium to facilitate the preparation and discussion of the formation of laws and regulations. But it can also serve as evidence at

a later date if there are differences in interpretation of the formulation of norms that have been made and enforced. Therefore, he requested that the drafters and drafters of this law thoroughly understand the processes, mechanisms, and rules contained in this task.

"Because the results of the preparation can have a direct impact on the quality of the resulting legislation. Thus, drafters are not only obliged to meet the targets of the legislation that have been set, but also have to properly understand the constitution which is the reference in the drafting of the law," explained Anwar.



Constitutional Justice Saldi Isra when giving material in the Legal Drafting Technical Guidance activity for the 4<sup>th</sup> Batch of the Association for State Administrative Law Lecturers-State Administration Law (APHTN HAN), Tuesday (9/21). Photo: Public Relations/Teguh

Furthermore, Anwar stated that the task of drafting legislation is related to the authority of the Constitutional Court (MK). If the law is a product of the executive and legislative institutions which by nature were generated from a democratic system that is majoritarian, then the Constitutional Court in its authority establishes a mechanism to determine that a law is formed in accordance with the process of its formation. Thus, the legislators must understand the preparation of a good draft, both from a formal and material perspective as well as from a substantive side.

"The most important thing from a legal draft in my view is that it aims to fulfill the principles of humanity, social justice, divine values and unity, as well as the principles of mutual understanding, understanding, tolerance, as the values outlined in the Pancasila state foundation. Thus, the preparation of the legal drafting has benefits, certainty, as well as justice for all people," said Anwar.

## Judicial Review of the Law in the Perspective of the State System

On the second day of the Legal Drafting Technical Guidance activity for the 4<sup>th</sup> Batch of State Administration Law Teaching Association (APHTN HAN), Constitutional Justice Saldi Isra was presented as a speaker with the subject of "Procedural Law for Judicial Review". The activity held by the Pancasila and Constitutional Education Center on Tuesday (21/9/2021) was attended by 100 participants consisting of 80 participants from APHTNHAN and 20 other participants from the Constitutional Court.

Speaking of judicial review (PUU), Saldi said that this is the first authority of the constitutionally mandated authority to the Constitutional Court (MK). In connection with this authority, if traced to the history of the idea of a state in the concept of checks and balances, then the review of this law must be placed as a constitutional legal

thought in looking at the relationship between states in the constitution of a country concerned.

Furthermore, Saldi discussed that if it was returned to the concept of trias politica—in which there are three institutions in the state system, namely the executive, legislative, and judiciary—then PUU in the theoretical context can be placed as a part of the judicial function, namely controlling the work of the executive and the judiciary. legislative. So how to review the laws (UU) made by lawmakers, with a constitutionality assessment that will be carried out by the Constitutional Court. Saldi acknowledged that in each of these institutions an internal check mechanism was available. However, if it doesn't work, then what if the law made violates the constitution.

"Therefore, we need an external institution outside the body of the institution concerned to oversee the process. If there are contradictory substances, then the Constitutional Court through its role will control and

assess potential violations that will potentially occur with the enactment of a law," said Saldi.

Thus, Saldi continued, the function of judicial review is to see whether or not a law has the potential to violate constitutional provisions. With this space, lawmakers will prioritize the element of prudence in carrying out the products they will produce.

### **Not Just about Amendments**

Furthermore, the 2003-2008 and 2015-2020 Constitutional Court Justices, I Dewa Gede Palguna also attended to review material related to the interpretation of the Constitution. In his presentation, Palguna explained the understanding of the interpretation of the constitution. It includes the understanding and methods for people to resolve disputes about the meaning of things contained in the constitution. According to Palguna, in the interpretation of this constitution, someone who is reviewing it will see how to elaborate the meanings in the constitution. Thus, the interpretation of the constitution can be said as an effort

to find answers from the statement of how to view the constitution.

"Therefore, the interpretation of the constitution can be said as a mechanism to find out and ensure that the constitution has been implemented in practice whether it is in accordance with the understanding and objectives contained in it," explained Palguna, who is now active again with the world of teaching on campus.

### **Stages of Harmonization of Draft Laws and Regulations**

On this third day, Wednesday (9/22/2021) 99 participants consisting of participants from APHTN-HAN and the Constitutional Court, were treated to several materials including the Technical Preparation of Academic Papers delivered by the Director of Harmonization of Laws and Regulations of Unan Pribadi and Techniques for Preparation of Academic Papers delivered by Djoko Pudjirahardjo from the National Legal Development Agency. Next, the technical guidance

participants were also given material on the Technique for Drafting Legislation Part I which was delivered by Imam Santoso as the Main Designer of the Research and Development of Law and Human Rights, and the Technique for Drafting Legislation Part II delivered by Reza Fikri Febriansyah as Head of Economics, Finance, Industry, Trade and Infrastructure National Legal Development Agency.

In the material entitled "Harmonization of Legislative Regulations", Unan Pribadi said that when a designer is involved in the stages of drafting a legislative plan (RPUU), he must be involved in harmonization as part of the formal requirements based on the legal basis in the form of a law. 15/2019.

Discussing about the stages of harmonizing the RPUU (draft bills), Unan explained in detail starting from the stage of submitting a request for harmonization of the RPUU from the initiator, namely the Minister or Secretary General on behalf of the Minister. Furthermore, administrative examinations will be carried out,



Unan Pribadi (speaker) with Vieta Cornelis (moderator) during a question-and-answer session with participants of the Legal Drafting Technical Guidance activity for the 4th Class Association of State Administrative Law Lecturers (APHTN HAN) on Wednesday (9/22) online. Photo: Public Relations/Teguh

including academic manuscripts, explanations regarding the urgency of the main ideas; conceptual analysis; meeting to harmonize the RPUU concept; initial approval; and delivery of the results of the harmonization of the RPUU conception.

"So, the harmonized aspects are the conception of content or substance and the technique of drafting laws and regulations," Unan explained in the activity moderated by Vieta Cornelis who is a lecturer in law from Dr. University Soetomo.

### Legal Quality

Regarding the academic text, Djoko Pudjirahardjo as the Head of the National Legal Planning Center of the National Legal Development Agency (BPHN) said that the lack of studies and research will affect the quality of the draft bill (RPUU). Academic manuscripts are only used as a prerequisite for an RPUU, even though this part is very much needed, mainly describing

the problem, the conditions to be achieved, how to solve the problem, the parties involved in proposing the RPUU. Academic papers must also contain philosophical, sociological, and juridical foundations.

With regard to the philosophical basis, academic texts must contain legal ideals in accordance with Pancasila and the 1945 Constitution. Through this basis, continued Djoko, the academic text of an RPUU must have a vision in accordance with Indonesian elements. But often a plan, the validity period is short. Meanwhile, with regard to the sociological basis, the academic paper will photograph the condition of the community so that the rules made are accepted and applied effectively.

"It is expected that academic texts can produce an RPUU that is prepared according to the needs of the community," said Djoko in an activity guided by Dri Utari Christina Rachmawati who is a lecturer in constitutional law from Airlangga University.

## Legislative Language

The language of laws and regulations is a different language from Indonesian in general. However, it is still guided by the rules of good and correct Indonesian. The difference is, the language of legislation is a legal language that has certain characteristics. This was the opening material delivered by Andriana Krisnawati as Head of the Sub-Directorate of Standardization and Guidance for Drafting Legislations at the Ministry of Law and Human Rights of the Republic of Indonesia in the Legal Drafting Technical Guidance activity for the 4<sup>th</sup> Generation Association of State Administrative Law Lecturers (APHTN HAN) on Thursday (9/23/2021).

In this material regarding the Techniques for Drafting Legislative Regulations Part III, Andriana reviews "Various Languages of Legislation". Andriana further explained that the characteristics of the legal language include clarity, understanding, standardization, harmony and



Andriana Krisnawati while giving material in the Legal Drafting Technical Guidance activity for the 4th Batch of State Administrative Law Teaching Association (APHTN HAN) online on Thursday (23/9). Photo: Public Relations of Constitutional Court/Teguh.



adherence to principles in accordance with legal needs, both in formulation in a straightforward and definite way of writing, simple, objective, standardizing the meaning of words, providing with careful definition, the writing of words with singular and plural meanings is always formulated in the singular. For example, Andriana mentioned the use of words such as alcohol (minuan keras/ liquor), court table (meja hijau/green table), prison (jeruji besi/iron bars).

"When drafting a statutory regulation, it is better not to use words or phrases that mean uncertain contexts in sentences so that they are not clear. So, for these words, you can directly use words that refer to actual words, for example alcoholic beverages, courts, prisons," said Andriana in an activity moderated by Imam Ropii who is a lecturer at Wisnuwardhana University, Malang.

## APHTN-HAN's Class IV Legal Drafting Technical Guidance is Officially Closed

Deputy Chief Justice of the Constitutional Court Aswanto officially closed the 4<sup>th</sup> Batch of Legal Drafting Technical Guidance for the Association for State Administration Law Teachers (APHTN HAN) on Friday (9/24/2021). At the end of this activity, Head of Education Center of Constitutional Court Imam Margono and Director of Facilitation of the Drafting of Regional Regulations and Guidance of Designers of Law and Law Enforcement and Nuryanti Widyastuti.

Aswanto said that based on the speakers presented at this activity with various topics related to the preparation of laws and regulations, it is expected that they can provide refreshments, insights, and better and convincing perspectives for participants from APHTN HAN to further transfer the knowledge gained in this year. students on campus. In connection with this goal, said Aswanto, it is actually related to the authority of the Constitutional Court in reviewing laws against the 1945 Constitution. Aswanto hopes that with this authority the Court will not only examine existing laws and regulations, but the Constitutional Court wants to

Deputy Chief Justice of the Constitutional Court Aswanto when closing the Legal Drafting Technical Guidance for the 4<sup>th</sup> Batch of the Association for State Administration Law-State Administration Law Lecturers (APHTN HAN) on Friday (9/24). Photo: Public Relations of Constitutional Court/Teguh.

take part so that the existing laws and regulations formed, both from the government's draft and the DPR can be more in line with the norms of drafting laws and regulations as regulated in the Constitution and the Law on the Establishment of Legislations (UU P3).

"The duties and authorities of the Constitutional Court are closely related to how to draft good laws.

Thus, the Constitutional Court in accordance with its main duties and functions is increasingly helped when laws and regulations are made by parties who have comprehensive knowledge in compiling them. In line with the case, the Constitutional Court as a guardian of democracy and human rights also hopes that in addition to the substance that must be in line with the constitution, the resulting law is also in accordance with the procedures for its formation as regulated in the constitution and UUP3," added Aswanto.

For information, this technical guidance activity was held for five days from Monday to Friday (20 to 9/24/2021). This activity was carried out due to the cooperation of three institutions, namely the Center for Pancasila and Constitutional Education of the Constitutional Court (Pusdik MK), the Indonesian Ministry of Law and Human Rights, and the Association for Teaching Constitutional Law–State Administration Law (APHTN HAN).

## The Purpose of the Establishment of the State

The Chief Justice of the Constitutional Court (MK) Anwar Usman gave a key lecture in an online activity to Improve the Understanding of Citizens' Constitutional Rights (PPHKWN) for

the Indonesian Association of Persons with Disabilities (PPDI), on Tuesday (5/10/2021). In this activity, Anwar said that the purpose of the establishment of the state in the Preamble to the 1945 Constitution is to protect the entire Indonesian nation and the entire homeland of Indonesia, and to promote public welfare, educate the nation's life, and participate in carrying out world order based on independence, eternal peace and social justice.

According to Anwar, there are at least three values contained in the goal of the establishment of the Indonesian state. First, the birth of the State of Indonesia aims to protect the entire Indonesian nation.

"This sentence is so noble, because the state has a responsibility to protect all its people without exception. The state, in carrying out its duties to protect all its people, must not discriminate

based on ethnicity, race, religion, or any group," said Anwar.

Anwar further explained that the purpose of the state as contained in the Preamble to the 1945 Constitution, in international law conventions, is known as the convention on the Elimination of All Forms of Discrimination. This convention was approved by the General Assembly of the United Nations (UN) on December 21, 1965.

"It means that if we compare the international convention on anti-discrimination with the Preamble of the 1945 Constitution above, it can be concluded that the founders of the Republic of Indonesia had long held the principle of anti-discrimination before the the convention. This shows the fact that the founders of Indonesia thought very progressively in instilling noble values for life and as a nation," said Anwar accompanied by Secretary



Chief Justice of the Constitutional Court (MK) Anwar Usman while giving a keynote speech in the event of Increasing Understanding of Citizens' Constitutional Rights (PPHKWN) for the Association of Indonesian Persons with Disabilities (PPDI), on Tuesday (10/5) online. Photo: Public Relations of the Constitutional Court/Teguh.

General of the Constitutional Court M. Guntur Hamzah.

## The Central Position of Constitution

On the following day, Wednesday (6/10/2021), the Constitutional Court Justice for the Period 2008-2013 and 2013-2018 Maria Farida Indrati presented the material "Constitution and Constitutionalism". Maria said the constitution can be interpreted as the formation of a state or compiling and declaring a state.

"So, usually if there is a society that at first, they live unorganized, then they want to build a country, then they will first form a constitution," said Maria.

Maria said that the constitution is the basic foundation for a country that can be understood by many parties. According to Maria, the constitution makers will try to make an order or rules in which these rules are interrelated.

"These links will make a country strong," said Maria.

Maria further said that the Constitution was intended for the state to run well without any conflict. "If there is a conflict, there is a middle way. It is regulated in the constitution. All state authorities need to have restrictions which in their implementation there must be a supervision, namely the term checks and balances," added Maria.

In addition, Maria also mentioned, in a democratic country, the constitution occupies a central position. This is because a democratic government is required to exercise its power according to the limits set out in the constitution.

"So, if there are institutions or citizens who go beyond what is regulated by the constitution, they will get sanctions. But indeed, the sanctions will not be formulated in the constitution because the constitution is the highest basic norm in a country which is a reference for the regulations



Constitutional Justice for the Period 2008-2013 and 2013-2018 Maria Farida Indrati during a question-and-answer session in an online activity to Improve Understanding of Citizens' Constitutional Rights (PPHKWN) for the Indonesian Association of Persons with Disabilities (PPDI), Wednesday (6/10). Photo: Public Relations of Constitutional Court/Teguh

under it, so there will be no sanctions," explained Maria.

## People with Disabilities Study Procedural Law of the Constitutional Court

The activity to increase the understanding of the constitutional rights of citizens (PPHKWN) for the Association of Indonesian Persons with Disabilities (PPDI) on the third day on Thursday (7/10/2021) was filled by Constitutional Justice Enny Nurbaningsih. The material presented by Enny was "The Constitutional Court and the Procedural Law of Judicial Review of the 1945 Constitution of the Republic of Indonesia".

Starting the discussion, Enny explained the history of the Indonesian nation's journey to the birth of an institution that was given the authority to enforce the constitution, one of which was by testing the law (UU) against the 1945 Constitution, namely the reference from Moh. Yamin. In short, continued

Enny, after the amendments to the 1945 Constitution, the Constitutional Court was established and has the authority regulated in Article 24C Paragraph (1) of the 1945 Constitution. The authority in question is that the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final and binding to examine the Act against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding the results of general elections.

Furthermore, based on Article 24C Paragraph (2) of the 1945 Constitution, the Constitutional Court is obliged to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution. In addition, Article 157 paragraph (3) of Law no. 10 of 2016 (Law on regional election) states that disputes over the determination of the final stage of the election results are



Constitutional Justice Enny Nurbaningsih gave material to the participants on the Online Understanding of Citizens' Constitutional Rights (PPHKWN) for the Indonesian Association of Persons with Disabilities (PPDI), Thursday (10/7). Photo: Public Relations of Constitutional Court/Teguh.

examined by the Constitutional Court until a special judicial body is formed.

## Application Preparation Techniques

On the same occasion, the Substitute Registrar of the Constitutional Court Rizky Amelia also provided material on "Techniques for Drafting Applications for Judicial Review". Rizky conveyed, based on Article 3 and Article 7 paragraph (1) of PMK 2/2021, the parties consist of 3 (three): the Petitioner, the Information Giver, and the Related Party.

"The three of them can be represented by a legal representative based on a special power of attorney and/or accompanied by a companion based on a certificate," said Rizky.

Rizky explained that the Petitioner is a party who considers his constitutional rights and/or authorities to be impaired by the enactment of the Law. The applicant consists of individual Indonesian citizens (including groups of people who have the same interests), customary law community units as long as they are still alive and in accordance with community development and the principles of the Unitary State of the

Republic of Indonesia as regulated in law, public or private legal entities, or state institutions.

In making the petition, Rizky continued, the Petitioner must describe the constitutional loss that is considered aggrieved. Such constitutional rights are the constitutional rights and/or authorities of the Petitioners granted by the 1945 Constitution which are then deemed by the Petitioners to be impaired by the enactment of the Law for which the petition is being reviewed.

According to Rizki, the constitutional loss must be specific (special) and actual or at least potential, which according to reasonable reasoning can be ascertained to occur. In addition, there is a causal relationship (causal verband) between the loss in question and the enactment of the law for which the review is being requested.

## Secretary General of the Constitutional Court Officially Closes PPHKWN for People with Disabilities

The activity to improve the understanding of the constitutional rights of citizens (PPHKWN) for the Association of Indonesian People with Disabilities (PPDI) was officially closed by the Secretary General of the Constitutional Court (Sekjen MK) M. Guntur Hamzah online from the Constitutional Court (MK) Building on Friday (10/8/ 2021).

Starting his speech, Guntur said that the Constitutional Court as a judicial institution has an interest in upholding the constitution in accordance with the



Secretary General of the Constitutional Court, M. Guntur Hamzah accompanied by The Head of the Pancasila and Constitutional Education and Training Center Imam Margono and the General Chairperson of the PPDI Governing Council Gufroni Sakaril held a group photo session at the closing of the online Citizens' Understanding of Constitutional Rights (PPHKWN) for the Association of Indonesian Persons with Disabilities (PPDI) online, Friday (10/9). Photo: PR/Teguh.

Constitutional Court's vision and mission as a modern and trusted judiciary.

"To effectively enforce the constitution is certainly not the task of the Constitutional Court itself, but requires support and requires participation from all components of society, including PPDl," said Guntur in front of the General Chairperson of the PPDl Governing Council, Gufroni Sakaril.

Guntur hopes that this activity can strengthen the ideology of Pancasila and the 1945 Constitution so that it can be implemented and incarnated in everyday life.

"This activity is just an introduction, but the most important thing is after this activity. It's like for 4 days and 3 nights, they try to know, understand and explore, but how to practice it in the community. This is what we hope for after the implementation of the Enhanced Understanding of Citizens' Constitutional Rights," Guntur continued.

The Constitutional Court Holding Technical Guidance on Procedural Law for Judicial Review for IKA FH Undip

Chief Justice of the Constitutional Court, Anwar Usman, officially opened the Legal Technical Guidance for Legal Testing organized by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) on Tuesday (12/10/2021). This activity was also attended by the Chairman of IKA FH UNDIP Ahmad Redi and Plt. Head of the Constitutional Court Education and Training Center, Imam Margono.

Anwar said that one of the contents contained in the 1945 Constitution is the guarantee of constitutional rights to citizens. However, in practice and as a consequence, such rights develop according to the needs of the community. In Indonesia, this guarantee of rights is regulated in the 1945 Constitution which has also been amended several times. Throughout



Chairman of the Constitutional Court Anwar Usman, accompanied by Chairman of IKA FH UNDIP Ahmad Redi and Plt. The Head of the Education and Training Center of the Constitutional Court, Imam Margono, opened the Legal Technical Guidance on the Testing of Laws organized by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) online on Tuesday (10/12). Photo: PR/Teguh.

the founding of Indonesia since independence, the 1945 Constitution has had its ups and downs. Starting from the results of the formation of BPUPKI and PPKI to the nation's journey on May 21, 1998, the sacralization of the 1945 Constitution came to an end. The demands of democracy are getting stronger and along with the passing of the government, the 1945 Constitution is undergoing gradual changes.

"The 1945 Constitution contains many new norms. This change also changed the structure of state institutions, such as the Supreme Advisory Council which was abolished but the Judicial Commission, Regional Representative Council, and the Constitutional Court were also held. After this change, the format of state institutions no longer recognizes the highest institution of the MPR so that the position of state institutions becomes equal" until Anwar in front of a total of 418 participants of technical guidance consisting of advocates, employees of state and regional institutions, entrepreneurs, community organizations, and student activists who are members in IKA FH Undip.

Anwar continued that the change had an effect on the creation of a balance pattern between the branches of state power, namely the executive, legislative, and judiciary by focusing on the constitution. Thus, when there is a deviation in the work of one of the state institutions, such as the legislature and the executive, so that the judiciary can also supervise the products produced by the institution.

Then, Anwar continued, the concept of democracy is no longer only on the legitimacy of general elections but also lies in the balance of understanding between democracy and the implementation of constitutional norms that are agreed upon as the highest norms in the state. This is also in line with the existence of the Constitutional Court with its powers granted by the 1945 Constitution, namely to examine laws against the 1945 Constitution, to decide on disputes over the authority of state institutions to decide the dissolution of political parties, and to decide disputes regarding the results of the general election.

## Many Laws Have Been Consistent and Coherent with the Constitution

Constitutional Justice Arief Hidayat was the speaker on the second day of the Legal Technical Guidance on Judicial Review held by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) on Wednesday (13/10/2021). In his presentation entitled "Procedural Law for Judicial Review", Arief introduced that the history of the existence of the Constitutional Court was formally first introduced by Hans Kelsen.

According to him, the constitutional implementation of legislation can be effectively guaranteed if an organ other than the legislative body is given the task of examining a constitutional law product. Therefore, Arief continued, it is necessary to establish a special organ, namely the Constitutional Court. Furthermore, in Indonesia itself, said Arief, the idea of forming a Constitutional Court has existed since the founding of the Indonesian state, which was

proposed by M. Yamin. However, the situation at that time did not support it until after the reform and amendment of the 1945 Constitution, Constitutional Court of Republic of Indonesia was generated on August 13, 2003.

"So, if we look at it now, the Constitutional Court is already 18 years old. Based on Article 24 of the 1945 Constitution, judicial power is exercised by the Supreme Court and the judicial bodies under it as well as the Constitutional Court," said Arief in front of a number of 249 technical guidance participants consisting of advocates, employees of state and regional institutions, entrepreneurs, community organizations, and student activists who are members of the Constitutional Court in IKA FH Undip. In the function of the institution, Arief explained that the Constitutional Court is often referred to as the guardian of the constitution.

In this function, the Constitutional Court conducts tests/review because it relates to the consistency, coherence, and correspondence of the law. Arief said that laws are formed which are

formed organically whose contents are already in the constitution. Next, there are laws that are formed based on the needs of the community.

Furthermore, in its function, the Constitutional Court is also known as the final interpreter of the constitution. In this case, explained Arief, the Constitutional Court often makes interpretations of laws that are the product of legislators. In line with the interpretation of this law, Arief said that the Constitutional Court from its 18 years of service had held 1,435 cases. Of these cases, the case that was granted by the Constitutional Court against the law which was declared unconstitutional was less than 5%. From this, Arief sees that such an indicator shows that the community is legally literate. Because, if they feel that their constitutional rights (in this case citizens) have been harmed, many individuals have also filed for judicial review (PUU).

"Therefore, to IKA FH Undip who come from various professions, it is hoped that they can understand and understand that the norms that are

**BIMBINGAN TEKNIS HUKUM ACARA PENGUJIAN UNDANG-UNDANG BAGI IKATAN ALUMNI FAKULTAS HUKUM UNIVERSITAS DIPONEGORO**

**Prof. DR. ARIEF HIDAYAT, S.H., M.S.**  
Hakim Konstitusi

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Constitutional Justice Arief Hidayat when giving material at the Legal Technical Guidance on the Judicial Examination organized by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) online on Wednesday (10/13). Photo: PR /Wijaya.

tested and only accepted are only 5% of those who enter. Hence, the laws made by legislators are consistent, coherent, and in correspondence with the constitution," added Arief.

### **Searching for Answer**

On the same occasion, Constitutional Justice I Dewa Gede Palguna (Period 2003 – 2008 and 2015 – 2020) was presented as a speaker who discussed in detail the "Interpretation of the Constitution". According to Palguna, the interpretation of the constitution relates to methods and strategies for parties trying to resolve disputes related to the understanding or application of the constitution. Therefore, the interpretation of the constitution does not merely match certain events, things, or circumstances with the articles in the constitution. Rather, it means seeking answers to the question of how one views the constitution and the goals to be achieved.

"Thus, the interpretation of the constitution is related to the mechanism to ensure whether the constitution has actually been implemented in practice in accordance with the meaning contained in it and the objectives to be realized in the constitution," said Palguna.

### **Power Balance**

Constitutional Justice Saldi Isra was presented to provide material related to the PUU procedural law. That the big concept of PUU in Saldi's view is present as a consequence of the context of relations between institutions within a country. In any constitution, at least it contains the structure of the existing institutions in the country concerned. If it is associated with constitutional law theory, the state institutions at least consist of legislative, executive, and judicial institutions (or also called *trias politica*). In this case, Saldi gave an example of the implementation of the United States constitution made by parliament or its congress. In the US the authority to form laws, rests with the

representative institutions in parliament.

"However, this does not mean that the president/executive does not play a role in drafting a norm. Because, in state practice 99% of draft norms are in the executive body because this is the body that requires laws to run the day-to-day government," said Saldi.

In contrast to Indonesia, continued Saldi, in the context of balancing state power in the constitution, it is the legislature that forms the law. In fact, within the institution or agency there has also been an internal supervisor. However, for the implementation of efforts to balance supervision and government power, a judicial institution such as the Constitutional Court was formed. Within its authority, the Constitutional Court has the authority to examine laws against the 1945 Constitution. And in the same development and context, the Constitutional Court also has the authority to examine Government Regulations in Lieu of Law (Perpu). This is because the laws and regulations create new legal norms with the same force as the law.

## **Theory and Practice of Compilation of Applications for Judicial Review**

The Substitute Registrar for Level I Constitutional Court Syukri Asy'ari was the speaker in the Legal Technical Guidance on the Judicial Review held by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) on Thursday (10/14/2021). In this material, Syukri describes the theory of the technique of drafting a petition for judicial review of the 1945 Constitution of the Republic of Indonesia.

In relation to judicial review (PUU), participants are invited to get to know

first the parties involved in the PUU trial as contained in PMK 2/2021 Article 3 and Article 7. These three parties can be represented by a legal representative based on a power of attorney and/or accompanied by a companion with a certificate. In relation to the existence of the Petitioner in the PUU, Syukri said that there must be a loss of constitutional rights experienced from the enactment of the law for which the judicial review is requested. These constitutional losses can be specific and factual or at least potential according to reasonable reasoning that can certainly occur.

After obtaining complete and detailed materials, a total of 200 technical guidance participants were divided into eight online class groups to practice drafting requests for judicial review. All of these participants were guided and guided directly by the researchers and the court's substitute clerk so that they could prepare the application properly in accordance with the existing provisions.

## **Functions and Roles of the Constitutional Court as a Constitutional Court**

Secretary General of the Constitutional Court M. Guntur Hamzah officially closed the Legal Technical Guidance on Judicial Examination organized by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) on Friday (15/10/2021). In this activity, the Chairperson of IKA FH UNDIP Ahmad Redi and Plt. Head of the MK Education and Training Center, Imam Margono.

Secretary General of the Constitutional Court M. Guntur Hamzah accompanied by Plt. The Head of Education Center of Constitutional



Sekretaris Jenderal MK M. Guntur Hamzah didampingi Plt. Kapusdik MK Imam Margono saat melakukan sesi foto bersama dalam penutupan kegiatan imbingan Teknis Hukum Acara Pengujian Undang-Undang yang diselenggarakan Pusat Pendidikan Pancasila dan Konstitusi bagi Ikatan Alumni Fakultas Hukum Universitas Diponegoro (IKA FH Undip) pada Jumat (15/10) secara daring. Foto Humas MK/Teguh

Court, Imam Margono during a group photo session at the closing of the Legal Technical Guidance for Legal Testing held by the Pancasila and Constitutional Education Center for the Alumni Association of the Faculty of Law, Diponegoro University (IKA FH Undip) online on Friday (10/15). Photo: Public Relations of Constitutional Court/Teguh.

In front of the 418 technical guidance participants who participated in this online activity, Guntur said that the technical guidance activities with legal material for judicial review of the law (PUU) were carried out in line with the business court of the Constitutional Court as a constitutional judicial institution. Therefore, through this technical guidance, the participants got various descriptions of the implementation of the duties and role of the Constitutional Court as an institution that guards the constitution. During these four days, he explained, the technical guidance participants had listened to the reviews from resource persons and senior researchers as well as substitute clerks for the Constitutional Court who understood various legal aspects of the implementation of constitutional justice.

"On that basis, the Constitutional Court was then given the attribute as the guardian of the constitution and

also as the guardian of democracy, where the Constitutional Court also has the authority to settle the results of the presidential/vice-presidential and legislative elections as well as the final settlement of disputes over the results of the regional head elections," explained Guntur at in front of the technical guidance participants consisting of advocates, employees of state and regional institutions, entrepreneurs, community organizations, and student activists who are members of the IKA FH Undip.

## The Utilization of Information Technology

On this fourth day, the participants of the technical guidance also received material related to the use of information technology from Riska Aprian and Rachman Karim as the Information and Communication Technology (ICT) Team of the Court. In his presentation entitled "Utilization of ICT in Handling Cases at the Constitutional Court", Aprian said that although the Covid-19 pandemic is still ongoing, the Court continues to carry out trial activities with speedy trial challenges to resolve cases immediately without leaving a fair hearing. Thus, the resulting decision remains meaningful and is decided at the right moment.

As the jargon exalted by the judges of the constitution that justice must be upheld even though the sky will fall. However, long before the onset of the pandemic, the Constitutional Court had been aggressively implementing ICT in realizing its vision of becoming a modern and trusted judiciary. The Constitutional Court made the legal basis for holding the trial by stating it in PMK 18/2019.

"Through this rule, the Constitutional Court then makes use of ICT as a real effort to realize easy access for parties in litigation at the Court through the administration of a modern and trusted judicial institution," said Aprian.

Furthermore, Aprian explained the things that can be accessed by the litigants in the Constitutional Court include the Electronic Case Handling Information System; the Constitutional Court's page (mkri.id); election information portal; remote/online trial; Click MK; Case tracking and online Q&A; trial schedule, decision, and court minutes.

Regarding the various features made by the Constitutional Court to ease litigants in the Constitutional Court, the IT staff of the Constitutional Court, Rachman, explained the technicalities of how the parties, especially the Petitioner, access the Electronic Application Information System. Through this feature, Rachman explained that the public can register themselves in submitting applications online, monitor the progress of case applications, access trial schedules and a list of court summons, as well as download minutes or court decisions. ■

UTAMI ARGAWATI/SRI PUJANTI/LULU

ANJARSARI/NUR R



# THE CONSTITUTIONAL COURT IN THE ROOM OF EDUCATION AND SOCIALIZATION OF PEOPLE'S CONSTITUTIONAL RIGHTS

Chief Justice of the Constitutional Court Anwar Usman was the speaker for Training I of the Integrated PPC Program for the Military Court Environment, Tuesday (21/09) at the MA Education and Training Center. Public Relations/Banji's photo.

In order to socialize and educate about the importance of constitutional awareness, the Constitutional Court is always active in providing a meeting room for various parties to discuss. On this occasion, the Constitutional Court through the constitutional judges attended national seminars, education and training, and various open forums from campus to campus and other state institutions to provide knowledge and understanding of citizens' constitutional rights and the Constitutional Court's procedural law.

## The Constitutional Court's Authority in the Supreme Court's Training Program

The Chief Justice of the Constitutional Court (MK) Anwar Usman was a speaker in Training I of the Integrated PPC Program for Military Courts throughout Indonesia by the Education and Training Agency of the Supreme Court (Badiklat MA) on Monday (20/9/2021) night at the MA Education and Training Center (Pusdiklat MA). In this event, Anwar said that the Constitutional Court is an institution of

judicial power that was generated after the reform in 1998 and as a result of the amendments to the 1945 Constitution. One of the articles related to it is the provision of Article 24 of the 1945 Constitution.

Anwar explained that in the amendments to the 1945 Constitution, the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final to review laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties,

and decide disputes about the results of the general election. In addition to this authority, the Constitutional Court also has one obligation, namely to give a decision on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President according to the Constitution.

## Additional Authority of the Constitutional Court

Chairman of the Constitutional Court Anwar Usman was a speaker at the XV Batch XV 2021 Special Training for Advocates Profession held by the Indonesian Advocates Congress (KAI) in collaboration with the Law Faculty of Pasundan University on Saturday (9/25/2021) in Bandung. In this presentation entitled "The Constitutional Court and the Procedural Law of the Constitutional Court", Anwar reviewed the opening material on the authority of the Constitutional Court mandated by the constitution.



Chief Justice of the Constitutional Court Anwar Usman was a speaker at the Special Advocate Profession Training Program organized by the Indonesian Advocates Congress in collaboration with the Faculty of Law, Pasundan University, on Saturday (25/9/2021) in Bandung. Photo: Public Relations/Agung.

In line with this authority, Anwar saw that the existence of the Constitutional Court was inseparable from the initial journey of reform and amendments to the 1945 Constitution. Of the four amendments to the 1945 Constitution, only Article 1 paragraph (1) of the 1945 Constitution regarding the form of the state was not changed. Meanwhile, changes are made according to the needs of the state and society. It includes the establishment of the Constitutional Court with all its authorities and obligations contained in Article 24C paragraph (1) and paragraph (2) of the 1945 Constitution. Besides, Anwar said that the Constitutional Court also has additional authority to settle disputes over regional head elections until the establishment of a special judicial body. However, Anwar explained the misconceptions that the public understood about the meaning of regional head elections. As stated in Article 18 of the 1945 Constitution, regional head elections are conducted democratically. This meaning

is interpreted by the Constitutional Court that if during the implementation of the election it runs with a democratic system, then it is legal and constitutional.

"If the election is carried out by the House of Representatives and is not directly elected by the people, is it constitutional? Yes, it is, constitutional and the same. So, the meaning of democracy in Article 18 of the 1945 Constitution may be direct or indirect. The next question, why is it not determined with certainty, directly elected by the people or Regional People's Representative Assembly? This is because Article 18 of the 1945 Constitution was ratified by the MPR before the ratification of the Election Law related to the direct election of the President and Vice President in 2001," explained Anwar.

### **The Mechanism of the Constitutional Court Session During a Pandemic**

Constitutional Judge Enny Nurbaningsih was a speaker in the Public Lecture as well as the inauguration of the use of the Smartboard Mini Courtroom, Faculty of Law, Gadjah Mada University (FH UGM) on Friday (10/1/2021). In the event themed "Covid-19 Pandemic Period: Implications for Dynamics and Legal Developments", the Dean of FH UGM Sigit Rianto and UGM HTN Lecturer Andy Omara and Head of the Permanent Secretariat of AACC and Foreign Cooperation of Constitutional Court Sri Handayani were also present.

In this presentation that was also listened to by undergraduate, postgraduate, and doctoral students of FH UGM online, Enny said that the situation and condition of Covid-19 was never predicted for a long time by countries in the world. So that when the President issued a substitute for law (Perpu) to respond to this situation, human life changed, including in the judicial system. The determination of the Covid-19 pandemic as a non-natural disaster, of course, caused the Constitutional Court to be affected in conducting the hearing.

Enny said that the Constitutional Court is a judicial institution that carries

out the constitutional mandate to uphold justice and safeguard the functions of citizens' rights. Thus, in the midst of this uncertain situation, the Constitutional Court must continue to strive to protect the constitutional rights of citizens in their implementation in state life. For this matter, the Constitutional Court finally can't refuse every case that is submitted to the application service.

"The Court has finally strengthened the tools to use technology to hold online and offline hearings. For example, in the case of the 2020 Regional Head Election, the Constitutional Court implemented an online trial using the Zoom application and an offline trial at the Constitutional Court Building by implementing health protocols strictly in accordance with the provisions of WHO and the Indonesian Ministry of Health," said Enny.

Furthermore, Enny also conveyed the procedure for the implementation of the judicial review of the law (PUU) at the Constitutional Court which was also carried out with adjustments following the developments of the Covid-19 pandemic situation. The hearing was conducted in the presence of the litigants virtually. Meanwhile, the panel of judges was present in the courtroom. To support the conduct of the trial properly and according to principles, continued Enny, the PUU procedural law was revised to accommodate changes in the trial process.

## The Constitutional Court Presents Technology to Reach Justice Seekers

Constitutional Justice Suhartoyo gave an institutional speech as well as symbolically inaugurated the use of the Smart Board Mini Court Room, Faculty of Law, Indonesian Islamic University (FH UII) Yogyakarta on Saturday (10/2/2021). This event was a collaboration between the Constitutional Court and FH UII in order



Constitutional Justice Enny Nurbaningsih gave a public lecture for students of the Faculty of Law, Universitas Gadjah Mada, on Friday (10/01). Photo: Public Relations/Banji.

to realize the Constitutional Court's concrete contribution to justice seekers. In this event, Suhartoyo was present with Constitutional Justice Saldi Isra and the Head of the Permanent Secretariat of AACC and Foreign Cooperation MK Sri Handayani at FH UII Yogyakarta.

In this speech, Suhartoyo said that the Smart Board Mini Court Room could be part of the legal subject in seeking justice. Because in the development of legal science,

legal subjects do not only include the organizers of the judiciary, the parties, and the legal proceedings but also the supporting tools that are presented in the element of seeking justice. Hence, through the presence of this technology in FH UII, the Constitutional Court does not only aspire to facilitate telecommunications facilities, but also realizes the Court's efforts to reach out to justice seekers and institutions that



Constitutional Justice Suhartoyo gave a speech during the symbolic handover of the use of the Smart Board Mini Court Room, Faculty of Law, Islamic University of Indonesia Yogyakarta, Saturday (10/02). Photo: Public Relations/Banji.

are synergized in one unit with elements supporting access to justice seekers.

"This is in accordance with the spirit of the Constitutional Court to become a constitutional judicial body that also has the responsibility to reach out to the protection of human rights. Therefore, anyone will be able to use this facility to fight for their constitutional rights, starting from the Petitioners, Related Parties, and all parties who need facilities to convene in the Constitutional Court. Hopefully, this Smart Board Mini Court Room can really achieve its maximum purpose and be used as well as possible," said Suhartoyo in the event which was also attended by the Deputy Chancellor of the Faculty of Law Ull Imam Djati.

## The Constitutional Court and the Supreme Court as the Executor of Judicial Power

Chairman of the Constitutional Court (MK) Anwar Usman was a speaker at the Studium Generale event at Hamzanwadi University, East Lombok, West Nusa Tenggara, on Saturday (10/2/2021). Anwar Usman explained the theme "The Point of Touching the Decision of the Constitutional Court with the Supreme Court and the Judiciary Below".

On that occasion, Anwar said that the Supreme Court is the executor of judicial power as stated in Article 24 Paragraph (2) of the 1945 Constitution which states, "Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court".

"Even though they are both actors of judicial power, the functions and characteristics between the Supreme Court and the Constitutional



Chief Justice of the Constitutional Court Anwar Usman was a speaker at the Studium Generale event at Hamzanwadi University, East Lombok, West Nusa Tenggara, Saturday (10/2). Public Relations/Bayu.

Court are different. The Constitutional Court oversees the Constitution, while the Supreme Court oversees the Law," said Anwar in front of the students

## The Character of Judicial Review

Constitutional Justice Suhartoyo was a speaker in a Public Lecture organized by the Faculty of Sharia and



Constitutional Justice Suhartoyo was a speaker in a Public Lecture held by the Faculty of Sharia and Law, State Islamic University Sunan Kalijaga Yogyakarta, on Saturday (2/10/2021). Photo: Public Relations/Panji.

Law (FSH) State Islamic University (UIN) Sunan Kalijaga (Suka) Yogyakarta on Saturday (2/10/2021). In this event, Suhartoyo presented a material entitled "Procedural Law of the Constitutional Court" in front of 700 participants in online lectures via Zoom and offline from Yogyakarta.

Suhartoyo said that the Constitutional Court's authority began with the mandate of Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution delegated to Law 24/2003 Article 10 and Law 48/2009 Article 29 paragraph (1) and paragraph (2). Through this norm, one of the powers of the Constitutional Court is contained, namely to examine the Act against the Constitution. With regard to this authority, Suhartoyo said that if an Indonesian citizen who feels that his constitutional rights have been impaired by the enactment of a law then submits a Judicial Review application to the Constitutional Court, he should first master the Constitutional Court's procedural law in the Judicial Review case.

"Within the authority of this Judicial Review, the nature of the hearing of the case is more nuanced in the absence of direct interest. Because, there is a Petitioner but no Respondent," explained Suhartoyo who was present at this activity with Constitutional Justice Saldi Isra and the Head of the Permanent Secretariat of the AACC and the Court's Foreign Cooperation, Sri Handayani, who was also attended by the Dean of FSH UIN Suka, Makhrus.

Suhartoyo discussed the special characteristics of the Judicial Review trial conducted by the Constitutional Court. The presence of the President and DPR as well as state institutions at the Judicial Review trial is to provide information to the Constitutional Court. Thus, they are not positioned as Respondents.

Furthermore, in this Judicial Review, there are two things that can be tested by the Petitioners, namely the formal test and the material test. If what is being tested by the Petitioner is a formal test, then the matter being tested emphasizes the requirements for the formation of a law with a time limit of 45 days from the promulgation of the law. Meanwhile, for the judicial review, the Petitioners may submit material on paragraphs and phrases contained in a norm which is considered contrary to the 1945 Constitution.

## University, Future Civilization of a Country

Constitutional Justice Arief Hidayat was the keynote speaker at the National Seminar on "The Role of Universities in Building the Integrity of Humanity and Indonesian Nationality" that took place offline and online on Friday (10/8/2021) at Sebelas Maret University (UNS), Surakarta.

The activity attended by high-ranking officials and academics from

various universities in Indonesia, was also to commemorate the inauguration of the Sebelas Maret University (UNS) Smart Board Mini Courtroom, Pancasakti Tegal, Sudirman University (Unsoed), Diponegoro University (Undip), Satya Wacana Christian University (SWCU). ).

"The theme in this national seminar is so actual, it becomes part of an important and interesting thought discourse in the midst of the current state of the nation and state. Universities should strengthen their role in that framework. It is undeniable that universities have the most strategic and decisive role in the development of the nation and civilization. This does not at all want to rule out the value of the role of education at lower levels," said Arief to the participants of the national seminar, including the Head of the Court's Public Relations and Protocol Bureau Heru Setiawan.

Therefore, continued Arief, it is natural to say that the portrait of a nation's civilization today and in the future is actually reflected in the face of universities. The better the face



Constitutional Justice Arief Hidayat was the keynote speaker at the National Seminar on "The Role of Universities in Building the Integrity of Humanity and Indonesian Nationality" which took place offline and online on Friday (10/8/2021) at Sebelas Maret University (UNS), Surakarta. Photo: Public Relations/Yuwandi.

of the university, the more the role of the university will be, the closer the university is to the solution of community problems, the higher the level of civilization of a nation will be.

In other words, Arief said that universities have an important and strategic position for a step forward, even a positive leap in the civilization of a nation. It is often said that higher education is nothing but a project of the future civilization of a country.

From the university, intelligent scholars will be generated, people with qualified scientific capacity, and humans who share empathy and are responsible for the progress of this nation.

“That’s why universities are institutions that are seen as having high credibility in the eyes of the public. Why is that? This is because universities have so far been proven that they have always adhered to their original roots to think and act critically, objectively, responsively to become problem solvers, and always speak out for truth and justice,” explained Arief.

On that basis, Arief added, universities must be able to strengthen their role in producing constructive breakthroughs to improve the quality of the nation’s civilization. This is conducted through three main areas which are referred to as the tridharma of higher education. In the context of Indonesia, universities are no longer required to only be science laboratories, but are also required and at the same time expected to be humanitarian laboratories. The development of Indonesian human character as a whole in the sense of character that is in accordance with the views and noble values of the nation that is reflected in Pancasila.

## The History of the Constitutional Court as a Constitutional Court



Judge Enny Nurbaningsih was a speaker in a Field Work Lecture organized by the Faculty of Sharia and Law of UIN Walisongo Semarang, on Friday (09/10). Photo: Public Relations/lfa.

### Institution

Constitutional Justice Enny Nurbaningsih was a speaker in the Field Work Lecture as well as the Signing of Cooperation between the Constitutional Court and the Faculty of Sharia and Law at UIN Walisongo Semarang on Friday (10/8/2021). The activity with the theme “Institutional, Duties, and Authorities of the Constitutional Court in the Indonesian State Administration System” was carried out offline from the FSH Theater Building and online via Zoom.

In this lecture, Enny shared a story about the minutes of the trial made by M. Yamin who proposed an institution tasked with comparing laws if in the future there were laws that contradicted the constitution and exceeded the provisions outlined by the constitution. However, continued Enny, because of the unfavorable atmosphere at that time, such an idea was rejected, including by Soepomo. Furthermore, the Association of Indonesian Law Scholars continues to provide encouragement for the creation of such an institution. Finally, M. Yamin’s ideals were realized through the breath of democracy during the reformation period.

“After the reformation, many changes and returning what M. Yamin

wanted were realized in a different form. People’s Consultative Assembly Decree No. III/ MPR/2000 concerning Legal Sources and Order of Legislation, which later became the opening road. However, this stipulation at that time was only regulatory in nature and had not been implemented. After the amendment to the 1945 Constitution, the constitutional system underwent changes accompanied by changes in the structure. So that all state institutions are equal, including the Constitutional Court in it,” explained Enny in the activity which was also attended by the Dean of FSH UIN Walisongo Semarang, Mohamad Arja Imroni.

Then Enny conveyed the organizational structure of the Constitutional Court, consisted of the Chairperson, Deputy Chairperson, and Constitutional Justices and the Ethics Council. There is the Secretary General and the Registrar. It is necessary for the public to know that within the institutional organization of the Constitutional Court there are researchers, case and decision data processors and the secretary of judges. These three sections are human resources who, with their capacities and thoughts, assist judges in carrying out their routine duties in each case review submitted to the Constitutional

Court. Through these judicial and non-judicial secretaries, explained Enny, with sufficient numbers, the Constitutional Court continues to push itself to be able to do work as professionally as possible. Therefore, judges in their duties and roles make every effort to uphold their functions to support the promotion of citizens' constitutional rights.

Furthermore, in front of the law students who listened to these online and offline lectures, Enny also conveyed the development of the Constitutional Court's authority apart from what was stated in Article 24C of the 1945 Constitution. That the Constitutional Court was also authorized to examine Government Regulations in Lieu of Law (Perpu). This is conducted with the consideration that the Perpu creates new legal norms with the same force as the law. Then Enny reviewed the authority of the Constitutional Court to Judicial Review (PUU) of the 1945 Constitution.

## Pandemic Affects Constitutional Rights

Efforts to anticipate the spread of the virus will not only affect the health sector, but are directly and indirectly affected by various factors. It means that various constitutional rights guaranteed in the constitution are also affected, whether they are limited or reduced.

This was conveyed by Constitutional Justice Wahiduddin Adams in a Public Lecture and Inauguration of the Mini Courtroom at Sriwijaya University, Palembang, South Sumatra.

Wahiduddin said that in the practice of state administration, Indonesia recognizes the two rules regarding the reduction and enforcement as contained in the constitution. Article 28I paragraph (1) is an example of a derogation clause. The reduction clause states that "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be

enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive law are human rights which cannot be diminished under any circumstances".

In the context of handling the Covid-19 pandemic, Wahiduddin continued, the Indonesian government has never announced that it is in a "state of danger". Constitutional rights are not in the context of being derogated or diminished. However, this does not mean that constitutional rights cannot be limited. The government can limit constitutional rights to deal with the pandemic. The restrictions imposed by the government are not necessarily without supervision. This is because restrictions can only be carried out as long as they are in accordance with the specified measurements.

The restriction on the constitutional rights of citizens is related to the government's efforts to suppress the rate of increase in the number of patients exposed to Covid-19, not until the complete closure of cities



Constitutional Justice Wahiduddin Adams gave a Public Lecture to the academic community of the Faculty of Law, Sriwijaya University with the theme Protection of Citizens' Constitutional Rights in a Pandemic Period, which took place online and offline, Saturday, (9/10/2021). Photo: Public Relations/Illham WM.



Constitutional Justice Daniel Yusmic P. Foekh gave an online Public Lecture organized by the Faculty of Law, University of Pattimura, Saturday (10/9). Photo: Public Relations/Hamdi.

or strict restrictions on community activities to the extent of the fence of their respective homes. In this context, the legal debate regarding the limitation of citizens' constitutional rights to fulfill their daily needs is not very prominent. This is because the government does not strictly implement the lockdown policy as has happened in other countries.

Nevertheless, Wahiduddin continued, Covid-19 still provokes legal debates in the macroeconomic management aspect. Massive budget diversion by the government for the sake of handling Covid-19 forced other sectors to 'tighten their belts.'

## Protection of the Constitutional Rights of Citizens during a Pandemic

Indonesia does not explicitly state what constitutes an emergency in the 1945 Constitution of the Republic of Indonesia. The constitutional provisions

for an emergency are regulated in Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia. Then based on Article 1 point 3 of Law Number 24 of 2007 concerning Disaster Management, epidemics and Disease outbreaks are classified as non-natural disasters.

This was conveyed by Constitutional Justice Daniel Yusmic P. Foekh in the Public Lecture "Protection of Citizens' Constitutional Rights in a Time of Pandemic" which took place in a hybrid manner on Saturday (9/10/2021). This activity as a collaboration between the Constitutional Court (MK) and the Faculty of Law (FH) of Pattimura University, is also the inauguration of the Smart Board Mini Courtroom at Pattimura University.

Daniel said, on March 11, 2020 WHO declared Covid-19 a pandemic that had spread to more than 110 countries and more than 118,000 cases were identified. Therefore, on March 31, 2020, President Joko Widodo issued Perpu Number 1 of 2020 concerning State Financial Policy and Financial

System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in Facing Threats That Endanger the National Economy and /or Financial System Stability. Furthermore, the President issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster.

Daniel continued, Indonesia has several regulations related to virus transmission or disease outbreaks. Such as Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, Law Number 24 of 2007 concerning Disaster Management, Law Number 6 of 2018 concerning Health Quarantine, Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability.

This includes Government Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Covid-19, Presidential Regulation Number 82 of 2020 concerning the Committee for Handling Corona Virus Disease 2019 (Covid-19) and National Economic Recovery, Minister of Health Regulation Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Covid-19, Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency Status.

## The Importance of Maintaining the Constitution and Upholding the Values of Pancasila

Chairman of the Constitutional Court Anwar Usman was a speaker in a public lecture held by the Muhammadiyah Law School (STIH Muhammadiyah) on Saturday (10/9/2021). The activity with

the theme “The Constitution as the Foundation for Advanced Indonesia” was attended by the Chairman of STIH Muhammadiyah Bima Ridwan and Bima community leaders. In this public lecture, Anwar invited the participants to reflect on the importance of maintaining the constitution for the sustainability of a country. Even world history has proven the destruction of a country if the country ignores its constitution.

“As a guardian of the constitution, the Constitutional Court has a huge and heavy mandate in maintaining the implementation of the rights contained in the constitution,” said Anwar in the activity which was attended by the entire academic community of STIH Muhammadiyah Bima from the Thayeb Abdullah Auditorium STIH Muhammadiyah.

In addition, Anwar also invited the participants of the public lecture to maintain and understand and implement the values of Pancasila. For example, Anwar mentioned how the first principle of Pancasila which reads “Belief in One Supreme God” and the third principle of Pancasila which reads “Unity of

Indonesia” play a role in accompanying the life of the Indonesian nation which consists of diversity. Indonesian people, although different, are expected to know each other so that they can live side by side in society.

Furthermore, Anwar also mentioned the meaning of the fourth precepts of Pancasila, “People led by wisdom in deliberation/representation”. In this precept, Anwar sees how the Indonesian people prioritize deliberation in consensus. Meanwhile, the fifth principle of Pancasila “Social justice for all Indonesian people” means that speaking of justice is related to conscience. The enforcement of the law, continued Anwar, is not prioritized by legal issues but how conscience can judge legal facts so that justice can be upheld for justice seekers.

## Procedural Law as A Bridge to Justice

Material law or substantive law can only be enforced through formal law or fair procedural law and provides



Chief Justice of the Constitutional Court Anwar Usman gave material at a Public Lecture held by the Muhammadiyah Law College, Saturday (09/10). Photo: Public Relations/Agung.



Chief Justice of the Constitutional Court Anwar Usman when delivering a keynote speech at the inauguration of the Smart Board Mini Court Room on Friday (10/15/2021) afternoon at Andalas University. Photo: PR/Hendy

legal certainty for litigants or justice seekers. This was conveyed by the Chief Justice of the Constitutional Court (MK) Anwar Usman when delivering a keynote speech at the inauguration of the Smart Board Mini Court Room on Friday (15/10/2021) afternoon at Andalas University (Unand), Padang. The activity which was held in collaboration between the Constitutional Court and Unand was also in the context of the 70<sup>th</sup> Anniversary of the Faculty of Law, Andalas University (FH Unand).

"The procedural law can be likened to a bridge for litigants to achieve justice. Without procedural law that provides fair legal certainty, it is impossible for material law to be enforced," said Anwar at the event which was attended by Unand Vice Chancellor I, Dean of FH Unand Busyra Azheri, Wali Nagari Pasia Laweh Zul Arifin, Unand officials, and other officials. hybrid academics.

## Let's Build Indonesia with God-Based Law

Constitutional Justice Arief Hidayat was a speaker in a Public Lecture entitled "Building a Law with Pancasila Character" which was held by the Faculty of Law, Andalas University on Friday (15/10/2021) in Padang, West

Sumatra. This activity was attended by Unand Vice Chancellor III Insannul Kamil, Unand FH Lecturer Ilhamdi Taufik, and Unand FH graduate students offline from the Unand Campus and online from the Zoom application.

In Arief's view, the development of human mobility in the world, including Indonesia, has changed aspects of human life, so that a society is born which is required to be able to master technological developments. However, these developments must

be fortified with the ideology of the nation so that the roots of the nation are not uprooted and eroded by world developments. Therefore, it is necessary for the Indonesian people to carry out self-capacity development, carry out continuous innovation, and change mindsets.

"This is very important to do so that later we are able to form a global mindset without losing locality so that we don't always lose and instead have to be winners when changes occur," said the Professor of the Faculty of Law, Diponegoro University.

Arief said that related to developments and changes in the legal field, for example, if the legislators could be influenced by non-legal factors, namely social, cultural, political, and economic. Likewise, law enforcers, including judges in the Constitutional Court, who apply the law and adjudicate a legal case are also affected by non-legal factors. Therefore, both legislators or law enforcement tools at the time of their work are faced with an area of choice. Likewise with the community, that the obedient or disobedient of the community is also influenced by non-legal factors.



Constitutional Justice Arief Hidayat was a speaker in a Public Lecture organized by the Faculty of Law, Andalas University on Friday (15/10). Photo: Public Relations/Banji.

“Thus, Indonesia’s conception is based on Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution that Indonesia is not only a constitutional democracy, but also in its power it is a democratic and godly state,” explained Arief.

Arief further said that the law in Indonesia is not secular law, but has the character of Pancasila. It means that the law is based on divinity so that it is hoped that law enforcers will not play with the law and make the law a commodity. This is because, Arief admits, that the chaotic law in Indonesia is one of the contributing factors to the lack of religious or divinity and Pancasila character education since law enforcers study the law from the ground up. Therefore, Arief invites educators, students, and law enforcers in Indonesia to jointly build laws with the character of Pancasila. Thus, it is no longer a law based on the common law system and civil law system, but a law built with the character of Pancasila which is guided by religious law.

## The Constitutional Court Prepares Legal Case Handling Facilities

During the reformation period, one of the demands for reform was the amendment of the 1945 Constitution. Before the amendment was carried out, the 1945 Constitution was very flexible, simple, and flexible. Therefore, a change is needed due to the background of power by the People’s Consultative Assembly considered unsuitable in running the wheels of government. Thus, it is also necessary to change the order of life in the Indonesian constitutional system. Amendments to the 1945 Constitution are carried out with a note that it is not allowed to change the Preamble to the 1945 Constitution. Because it contains the goals of the state and the basic formulation of the state. The amendment process to



Constitutional Justice Manahan MP Sitompul gave a public lecture at the University of North Sumatra, on Saturday (16/10). Photo: Public Relations/Agung.

the 1945 Constitution was carried out starting from the first amendment to the fourth amendment in 1999-2002.

This was conveyed by Constitutional Justice Manahan M.P. Sitompul in a Public Lecture as well as the inauguration of the Mini Court Room at the University of North Sumatra (USU) on Saturday (10/16/2021). The activity with the theme “Protection of the Constitutional Rights of Indonesian Citizens (Indonesian People) in a Pandemic Period” was attended offline by the Dean of the Faculty of Law USU Mahmud Siregar, and was attended online by the Chancellor of USU Muryanto Amin and a number of academics from the undergraduate, postgraduate, and doctoral levels of the USU Faculty of Law.

With the amendment, Manahan continued, there was a change in the body of the 1945 Constitution. Prior to the amendment, the body of the 1945 Constitution consisted of 16 chapters and 37 articles. After the amendment, the 1945 Constitution consists of 21 chapters, 73 articles with 170 paragraphs and there are also 2 articles of transitional rules and 2 articles of additional rules. In the norms of this amendment, the state order, the

rights of citizens (Indonesian people) are becoming increasingly complex.

“From this amendment, there is the name of the Constitutional Court institution which is part of the biological child of reform whose existence is confirmed in Article 24C of the 1945 Constitution with its authority as stated in Article 24C paragraph (1) of the 1945 Constitution,” until Manahan in an activity moderated by USU’s FH Lecturer Afilla from the USU, Medan.

In relation to the authority of the Constitutional Court and the situation during the Covid-19 pandemic that occurred in the world and in Indonesia, as a judicial institution for constitutional rights, the Constitutional Court must continue to think about ways to continue to facilitate the handling of legal cases submitted by the Indonesian people. Therefore, the Constitutional Court in its role participates in carrying out every policy determined by the government to break the chain of turmoil for the Covid-19 pandemic. One of them, the Court applies as much as possible to hold an online trial and if an offline trial is conducted, the implementation of health protocols is applied. ■

UTAMI ARGAWATI/SRI PUJIANTI/BAYU  
WICAKSONO/BAMBANG PANJI ERAWAN/LULU  
ANJARSARI/NUR R



## CHALLENGES AND PROBLEMS OF JUDICIAL REVIEW

**CHALLENGES** and problems of judicial review in the Constitutional Court are indeed quite a lot, such as the question of the assumption that judicial review is only related to material testing. Lately, there is more desire from the public to carry out formal testing. Therefore, to accommodate the public's wishes, it is necessary to have a legal umbrella in the form of a Constitutional Court Regulation (PMK).

This was conveyed by the Secretary General of the Constitutional Court M. Guntur Hamzah as a speaker for the National Webinar organized

by the Sharia Faculty of Kiai Haji Achmad Siddiq State Islamic University (UIN KHAS) Jember, on Wednesday (22/9/2021) online. In this activity, Guntur presented material entitled "Problems and Challenges of Judicial Review of the Constitutional Court in Indonesia". According to him, Indonesia's constitutional system is seen as adaptive to the Constitutional Court. Long before the establishment of the Constitutional Court in Indonesia, when the founding fathers of the nation held a meeting in the Investigation Agency for Preparatory Work for Independence (BPUPK), the idea of forming a Constitutional Court was born.

However, the idea that was proposed by Yamin was opposed

by Soepomo's. The reason is that Indonesia does not adhere to a separation of powers system but recognizes the distribution of power. Until the reformation in Indonesia in 1998, followed up by amendments to the 1945 Constitution in four stages (1999-2002), the idea of establishing the Constitutional Court in Indonesia was introduced. "There is no longer the supremacy of the MPR but the supremacy of the constitution," Guntur told more than 300 participants in a national webinar.

As it is well known, the main authority of the Constitutional Court is to examine laws against the Constitution. But in its development, said Guntur, the Court experienced various challenges. For example, does the Constitutional Court also have the authority to examine Government Regulations in Lieu of Law (Perpu) or MPR Decrees. In its development, it turns out that the Constitutional Court has the authority to examine the Perpu. Considering that the Perpu creates new legal norms with the same force as the law. Including the Constitutional Court is also authorized to examine the People's Consultative Assembly Decree. (Nano Tresna Arfana/Nur R)

## THE CONSTITUTION GUARANTEES THE RIGHTS OF CITIZENS AGAINST COVID-19

**SECRETARY** General of the Constitutional Court (Secretary General of the Constitutional Court) M. Guntur Hamzah was the keynote speaker in the National Webinar of the Doctoral Program (S3) Law Study Program PPs Warmadewa University, on Wednesday (29/9/2021) online

morning. The theme of the webinar is "Health Quarantine Emergency Law: Enforcement of Covid-19 Emergency Community Activity Restrictions (PPKM) Political, Legal, Economic, Socio-Cultural, Security and Human Rights (HAM) Perspectives".

On that occasion, Guntur delivered the material "Covid-19 Emergency in Aspects of Protection of Citizens' Constitutional Rights Guarantees in the Transition Period". Guntur said that the aim of the state is not only to achieve independence, fill it with democracy, law, but the state is also guided

according to religious procedures. According to Guntur, Indonesia is not a religious state, but it is not a secular state either.

Therefore, Guntur continued, many experts see that Indonesia is not only a democratic country, not only as a democracy (state of law) but also has an aspect of religiosity. Because we are also guided by religious values, of course Indonesia is not only a democracy and democracy but also adopts theocracy. So many experts say, Indonesia is a theocratic, democratic and democratic country. This is stated in Pancasila. The five precepts in Pancasila begin with the precepts of "Belief in One Supreme God". The precepts of "Belief in the One Supreme God" inspire the following precepts, inspiring all aspects of life.

"The principle of democracy is in the fourth precept. The principle of democracy is contained in the fifth precept. The principles of theocracy, democracy and democracy are in one breath that cannot be separated," he explained. (Utami Argawati/Nur R)





## THE CONSTITUTIONAL COURT HELD FGD MONEY IMPLEMENTATION OF THE DECISION OF THE CONSTITUTIONAL COURT

**ACTIVITIES** Focus Group Discussion (FGD) in collaboration between the Registrar and the Secretariat General of the Constitutional Court (MK) and the Faculty of Law (FH) Universitas Jember was held in a hybrid manner on 2-4 October 2011. Experts from various universities, a number of officials and employees of the Constitutional Court, campus officials and academic community members attended the FGD activity with the theme "Monitoring and Evaluation (Monev) for the Implementation of the 2021 Constitutional Court Decision"

Secretary General of the Constitutional Court M. Guntur Hamzah, who officially opened the FGD activities, said that apart from the Constitutional Court's decision being final and binding and *erga omnes* in nature that applies throughout the territory of the Unitary State of the Republic of Indonesia (NKRI), the Constitutional Court's decision must also be implemented quickly and directly, without waiting for an agency to execute. "We can also investigate and monitor further whether the Constitutional Court's decision is immediately implemented after the Constitutional Justice reads the decision. There is still a delay in the implementation of the Constitutional Court's Decision. As a product and process of the judiciary, the Constitutional Court's decision can be implemented immediately," said Guntur.

Guntur added, several criteria for the Constitutional Court's Decision. From the Constitutional Court Decisions which are implemented in full, the Constitutional Court Decisions which

are partially implemented, to the Constitutional Court Decisions that have not been implemented. If the Constitutional Court's decision has not been implemented, there is still a chance to implement it in the future. "We use this as a way of looking at what is called monitoring the Constitutional Court's Decision. We just need to improve the reporting system related to the monev report, which for now is actually quite comprehensive and good," said Guntur.

In this FGD, Guntur explained the background of the importance of monitoring and evaluation. The parties involved in implementing the Constitutional Court's Decision are not only the legislators, namely the Government and the House of Representatives, but all parties related to the implementation of the provisions of the law decided by the Constitutional Court (*erga omnes*). That is why it is necessary to carry out monev on the Constitutional Court's decision. (Nano Tresna Arfana/Lulu Anjarsari P)



## PANCASILA AND CONSTITUTIONAL EDUCATION CENTER WIN SIKD AWARD

**THE** Pancasila and Constitutional Education Center was in the first position as the work unit with the fastest performance response in September 2021 and winning the SIKD Award.

The SIKD Award was given directly by Plt. The Head of the Information and Communication Technology Center of the Constitutional Court, Sigit Purnomo told Plt. Head of the Center for Pancasila and Constitutional Education, Imam Margono on Tuesday afternoon (5/10/2021) at the Constitutional Court Building.

Secretary General of the Constitutional Court M. Guntur Hamzah congratulated the bureau in the Constitutional Court who succeeded in

occupying the first position. According to Guntur, the SIKD Award is intended to be a spirit and motivation for other work units in the Constitutional Court to achieve the same award.

Dynamic Archive Information System (SIKD) is a system that is used to support the internal performance of the Constitutional Court. It is also part of the knowledge management of the Constitutional Court. The main purpose of using the SIKD application is to provide archiving services that are easy, fast, effective and efficient. The Registrar and Secretariat General of the Constitutional Court felt a significant change after using the SIKD application in archive management. For example, the drastically reduced amount of paper and printer ink usage (less paper) and the impact it reduces the storage space for paper archives so that they are more efficient, the speed of service delivery is more effective, and in terms of data security is safer. (Nano Tresna Arfana/Nur R)

## CLERK OF THE COURT DISCUSSES TECHNICAL PROBLEMS OF JURISDICTION ADMINISTRATION OF JUDICIAL REVIEW

**THE** most widely tested law in the Constitutional Court is Law no. 8 of 1981 concerning the Criminal Procedure Code, Law no. 7 of 2017 concerning Elections, Law no. 8 of 2015 concerning Amendments to Law No. 1 of 2015 Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors. In addition, Law no. 32 of 2004 concerning Regional Government and Law no. 8 of 2012 concerning the Election of House of Representative, Regional Representative Council, Regional People's Representative Assembly. This was conveyed by the Registrar of the Constitutional Court Muhidin on Friday (10/15/2021) at Andalas University (Unand), Padang in the context of



Unand's 70th Anniversary as well as the inauguration of the smart board minicourt in Unand as a sophisticated and modern remote court facility.

Muhidin said that the Constitutional Court of the Republic of Indonesia (MKRI) was established on August 13, 2003. In 2004 the MKRI exercised its authority to handle disputes over election results. For MKRI, this is a challenge, first dealing with disputes over election results and must be resolved in a fast time or speedy trial. "Election dispute cases must be resolved no later than 14 working days. It became an unforgettable experience," recalled Muhidin.

Furthermore, Muhidin discussed the principles of the Constitutional Court's judiciary which included *ius curia novit* (courts are prohibited from refusing to examine, try, and decide on a case); the trial is open to the public; independent and impartial; fast, simple, free trial; *audi et alteram partem* (right to be heard equally); the judge is active in the trial; *praesumptio iustae causa* (presumption of validity); final and binding; *erga omnes* (applies to all parties); self-implementing/ executing (implementation of decisions is direct). (Nano Tresna Arfana/ Lulu Anjarsari P)

# Korea Fever in The Court

● **Immanuel B. Hutasoit**  
Head of International Cooperation

*“When I was a kid, I loved playing with my friends so much that I didn’t know the time. I want to feel that pleasure, something I can’t have just sitting in the audience.”*

*(Oh Il Nam, main character in the series “Squid Games”)*

For some people who are reluctant to follow the development of the digital television world (Netflix, Disney Hot Star, Amazon Prime, etc.), of course the sentence above does not “sound” at all. It is different for the millennial generation, the multimedia generation, the informatics generation, or whatever terms are attached to today’s generation of young people. A piece of the sentence above will provoke a prolonged warm conversation, of course with a contemporary cup of coffee in hand. Yet, if the Squid Games series isn’t on your radar, then maybe your radar vibrates when you hear; Descendants of the Sun? Gangnam Style? or Winter Sonata and Fullhouse which “exploded” in the 2000s.

South Korea is indeed “colonizing” Indonesia or even “colonizing” the world with K-pop, K-Drama, K-Food and a number of other Korean pop cultures. They managed to touch aspects of our society’s social life. In simple terms, it can be seen from billboards, digital advertisements or television advertisements that are now competing to use the services of Korean artists, Call it online shopping platform advertisements, mobile phone advertisements, carbonated drinks, to Indonesian instant noodles, All of them had “Korean fever”.

Then what about the world of work—especially in the Constitutional Court? Have you experienced the same “colonialism”? Referring to data on official travel abroad conducted by the Constitutional Court of the Republic of Indonesia from 2007 to the period before the pandemic two years ago—in fact, South Korea is on the top list of official travel destinations for the Constitutional Court of Republic of Indonesia delegation from time to time.

At least, during the last 3 years before the pandemic, there were 5 (five) visits from the Constitutional Court of Republic of Indonesia delegation to South Korea. The visit was certainly held for different purposes and forums for activities, namely for constitutional judges, employees with legal education backgrounds, and employees with IT education backgrounds. Then, why did Korea become the “idol” of the Indonesian Republic’s official travel destination? Here’s the underlying reason.

## Similarity of judicial aspects

The organizational aspect is certainly the first factor to be considered, there are some similarities or similarities between the Constitutional Court and the South Korean Constitutional Court. One of them is 9 (nine) constitutional judges. The composition of the Constitutional Court Justices of

South Korea is also the same as in Indonesia, namely three judges from the President, three judges from the National Assembly (parliament), and three judges from the Supreme Court.

Furthermore, when referring to the duties and authorities, the South Korean Constitutional Court has five powers. Of the five powers, four are also owned by the Constitutional Court of Republic of Indonesia. These powers include judicial review, institutional authority disputes, impeachment of the president, and the dissolution of political parties. Meanwhile, the Constitutional Court of Republic of Indonesia does not yet have one other authority, namely the constitutional complaint.

Although it has almost the same authority, in terms of the number of cases handled, the South Korean Constitutional Court is at the forefront of the Constitutional Court. According to statistics released by the South Korean Constitutional Court’s website, as of September 2021, 43,746 constitutional cases have been received. Of these, 42,349 cases have been decided.

This figure is simply 13 times the number of cases that have been decided by the Constitutional Court of Republic of Indonesia. However, of course we should not be dazzled by the difference in numbers. Because, the South Korean Constitutional Court is the “older brother” who was born 15 years earlier before the Constitutional Court was born. So, it is quite natural that they have much more experience in the case. Likewise with the implementation of authority, the Constitutional Court of Republic of Indonesia has never decided on the authority related to impeachment. Meanwhile, the Korean Constitutional Court has received three cases of impeachment of the president.

## Excellence in Law Research and Libraries

Another reason is the superiority of South Korea’s Constitutional Court research. The research was initiated in 2011 which was marked by the establishment of the Constitutional Research Institute. This institution aims to support the Constitutional Court with the results of its research. There are three foundations for the importance of this research institution having an important role as stated in the annual report, namely:

- To conduct medium-term and long-term research in order to explore the Constitutional Court’s decisions so that they are more in line with the characteristics of Korean society;
- Conducting preview studies on constitutional law issues to assist the Constitutional Court in making prompt decisions on constitutional cases being handled;
- Provide education and

training for the community to understand their basic rights and constitutional rights.

The seriousness of the South Korean Constitutional Court in conducting research is also reflected in the focus of the research which is divided into several research groups, namely the Institutional Research Team, Basic Rights Research Team, and the Comparative Constitutional Law Research Team. With the division and focus of well-designed research, it is not surprising that the South Korean Constitutional Court was appointed as the Secretariat for Research and Development of the Asian Courts Association (AACC).

The plenary research they have is also supported by qualified literature. Filled with more than 169,000 collections of book titles in the field of law, South Korea's Constitutional Court library is known as the largest law library.

### **The Representation of Asia in Global**

This one factor certainly can't be separated from the maturity of the international cooperation team owned by the South Korean Constitutional Court. For years, South Korea has represented the "face of Asia" in the association of the Constitutional Court at the global level. As the first President of the AACC, of course, the South Korean Constitutional Court has represented Asia in several global forums. The Korean Constitutional Court also actively encourages the advancement of associations and helps the Constitutional Courts in Asian countries to be able to study decisions, research results, and even provide periodic IT training.

In a wider forum—the World Conference on Constitutional Justice (WCCJ) as a forum for all constitutional courts in the world—the South Korean Constitutional Court was the first Asian country to be elected to host the WCCJ congress in 2014. The choice of South Korea was certainly due to their current readiness. it precedes other Asian counterparts, including Indonesia.

Now let's return to the opening statement of this paper. With the same desire as Oh Il Nam, the character of the Squid Games, of course we don't want to just be spectators and enjoy the show presented by the South Korean Constitutional

Court. We need to get out on the pitch, play along, and enjoy every achievement that needs to be worked on.

In terms of international cooperation, it is noted that the Constitutional Court of Republic of Korea has twice balanced (if not to say "beating") the Constitutional Court of South Korea. First, during the determination of the Permanent Secretariat of the AACC with the election of Jakarta as the coordination center for all AACC members. At first Seoul volunteered as a single secretariat, but eventually became a secretariat trident, namely Seoul, Ankara, and Jakarta. Second, when the MKRI convincingly obtained a unanimous vote to become the representative of the Asian and Pacific continents in the WCCJ working body (Bureau). At that time, the South Korean Constitutional Court also volunteered for the same position.

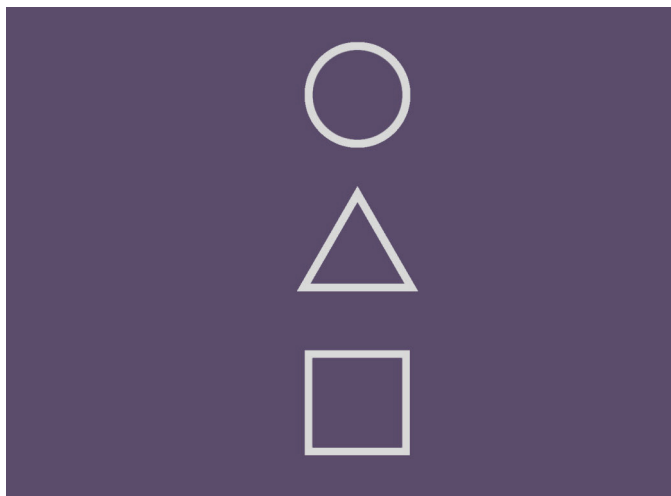
Now, the "face of Asia" is increasingly shifting to a country in the far east, precisely to the archipelago, with the election of Indonesia as the host of the WCCJ congress in 2022. Although Indonesia is not the first Asian country to host

the congress, this momentum will be a pivotal step that will open international eyes about the work of the Indonesian Republic of Indonesia in maintaining the constitution in a pluralistic society. In addition, Constitutional Court of Republic of Indonesia is also actively involved in providing solutions and proposals that advance constitutional justice in other countries—especially in Asia. For MKRI, the principles of gotong royong, togetherness, and kinship—which are the

essence of the values of Pancasila—are important keys that will be disseminated in the global social arena—of course, by being packaged into an "Asian Way".

As the initiator of the asian way, Constitutional Court of Republic of Indonesia is the new face of Asia in association at the global level. So, it is appropriate for the Constitutional Court to stop being a spectator and try to catch up with the South Korean Constitutional Court. One way is to increase research and library collections to make them more qualified.

Let's try to make sure that the Constitutional Court's decision is an effective reference for foreign Courts in handling cases of constitutionality in a pluralistic society.



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## Understand Your Constitutional Rights

