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E-MAGAZINE KONSTITUSI

Interfaith Marriage According to the Constitutional Court

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CONSTITUTIONAL HISTORY CENTER

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Editor's Foreword

The controversy over interfaith marriage has come to an end. The Constitutional Court (MK) through Decision Number 24/PUU-XX/2022 rejected the "validation" of interfaith marriages. Then, how did the hearing process of the petition filed by E. Ramos Petege unfold? Readers can find out in the Headline of the February 2023 edition of KONSTITUSI Magazine.

In this edition, the Editorial team revives the section "Cakrawala" by discussing the comparison of death penalties for drug dealers between Indonesia and Australia. This particular "Cakrawala" is exceptional as it is directly written by a Law Faculty student from Deakin University, Australia, who did an internship at MKRI. For more details, readers can directly peruse the "Cakrawala" section.

Furthermore, readers will be presented with the regular sections that appear in KONSTITUSI Magazine, including "Window," which discusses Asrul Sani's drama "Mahkamah," along with other sections. Happy reading!

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TABLE OF CONTENTS

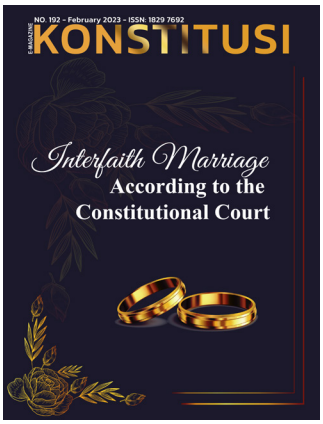
THE CONSTITUTIONAL COURT PROHIBITS INTERFAITH MARRIAGE

Catholic individual intended to marry a woman who practices Islam. However, this desire was impeded due to the provisions of the legal regulations that do not allow interfaith marriages. The provisions of the Marriage Law were then reviewed in the Constitutional Court (MK).

MARRIAGE: LEGITIMACY OF RELIGIOUS AFFAIRS, REGISTRATION OF STATE AFFAIRS

The Decision of the Constitutional Court Number 24/PUU-XX/2022 should have put an end to the debate regarding the prohibition of marriages between couples of different religions. Before this Decision, there were already two previous Decisions by the Constitutional Court. Both of these Decisions addressed, among other things, Article 2 paragraphs (1) and (2) of the Marriage Law. Article 2 paragraph (1) states, "Marriage is legitimate if conducted according to the laws of each respective religion and belief." Article 2 paragraph (2) states, "Each marriage shall be recorded according to the applicable legal regulations." These two Decisions were Decision Number 46/PUU-VIII/2010 dated February 17, 2012, and Decision Number 68/PUU-XII/2014 dated June 18, 2015. In both of these Decisions, the Constitutional Court has already confirmed the validity and registration of marriages as specified in the Marriage Law.

Regarding the validity of marriage, the Constitutional Court has taken a stance by establishing the constitutional mandate through Decision Number 68/PUU-XII/2014. Essentially, the bond, both outward and inward, in marriage is a declaration of a man and a woman's intent to form a happy and lasting family (household) based on the belief in the One Almighty God. Thus, marriage is not merely a formal aspect but also has spiritual and social aspects. It is reaffirmed that religion determines the validity of marriage, while the Law determines the administrative validity carried out by the state. Regarding the registration of marriage, the Constitutional Court has also provided clear directions through Decision Number 46/PUU-VIII/2010. There are two points. *First,* the registration of marriage is not a determining factor for its validity. *Second,* registration is an administrative obligation mandated by the legal regulations.



Through these two Decisions, the Constitutional Court has long provided a constitutional basis for the relationship between religion and state in the realm of marriage law. Once again, religion determines the validity of marriage, while the state determines the administrative validity of marriage within the framework of the law. However, apparently, this was not sufficient. A new petition for a constitutional review of the Marriage Law was filed with the Constitutional Court, reviewing the constitutionality of the prohibition on interfaith marriages. In response to this matter, through Decision Number 24/PUU-XX/2022, the Constitutional Court provided several interesting interpretations and affirmations.

Firstly, there is a difference in the construction of protection guarantees between the Universal Declaration of Human Rights (UDHR) and the 1945 Constitution of Indonesia (UUD 1945). The UDHR grants the right to marry. Article 16 paragraph (1) of the UDHR states, *"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family."* Meanwhile, the 1945 Constitution has a different formulation. Article 28B paragraph (1) of the 1945 Constitution states, *"Every person has the right to form a family and to procreate through a legal marriage."*

According to the Constitutional Court, Article 28B paragraph (1) of the 1945 Constitution guarantees two rights, including the "right to form a family" and the "right to procreate." The phrase "legal marriage" is a prerequisite for the protection of the two aforementioned rights. In other words, marriage is not considered a right but a mandatory prerequisite to protect and exercise the rights to form a family and to procreate. Without a legal marriage, one cannot form a family or procreate.

Secondly, marriage is an external forum for practicing religion. This means that marriage is an expression of religion in public. In the external forum, the state may intervene, not to restrict an individual's belief in religion, but to ensure that religious expressions do not deviate from the fundamental teachings of the religion adhered to.

Thirdly, the Law on Population Administration states that every citizen who has undergone a legitimate marriage according to the legal regulations has the right to register their marriage. This is done at the civil registration office for couples of non-Islamic faiths and at the Office of Religious Affairs (KUA) for couples of Islamic faith. The assurance of registering marriage can also apply to marriages determined by the court.

Article 35 letter a of the Law on Population Administration states, *"The registration of marriage as referred to in Article 34 also applies to: a. marriages determined by the court."* In the explanation, it is clarified that the term "marriages determined by the court" refers to marriages between individuals of different faiths. However, the Constitutional Court warned that this provision does not mean that the state recognizes interfaith marriages. It must be understood that this provision is an administrative arrangement by the state in the field of population administration. Once again, the issue of the validity of marriage must still refer to the norm stated in Article 2 paragraph (1) of the Marriage Law. Marriage is valid if conducted according to the laws of each respective religion and belief.

Hopefully, as stated in the opening sentence, Decision Number 24/PUU-XX/2022 should put an end to the debate regarding the prohibition of marriages between couples of different religions. Long live the Constitution!

Window

THE COURT

I D.G.Palguna

"Your Highness, whatever decision Your Highness is about to make, one thing must be certain. The decision must be based on truth ... the world is already burdened with all kinds of prejudice."

An excerpt from the dialogue of the character Defender in the drama "Mahkamah" by Asrul Sani.

Around mid-January 2004, in a corner of Taman Ismail Marzuki, Cikini, Central Jakarta (at that time), near Jose Rizal Manua's kiosk offering old books, a group of individuals gathered to engage in a seated discussion on a play *Mahkamah* by Asrul Sani— a prominent artist who had passed away a few days earlier. From the tenor of their conversation, they appeared to be students from the Jakarta Institute of the Arts (IKJ). The substance of their discussion indicated their intention to stage (once again) *Mahkamah*. This drama script had previously been aired on TVRI around the mid-1980s — the only television station at that time. The broadcast garnered public appreciation, as did the stage performance at the Jakarta Arts Building, also around that time. If I am not mistaken, around the early 2000s, Jose Rizal Manua also directed a production of Mahkamah with the Sanggar Pelakon — a studio led by Mutiara Sani, the late Asrul Sani's wife — which also received positive responses. In modern drama

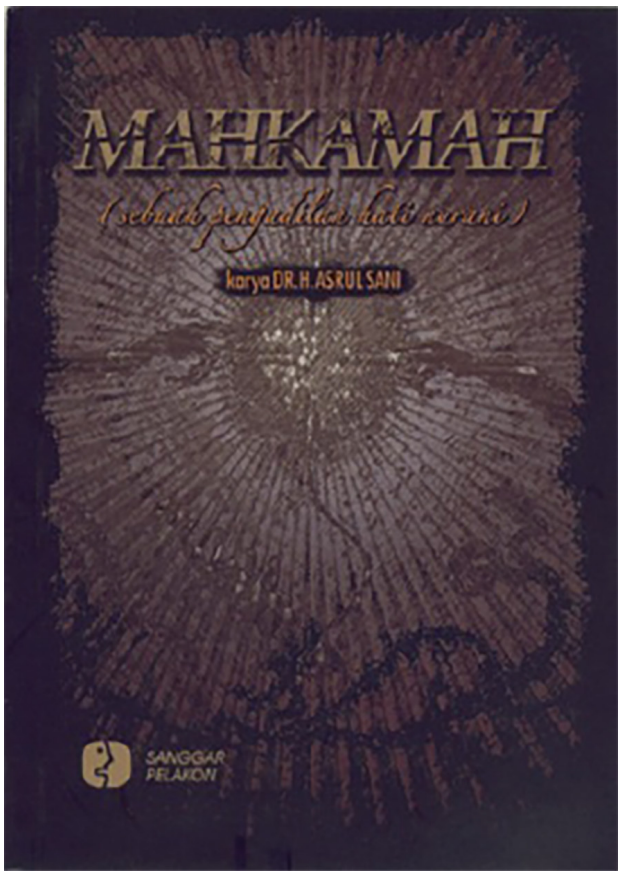
competitions organized by vibrant campuses from the late 1970s to the late 1990s, *Mahkamah* always held its place among the "indigenous" scripts filed by the competition organizers for participants to select from. *Mahkamah* stood alongside adaptations of foreign works, such as *The Bear* (by Anton Chekov), *Metamorphosis* (by Franz Kafka), *Waiting for Godot* (by Samuel Beckett), *The Chairs* (by Eugene Ionesco), and others.

The moral message that *Mahkamah* seeks to convey is indeed very classic, if not considered clichéd: one should not become Machiavellian, justifying any means for personal gain, merely because they are in power, for, in the end, it will become an unbearable burden in old age. So, what sets it apart? Perhaps the plot, characters, and inner struggles of its figures, or perhaps another message, namely that the most honest judge for each person is oneself. Or a combination of all these elements. Who knows? What is certain is that, until now, there has been no contradiction to the opinion that *Mahkamah* is one of Asrul's *magnum opus* in the world of theater.

Although a work of fiction, there is a hint of a historical backdrop in this script. Captain Anwar is commanded by his superior, Major Saiful Bahri, to quell the rebellion that occurred in Madiun in 1948. Captain Anwar refuses the order, stating that he does not wish to wage war against or face his fellow countrymen. For him, it is a matter of principle and conviction. The true war, for Captain Anwar, is the fight against the colonialists. Due to his stance, he is considered defiant or insubordinate to the orders of superiors. As a consequence, Captain Anwar is

sentenced to death by firing squad. The execution of the sentence is carried out by Major Saiful himself. Ironically, the executor (Major Saiful) and the one executed (Captain Anwar) are two close friends. So close that they are like brothers. Hence, on a human level, it is natural to question: how could Saiful carry out such a "heinous act"? The answer is that it was done out of necessity for the sake of the nation.

Initially, Saiful was very confident in the righteousness of his reasons. However, a predicament arose when he reached the end of his life, as the Angel of Death was about to take him. Saiful became restless. He began to doubt his past decisions. After all, at that time, Saiful and Anwar, despite being close friends, competed for the love of the same woman, Murni — who later became Saiful's wife. Did he really carry out the execution due to reasons of national interest? Or, at the very least, which element had a greater influence when the judgment was passed, the national interest or Saiful Bahri's personal interest? This anxiety and doubt were like a huge stone obstructing the journey of the soul about to face its Creator. Thus, to dispel these uncertainties and to find the real truth, a court or tribunal was formed. In this court proceeding, several intriguing dialogues took place among its characters, including the Defense Lawyer, Murni (Mayor Saiful Bahri's wife), and the Public Prosecutor. These dialogues aimed to unearth the motives behind Mayor Saiful Bahri's execution of Captain Anwar by delving into the integrity of the dying mayor. For instance, when the Defense Lawyer wanted to question Murni (Mayor Saiful Bahri's wife) to prove that there were no personal motives, such as a love rivalry, when Mayor Saiful Bahri sentenced and executed Captain



Anwar, but solely for the sake of the nation. "Madam, there is a confession that needs to be heard by the Honorable Judges. We know that you were once Captain Anwar's lover. However, he was not the only one who loved you. There was another, Mayor Bahri, your current husband. He also loved you. Captain Anwar was then sentenced by a field court. The chairman of that court was Mayor Bahri, your husband. I would like to ask a few questions. Please answer honestly. How many years have you been married to Mr. Bahri?". Murni replied that she had been married to Saiful Bahri for over thirty years. Upon hearing this answer, the Defense Lawyer commented that it was a long enough time to know her husband's personality. The Defense Lawyer then asked Murni to contemplate whether her husband, Saiful Bahri, may have punished Captain Anwar with the motive of eliminating a rival in their pursuit of Murni's love. "I don't need to contemplate it," Murni answered as she continued, "I know my husband's character. My husband is a warrior, a loyal soldier. No. He is not a murderer." When the Defense Lawyer pressed her to speak louder, Murni responded loudly, "My husband did not kill Anwar because he wanted to marry me."

Upon hearing that testimony, the Public Prosecutor attacked Murni and attempted to convince the judge that the witness (Murni) could not be trusted. "Madam Murni, can you be trusted? Or are you saying all this just to boast about your loyalty to a husband you don't really have?" The Public Prosecutor's statement provoked strong protests and objections from the Defense

Lawyer, who stated that Mrs. Murni was not the defendant in this case, but rather Saiful Bahri was. After being ordered by the judge, the Public Prosecutor continued, "Mr. Defense Lawyer is too hasty. I have not finished speaking. I am not passing judgment. I am merely drawing a conclusion." The Public Prosecutor then asked Murni, "After Mr. Anwar died, how long after that did you marry Mr. Bahri?" Murni fell silent and bowed her head. The Public Prosecutor continued in an urgent tone, "Come on, Madam... According to the information we obtained, you were deeply in love with Mr. Anwar. Is that true?" Murni nodded. The Public Prosecutor continued, "You loved him so much that you rejected Mr. Bahri's proposal — who held a higher rank than Mr. Anwar. I am not certain, though it is not essential, but given the closeness between you and Mr. Anwar, it is not so strange if you and Mr. Anwar sympathized with each other and planned to live together until death. That's normal. That's how young people in love usually are. Then he died. How long after that did you marry Mr. Bahri?"

Murni whispered, "Two months," prompting the Public Prosecutor to ask her to say it louder. "Two months," Murni repeated. The Public Prosecutor then sneered, "Two months? Your loyalty to Mr. Anwar is truly remarkable. Before his body even decomposed, you had already turned to another man, his rival. What kind of woman are you, really? A promiscuous woman who easily moves from one man to another? A seller of sweet words, a liar, a deceiver?" The Public Prosecutor's statement angered the Defense Lawyer, who strongly protested. The judge intervened and then gave the Defense Lawyer the opportunity to ask questions. The Defense Lawyer addressed Murni, acknowledging that the facts indeed showed that Murni married Mayor Saiful Bahri only two months after Anwar's death, which generally raises suspicions in the eyes of the public, leading to a tendency to condemn. "However, Madam, you have the right to defend yourself. You must have reasons. Could you explain?" said the Defense Lawyer. After gaining control of her emotions, Murni replied, "After Anwar's death, I was shattered. It felt like doomsday, and I was almost lost. I contemplated suicide, but God protected me. Night after night, I struggled against my desires. Finally, I made a decision. I chose to continue living. I had to try to forget. But I am a woman. Alone. I needed protection. There was no use hoping for protection from someone who was no longer there. The only person who loved me, aside from Anwar, was Bahri. I then resolved in my heart. Who knows, maybe I can learn to love him. Because he is a good man. Faithful. He also loved Anwar. Not a single word ever came from his mouth that spoke ill of Anwar. After our marriage, every year he takes me to visit Anwar's grave. At first, I thought I loved two men. But the truth is, I love only one, Bahri."

In the hearing, the Defense Lawyer also informed the judge that he had one piece of evidence in the form of a letter from the defendant (Saiful Bahri). According to the Defense Lawyer, the letter was written by the defendant on the night after he proposed to Murni. The letter was then sent to Murni with the help of a soldier. However, the soldier was killed, and the letter never reached Murni's hands. "I have the letter with me, Your Honor," the Defense Lawyer said to the judge and then requested permission to read it aloud. "Beloved Murni," began the Chief Judge reading the letter, "Although you have rejected my love, I hope you are still willing to read this letter and consider my plea. I apologize for the words I uttered in front of you. I was so disappointed and sad that I lost control of myself, and I said, 'If that's the case, then one of us, either I or Anwar, must die.' I deeply regret those words. I am ashamed. Now, I want to speak from the bottom of my heart. You are free to make your choice. If you decide to choose Anwar, then I will be grateful and pray to God for your happiness. Anwar is my friend. If he is happy, then I am happy too. Regards, Your Admirer, Saiful Bahri."

In short, despite various facts, witnesses, and evidence being presented, various arguments and rationales being exchanged, the court was unable to reach a verdict. The judges in this court gave up. In other words, this court could not find the answer to the questions that haunted Saiful Bahri's conscience and made him restless. Therefore, a new court was formed with a new judge.

With his anxiety accompanying him, Saiful Bahri sat impatiently, even becoming very annoyed as the (new) judge who would adjudicate him did not arrive. However, when the long-awaited judge finally appeared, he was taken aback because the judge who arrived was none other than himself.

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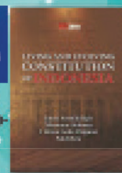

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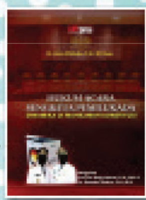

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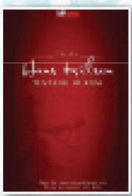

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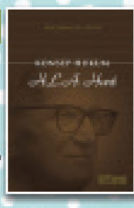

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THE COMPETITION OF SOVEREIGN IN THE LEGISLATIVE ELECTION SYSTEM

The House of Representatives of the Republic of Indonesia (DPR-RI) provided testimony in the ongoing hearing of Case Number 114/PUU-XII/2022 concerning the Judicial Review of Law Number 7 of 2017 on General Elections (UU 7/2017) at the Constitutional Court (MK). In providing their testimony, the DPR-RI, represented by Commission III, presented two differing views, which is a new phenomenon uncommon for the DPR to present conflicting testimonies in the judicial review of laws (PUU).

The Petitioners consist of six individuals, two of whom are members of Political Parties (Parpol), namely Demas Brian Wicaksono (PDIP) and Yuwono Pintadi (NasDem). However, Yuwono Pintadi's status as a party member has been disputed by the NasDem Party, stating that Yuwono Pintadi is no longer an active member of the party led by Surya Dharma Paloh, as he has not re-registered since 2019 and is considered to have resigned. The petitioners reviewed Article 168 paragraph (2) of UU 7/2017, which states that *"Elections to choose members of the DPR, Provincial DPRD, and District/City DPRD shall be conducted through an open proportional system."*

According to them, the implementation of Legislative General Elections with an open proportional system contradicts the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), such as Article 22E Paragraph (3) *"Participants in general elections to elect members of the People's Consultative Assembly and members of regional representative councils are political parties"*; Article 18 Paragraph (3) *"Provincial, regency, and city regional governments have Regional Representative Councils whose members are elected through general elections"*; Article 19 Paragraph (1) *"Members of the People's Consultative Assembly are elected through general elections"*; and Article 28D Paragraph (1) *"every person has the right to recognition, guarantees, legal protection, and fair and equal treatment before the law."*

They argued that the legislative election system with an open proportional system raises various issues, such as complexity in election implementation, wastefulness of state budget, the occurrence of money politics, and encouragement of corruption, weakening of political party institutionalization, and creating multidimensional problems. Based on these reasons, they believe that Article 168 paragraph (2) is in contradiction with the UUD NRI 1945.

Between Population Sovereignty and Party Sovereignty

As mentioned at the beginning of this writing, the pro and contra arguments regarding the legislative election system to be used in the 2024 elections have divided the legislative institution in providing testimony to the Court, as conveyed by Supriansa and Arteria Dahlan.

The Pro-Petitioner View: The PDIP faction is pro-petitioner. Arteria Dahlan, who presented the viewpoint, stated that Article 22E paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly stipulates that election participants are political parties, thus it is only appropriate for political parties to be given sovereignty and full authority in determining the candidates for legislative members. This sovereignty and authority are essential elements and should be understood that political parties are given the authority to place their best cadre according to their respective versions, so they can become representatives of the people. It is not enough to simply place legislative candidates and then leave it entirely to the people to choose or leave it entirely to a free-market mechanism based on competing for the most votes by resorting to all sorts of means to obtain votes in the electoral contest.

Arteria also mentioned that the closed system promotes the improvement of political parties in representation-based cadreship. This encourages the strengthening of party institutionalization. The implementation of candidate number priority for prospective elected legislative members cannot be considered as usurping the people's rights, nor is it a process of democratic regression or anti-democratic in nature. On the contrary, it is part of strengthening democracy and accelerating political and democratic consolidation. Arteria even emphasized that with the closed system, the focus is on collective battles based on ideas, concepts, and party ideologies, rather than individual competencies or personal competitions that prioritize individual strength, the power of capital, and authority.

Contrary View: Meanwhile, Supriansa, representing 8 political party factions including the Golkar Faction, Gerindra Faction, NasDem Faction, PKB Faction, Democrat Faction, PKS Faction, PAN Faction, and PPP Faction, provided a "contrary" viewpoint, which is to reject the change of the legislative election system from an open proportional system to a closed one. They believe that the open system is intended to expand the dimensions of justice in political development, which has embraced a system of direct elections. Moreover, this system ensures a good degree of representation as voters are free to directly choose their representatives in the legislature and can continuously monitor those they have elected.

Using the open system will create not only fairness for legislative candidates but also for the people in exercising their voting rights, even if they are not affiliated with any political party participating in the elections. The open system will lead to a candidate's victory not solely depending on the policies of the participating political parties but rather on the level of support given by the people to the candidate. Based on these reasons, they conclude that in the context of

the electoral legal politics in Indonesia, the DPR (People's Consultative Assembly) believes that the potential for democratic regression will occur if the elections are once again conducted with a closed system, which only selects political parties.

Constitutional Court Decision 22-24/PUU-VI/2008; Regarding the open and closed proportional system of electing legislative members, the Constitutional Court has ruled in Decision No. 22-24/PUU-VI/2008 concerning the Review of Law No. 10 of 2008 on the General Election of Members of the People's Consultative Assembly, Regional People's Representative Councils, and Regional Representative Councils. In the operative clause of the decision, the Constitutional Court partially granted the petition filed by Muhammad Sholeh and Sutjipto.

In its legal considerations, the Court took into account Article 1 paragraph (2) of the 1945 Constitution, which states that *"Sovereignty is in the hands of the people and is carried out according to the Constitution."* This indicates that the highest sovereignty resides with the people, thus in various electoral activities, the people directly choose those they desire. The magnitude of the people's votes reflects the high political legitimacy obtained by legislative and executive candidates, while a low vote count indicates a low political legitimacy of the respective candidates.

The principle of the people's sovereignty is a fundamental constitutional principle that not only gives color and spirit to the constitution, which determines the form of government but also can be seen as the constitutional morality that imparts color and character to all laws in the political field. Moreover, the primary purpose of placing people's sovereignty as a fundamental constitutional principle is to position it in such a way that the respect and assessment of the voting rights of the electorate, which constitute the embodiment of the people's sovereignty, are not subject to changes arising from political controversies in the parliament. In this case, by allowing political parties to convert the people's choice into the party's choice through the allocation of numbers in the ballot.

That Article 22E paragraph (1) of the 1945 Constitution mandates that the conduct of elections must be of higher quality with the widest possible participation of the people based on the principles of democracy, direct, general, free, confidential, honest, and fair, should be the main foundation in organizing elections, to be developed and implemented by the Election Law in a concise and straightforward manner, which is used to provide a basis for all stages of the election process to be accountable. Thus, the people, as the main subject in the principle of people's sovereignty, should not only be treated as mere objects by election participants striving for victory.

Granting the people the direct right to vote and determine their choices for legislative candidates with the highest number of votes not only provides convenience for voters in making their choices but also ensures fairness, not only for the candidates for the DPR/DPRD but also for the people in exercising their right to vote.

The philosophical basis of any election to determine the winner is based on the highest number of votes obtained. Therefore, the determination of elected candidates should also be based on whoever receives the highest number of votes in consecutive order and not based on the lowest assigned candidate number. In other words, no longer shall elections use a double standard, by considering both the assigned candidate numbers and the vote counts for each candidate. Imposing provisions that grant the right to elected candidates based on assigned numbers would constrain the people's right to vote according to their choices and disregard the level of political legitimacy of the elected candidates based on the number of votes received.

There's must be Improvements

All elements have references to the functioning of the open or closed proportional election system through

the historical records of legislative elections so far. Therefore, the strengths and weaknesses, as well as the pros and cons of both systems, have been known to the public, including policymakers (drafters of laws) or those authorized to assess the norms being reviewed (the Constitutional Court).

The criticisms raised by the petitioners against the flaws of the open system can also occur in the closed system if it is used. For example, the occurrence of money politics cannot be guaranteed to be eliminated solely by using the closed system. Thus, in the author's view, if the Constitutional Court decides differently and changes the open-closed system based on previous rulings, we are merely changing the recipient vessel for money, as the flow will continue unabated.

What needs to be improved and is crucial is the way political party cadres are recruited. Many party cadres are born prematurely (political moment cadres) due to hasty recruitment, and the lack of gradual cadreship results in party cadres being born prematurely with their own party ideology, which impacts the loss of loyalty to the party. This is exacerbated by the pragmatism of parties in recruiting legislative candidates, as seen in every election cycle, where parties tend to search for individuals outside the party who have high popularity to be nominated as their candidates. Therefore, according to the author, the weak control and the lack of legitimacy and loyalty that parties receive from their members of the DPR/DPRD are due to errors in cadreship and the distribution of candidates in the legislative nomination process, not necessarily the system used. No matter how good the system used, if the participants in the election do not improve themselves, it will remain problematic.

THE CONSTITUTIONAL COURT PROHIBITS INTERFAITH MARRIAGE

A Catholic citizen wishes to marry a woman who follows Islam. However, this desire is hindered by the provisions of the legislation, which do not allow marriages between individuals of different religions. The provisions of the Marriage Law are reviewed before the Constitutional Court (MK).

For three years, E. Ramos Petege has been in a relationship with a woman who practices Islam. Later, Ramos decided to take the relationship to the next level and get married. However, this wish did not proceed smoothly; in fact, it had to be canceled due to the existing provisions of the marriage laws, which do not allow marriages between individuals of different religions.

Subsequently, Ramos brought this issue before the Constitutional Court (MK) by filing a petition on February 4, 2022. The MK's registry registered this petition with Number 24/PUU-XX/2022 on February 23, 2022. In the petition, Ramos reviewed Article 2, paragraph (1) and (2), as well as Article 8, letter f of Law Number 1 of 1974 concerning Marriage (Marriage Law). According to Ramos, the reviewed provisions violate his constitutional rights guaranteed by Article 29, paragraph (1) and (2), Article 28E, paragraph (1) and (2), Article 27, Article 28I, paragraph (1) and (2), Article 28B, paragraph (1), and Article 28D, paragraph (1) of the 1945 Constitution (UUD 1945).

These provisions prevent Ramos from marrying his partner due to religious differences. He accused these provisions of reducing and conflating the meanings of marriage and religious freedom, and alleges that the state exceeds its authority by intervening in the internal affairs of citizens through the power to

Article 2, paragraph (1) of the Marriage Law:
"Marriage is legitimate if conducted in accordance with the respective religious beliefs and convictions of the parties."

Article 2, paragraph (2) of the Marriage Law:
"Every marriage shall be recorded in accordance with the prevailing laws and regulations."

Article 8, letter f of the Marriage Law:
"Marriage is prohibited between two persons who: f. have a relationship that, according to their religion or other applicable regulations, is forbidden to marry."

E. Ramos Petege, accompanied by his legal representatives, presented the main petition for the review of the Marriage Law in the preliminary virtual hearing held at the Constitutional Court (MK) on Wednesday, March 16, 2022. Photo by Humas/Ilham WM9

determine the validity of marriages administratively based solely on the religious similarity of the prospective husband and wife.

According to Ramos, Article 2, paragraph (1) gives rise to various interpretations regarding the meaning of "according to the respective religious beliefs and convictions of the parties." As a result, many religious institutions are unwilling to conduct interfaith marriages, and even civil registry officials reject the registration of such marriages. When marriages are only permitted within the same religion, it essentially coerces the citizens at the core of the state.

Furthermore, Article 2, paragraph (2) has led to interpretations among the implementers of the Marriage Law that conducting interfaith marriages is not possible, as it generalizes various interpretations of religious laws and beliefs to avoid interfaith unions.

Similarly, Article 8, letter f, creates ambiguity, obscurity, or legal uncertainty in the context of interfaith marriages as to whether such unions are permitted or prohibited according to religious laws and beliefs. There is no clear standard regarding the prohibition or permissibility of interfaith marriages, given the lack of consensus among experts in religious and state law.

Right to Marry

In his petition, Ramos argues that the right to marry and the right to freedom of religion are both constitutional rights of citizens that must not be obstructed by the state in any way. Every individual has the right to marry whomever they choose, regardless of religious differences. Therefore, the state cannot prohibit or refuse to recognize interfaith marriages. A solution must be provided by the state for those who wish to enter into interfaith marriages.

The government has proposed three solutions for those engaging in interfaith marriages. However, all three present problems. *Firstly*, conducting marriages abroad. This amounts to circumventing the law, with the state forcing its own citizens to exploit legal loopholes. Citizens are directed to disobey the law. *Secondly*, requiring one of the partners in an interfaith marriage to convert to the religion of their spouse. This would involve deceiving God in order to marry. *Thirdly*, seeking a court ruling in accordance with the provisions of the Regulation on Mixed Marriages (GHR). However, in 2019, the Supreme Court issued a binding fatwa to all courts under its jurisdiction, stating that interfaith marriages are not recognized by the state. Therefore, there is currently no way to conduct interfaith marriages.

The Relationship Between Religion and State

According to Ramos, the issue of religion and state must be separated. State intervention in religious matters is limited to administrative scope, concerning facilities, infrastructure, and resources, but not the substance or content of religion. In other words, the state does not interfere in religious worship or beliefs in Indonesia; instead, it ensures that religious practices can be carried out and fulfilled properly.

One of the legal fields that receives government interference and intervention is the field of marriage. As an essential dimension of human life, marriage is regulated under religious laws, customary laws within society, and/or positive state law. It is a common reality that the regulations regarding the implementation of marriage do not show uniformity (Santoso, "The Essence of Marriage According to the Marriage Law, Islamic Law, and Customary Law," Jurnal Yudisia, Vol. 7, No. 2, 2016, p. 414). In the context of marriage, according to Hilman Hadikusuma, these differences not only occur between different religions but can also exist within a single religion due to different ways of thinking arising from adherence to different schools or sects (Hilman Hadikusuma, Indonesian Marriage Law According to Legislation, Islamic Law, and Customary Law, Bandung: Mandar Maju, 2007, p. 1). Such diverse opinions have caused ambiguity in justifying the validity of interfaith marriages.

Regarding the relationship between religion and the state, Ir. Soekarno stated that religion is a spiritual and personal matter and, therefore, should be the responsibility of individuals rather than the state or government. The state, in this regard, does not have the authority to regulate, let alone impose, religion on its citizens (Budiyono, "The Relationship Between the State and Religion in the Pancasila State," Fiat Justisia: Journal of Legal Sciences, Vol. 8, No. 3, 2014, p. 410)

Arsul Sani, a member of Commission III of the Indonesian Parliament (DPR RI), delivered the virtual statement on behalf of the DPR RI during the hearing for the review of the Marriage Law at the Constitutional Court (MK) on Monday, June 6. Photo by Humas/ Ifa

Director General of Islamic

Anggota Komisi III DPR RI Arsul Sani menyampaikan keterangan DPR RI secara daring dalam persidangan pengujian UU Perkawinan di MK, Senin (06/06). Foto Humas/Ifa.

Direktur Jenderal Bimbingan Masyarakat Islam Kementerian Agama RI Kamarudin menyampaikan keterangan Presiden/Pemerintah secara daring dalam sidang pengujian pengujian UU Perkawinan di MK, Senin (06/06). Foto Humas/Ifa.

Community Guidance of the Ministry of Religious Affairs of Indonesia, Kamarudin, presented the statement of the President/Government online during the hearing of the Marriage Law at the Constitutional Court (MK) on Monday, June 6. Photo: Public Relations/If.

Ramos also argues that, philosophically, in the context of interfaith marriage, prospective couples still lead their spiritual lives based on the principle of belief in the One Almighty God. However, in the process and procedures of conducting such marriages, they are subject to the specific religious laws agreed upon by the prospective couple according to their free will to exercise their right to freedom of religion. Freedom, in this sense, means that the decision to determine the religious law to be applied is within the domain of privacy, while the state's role should be limited to ensuring juridical guarantees and facilitating that citizens can conduct their marriages based on their chosen religion and belief in a safe, peaceful, and tranquil manner.

According to Prof. Mahfud MD., in the Pancasila state based on the rule of law, the government plays a role in formulating legal policies or state policies based on four principles. One of them is that state policies or legal politics must be based on the principle of civilized religious tolerance, so every policy or state legal politics must be imbued with the teachings of various religions that have noble aims for humanity (Mahfud MD, Constitution and Law in Controversial Issues, Jakarta: Rajawali Press, 2009, p. 26).

In its implementation, the state's obligation in religious affairs is reflected in the state's involvement and participation in religious life. Regarding this matter, there are several responses from notable figures, including Hatta, Daliar Noor, Jazim Hamidi, and M. Husnu Abadi, who explained that the issues of religion and state must be separated, and state intervention in religious matters is limited to administrative scope, concerning facilities, infrastructure, and resources, but not the substance

or content of religion. In other words, the state does not interfere in religious worship or beliefs in Indonesia (Jazim Hamidi and M. Husnu Abadi, State Intervention in Religion, Yogyakarta: UII Press, 2001, p. 5).

According to Ramos, freedom of religion as described in Article 29, paragraphs (1) and (2) of the 1945 Constitution of Indonesia is part of human rights. Hence, the involvement of the state in religious affairs needs to be questioned, whether it aligns with the 1945 Constitution to provide guarantees and protection for the freedom to embrace religion and beliefs and to practice one's worship individually, or whether the state should also participate in determining or guiding the religions and beliefs adhered to by its citizens, particularly in the context of conducting interfaith marriages. Excessive state intervention in religious and belief matters of its citizens results in the loss of the essence of practicing religion, which is based on heartfelt conviction, and the loss of the right to individual (private) belief, with the state becoming an instrument to oppress minorities.

The Registration of Marriages

Ramos argues that registration officials hold a strategic position to determine whether interfaith marriages can take place or not. This clearly contradicts the principle of the Pancasila state based on the rule of law. The obligation of state registration of marriages through regulations is an administrative duty.

In this context, Ramos cites the opinion of Prof. Maria Farida Indrati in a concurring opinion in Constitutional Court Decision Number 46/PUU-VIII/2010, point 6.1, which states that the existence of religious norms and legal norms in the same legislation has the potential to weaken or even contradict each other. In this case, the potential for mutual nullification exists between Article 2, paragraph (1), and Article 2, paragraph (2) of Law No. 1/1974. While Article 2, paragraph (1), fundamentally ensures that a marriage is valid if performed according to the laws of each respective religion and belief, it turns out to be hindered by and, in turn, also hinders the implementation

Neng Djubaedah dan Muhammad Amin Suma selaku ahli yang dihadirkan oleh Majelis Ulama Indonesia (MUI) menyampaikan keterangan dalam sidang pengujian UU Perkawinan yang digelar secara daring di MK, Rabu (08/09). Foto Humas/Ifa.

of Article 2, paragraph (2), which fundamentally regulates that a marriage will be valid and legally binding once it has been registered by the authorized agency or marriage registration officer. If Article 2, paragraph (2) of Law No. 1/1974 is interpreted as administrative registration that does not affect the validity or invalidity of a marriage, then it does not contradict the 1945 Constitution, as there is no addition of marriage requirements.

Neng Djubaedah and Muhammad Amin Suma, as experts brought by the Indonesian Ulema Council (MUI), presented their statements in the hearing.

The norm of Article 8 letter f creates ambiguity, obscurity, or legal uncertainty in the context of interfaith marriages as a legal event that is permitted or prohibited in the respective religious and belief systems. The prohibition of interfaith marriages due to differences in interpretation among legal experts has essentially diminished the freedom and independence to embrace religion and beliefs, especially in conducting interfaith marriages, which are guaranteed under Article 29, paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

The Phenomenon of Interfaith Marriages

The phenomenon of interfaith marriages is a natural occurrence in society that has not yet obtained its rightful position due to the paradigm in society that perceives interfaith marriages as taboo. In this regard, Ramos provides an example of an interfaith marriage between Ahmad Nurcholis (Islam) and Ang Mei Yong (Kong Hu Cu) that was conducted

Sidang pengucapan Putusan Nomor 24/PUU-XX/2022 dalam perkara pengujian UU Perkawinan, Selasa (31/01) di Ruang Sidang Pleno MK. Foto Humas/Ifa.

in accordance with Islamic and Kong Hu Cu customs on June 8, 2003. Moreover, interfaith marriages occurring in society today have also received recognition through several Supreme Court decisions that have granted applications for interfaith marriages. For instance, the Supreme Court Decision Number 1400K/PDT/1986 granted an application for an interfaith marriage by overturning the Decision of the Central Jakarta State Court Number 382/PDT.P/1985/PN.JKT. PST. Additionally, the Decision of the Lubuk Linggau District Court Number 3/Pdt.P/2015/PN.Llg. granted the application of Irawan Wijaya (Buddhist) and Claramitha Joan (Catholic) to conduct an interfaith marriage. Furthermore, the Decision of the Banyuwangi District Court Number 14/PDT.P/2015/PN.Bwi. approved the application of Agus Pudjianto (Buddhist) and Eveline Djohan (Christian) for their marriage.

The pronouncement hearing of Decision Number 24/PUU-XX/2022 in the case of reviewing the Marriage Law took place on Tuesday, January 31st, in the Plenary Courtroom of the Constitutional Court.

The absence of a clear legal regulation concerning interfaith marriages and the rejection of interfaith marriages in Indonesia fundamentally constitute discriminatory actions that are inconsistent with the principles of human rights. The non-recognition of a marriage based on religious differences represents a restrictive measure based on religious differences, which contradicts Article 27 paragraph (1), 28I paragraph (1) and (2), and Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Therefore, in his petitum, Ramos requests the Constitutional Court (MK) to declare that Article 2 paragraph (1) and (2), as well as Article 8 letter f of the Marriage Law, are in conflict with the 1945 Constitution. Alternatively, to declare that Article 2 paragraph (1) and (2), as well as Article 8 letter f of the Marriage Law, are in conflict with the 1945 Constitution and, therefore, do not have binding legal force as long as they are not interpreted as follows:

Article 2 paragraph (1), "Marriage is valid if conducted according to the law of each respective religion and belief, based on the free will of the parties to choose one of the marriage implementation methods in accordance with the procedures stipulated by the law of each respective religion and belief."

Article 2 paragraph (2), "Every marriage is recorded according to the prevailing legislation as long as it can be proven to have fulfilled the provisions as stipulated in paragraph (1)."

Article 8 letter f, "Marriage is prohibited between two people who: f. have a relationship that is prohibited by the prevailing legislation."

Marriage in the Religious Domain

Regarding Ramos' request, the Constitutional Court, in its legal considerations, cited Decision Number 68/PUU-XII/2014, which explained the validity of marriage. The Court's legal consideration in point [3.12.5] of that decision stated that marriage should not only be viewed from a formal aspect but also from spiritual and social aspects. Religion determines the validity of marriage, while the law determines the administrative validity carried out by the state.

Furthermore, in Constitutional Court Decision Number 46/PUU-VIII/2010, the Court also considered marriage registration. In point [3.12] of the decision, it is stated that the obligation of marriage registration by the state through legislation is an administrative obligation. The administrative obligation of recording marriages, according to the Court, can be viewed from two perspectives. *First,* from the state's perspective, the registration is mandated to fulfill the state's function in providing guarantees, promotion, enforcement, and fulfillment of the human rights of the parties involved, which is the responsibility of the state and must be carried out in accordance with the principles of a democratic

rule of law, as regulated and stipulated in legislation [see Article 28I paragraph (4) and (5) of the 1945 Constitution]. *Second,* the administrative registration carried out by the state is intended so that marriage, as a significant legal act in one's life with wide-ranging legal implications, can be proven with complete evidence through an authentic certificate, enabling effective and efficient protection and services by the state regarding the rights arising from the respective marriage.

Based on the legal considerations of the two aforementioned decisions, it is evident that the Constitutional Court has clearly and unequivocally answered that the validity of marriage falls within the religious domain through religious institutions or organizations authorized or having the authority to provide religious interpretations.

The role of the state, in this context, is to follow up on the interpretations provided by religious institutions or organizations. As for the implementation of marriage registration by state institutions, it is to provide certainty and order in population administration, in accordance with the spirit of Article 28D paragraph (1) of the 1945 Constitution. Thus, due to the intertwined interests and responsibilities of religion and the state regarding marriage, through the two aforementioned decisions, the Constitutional Court has laid the constitutional foundation for the relationship between religion and the state in marriage law, with religion determining the validity of marriage and the state determining the administrative validity of marriage within the framework of the law.

Human Rights in Indonesia

Human Rights are rights recognized by Indonesia and subsequently enshrined in the 1945 Constitution as constitutional rights of Indonesian citizens. However, the human rights that apply in Indonesia must be in line with the philosophical ideology of Indonesia, based on Pancasila as the nation's identity. The guarantee of universal human rights is stipulated in the Universal Declaration of Human Rights (UDHR). Although declared as a common agreement among countries worldwide, the implementation of human rights in each country is also adjusted to the ideology, religion, social, and cultural values of its people.

In the context of marriage, which is the main issue in this case, there is a difference in the construction of protection guarantees between the UDHR and the 1945 Constitution. Article 16 paragraph (1) of the UDHR explicitly states, *"Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family." This means that the UDHR unequivocally guarantees the right to marry. On the other hand, the 1945 Constitution has a different formulation through Article 28B paragraph (1), which states, "Everyone has the right to form a family and to procreate through lawful marriage."*

Based on the formulation of Article 28B paragraph (1) of the 1945 Constitution, two rights are explicitly guaranteed: the "right to form a family" and the "right to procreate." The subsequent phrase indicates that a "lawful marriage" is a prerequisite for the protection of the two aforementioned rights. In other words, marriage is not positioned as a right but as a prerequisite for exercising the right to form a family and the right to procreate.

Although Article 28B paragraph (1) of the 1945 Constitution positions a lawful marriage as a requirement to protect the right to form a family and the right to procreate, this requirement is obligatory. This means that one cannot form a family and procreate if not done through a lawful marriage. Using the legal maxim "something that is a condition for an obligation is itself obligatory *(mâ lâ yatimmu alwâjibu illâ bihî fahuwa wâjib),"* a lawful marriage is also a constitutional right that must be protected.

The Role of the State

The existence of the state in regulating marriage has been considered by the Constitutional Court in Decision Number 56/PUU-XV/2017. On page 532 of that

decision, it is explained that religion can be divided into two aspects. First, religion in the sense of having a belief in a particular religion, which falls within the realm of the internal forum that cannot be restricted or forced and is beyond the jurisdiction of the law. Second, religion in the sense of expressing one's religion through statements and actions in accordance with one's conscience in public, which falls within the realm of the external forum.

Marriage is considered as part of religious worship and expression of faith. Therefore, marriage is categorized as the external forum in which the state can intervene, just like in the management of zakat and hajj.

The role of the state is not intended to restrict a person's belief, but rather to ensure that religious expressions remain in line with the fundamental teachings of the religion they adhere to. Marriage is one of the areas regulated within the legal framework of Indonesia, as stated in Law No. 1/1974. All actions and behaviors concerning marriage must comply with the laws and regulations and should not violate or contradict them. The legislation on marriage is established to govern and protect the rights and obligations of every citizen in relation to marriage. Such regulation is in line with Article 28J of the 1945 Constitution, which states that, in exercising the rights guaranteed by the Constitution, every citizen is obliged to abide by restrictions determined by law, solely to ensure the recognition and respect for the rights and freedoms of others, and to fulfill the fair demands according to moral considerations, religious values, security, and public order in a democratic society based on the rule of law.

The state's involvement in the administration of marriage does not extend to interpreting religion for the validity of marriage. In this regard, the state follows the interpretations given by religious institutions or organizations to ensure that marriages comply with each individual's religion and belief. These interpretations are then codified by the state into laws and regulations. Thus, the authority to interpret the validity of marriages, particularly the prohibition of interfaith marriages, remains with religious leaders through the agreed interpretations of religious institutions or organizations, rather than interpretations made by individuals that could cause legal uncertainty.

According to the Constitutional Court, there is no state coercion in the administration of marriage for any religion. The state's role is to follow up on the interpretations agreed upon by religious institutions or organizations. Furthermore, religious teachings and customs still hold as one of the sources of material law that are alive in society. Therefore, the existence of Article 2 paragraph (1) in conjunction with Article 8 letter f of the Marriage Law is in line with the essence of Article 28B paragraph (1) and Article 29 of the 1945 Constitution, which are related to the state's obligation to ensure the implementation of religious teachings.

The Marriage Law defines marriage as a spiritual and emotional bond between a man and a woman bound by the marriage vows, creating the status of husband and wife. Marriage is intended to form a happy and everlasting family within the framework of the belief in the Almighty God. Regarding marriage, Article 28B paragraph (1) of the 1945 Constitution not only refers to marriage itself but goes beyond that, specifically mentioning "lawful marriage." A lawful marriage is one that is conducted according to the laws of each religion and belief. The registration mentioned in Article 2 paragraph (2) of the Marriage Law should be a registration that brings validity as stated in paragraph (1). Thus, the Marriage Law requires that the registered marriage must be a lawful one. The obligation to register marriages is an administrative duty of the state. As for the validity of the marriage, with the norm stated in Article 2 paragraph (1), the state delegates it to religions and beliefs, as the condition for a lawful marriage is determined by the laws of each religion and belief.

Article 2 paragraph (1) of the Marriage Law provides a framework for the implementation of marriages, stating that for a marriage to

be lawful, it must be conducted according to the laws of each religion and belief. The application of Article 2 paragraph (1) does not hinder or obstruct the freedom of individuals to choose their religion and belief. The legal regulation in Article 2 paragraph (1) of the Marriage Law pertains to the validity of marriage according to each religion and belief, not the right to choose religion and belief. The freedom to embrace and adhere to one's religion and belief remains a personal right, as guaranteed by Article 29 paragraph (2) of the 1945 Constitution.

Regarding the registration of marriage, Article 34 of Law No. 23 of 2006 on Population Administration (Law 23/2006), as amended by Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration, asserts that every citizen who has legally married according to the laws and regulations has the right to register their marriage at the Civil Registry Office for non-Muslim couples and at the Office of Religious Affairs (KUA) for Muslim couples. The guarantee of marriage registration for every citizen can also be applied to marriages determined by the court. Although it is clarified in the explanation that the marriages determined by the court refer to interfaith marriages, according to the Constitutional Court, it does not mean that the state recognizes interfaith marriages. Instead, the state follows the interpretations given by religious institutions or organizations that have the authority to issue interpretations.

According to the Constitutional Court, the regulation regarding the implementation of marriage registration above indicates no constitutional issue with Article 2 paragraph (2) of the Marriage Law. On the contrary, the existence of regulations on marriage registration for every citizen who has legally married demonstrates that the state has played a role and function in providing guarantees for the protection, promotion, enforcement, and fulfillment of human rights, which is the responsibility of the state and must be carried out in accordance with the principles of the rule of law as guaranteed in Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution.

The Constitutional Court remains firm in its stance that valid marriages are those conducted according to one's religion and belief, and every marriage must be recorded according to the laws and regulations. Thus, the petitioner's arguments regarding Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law, are legally groundless. According to the Constitutional Court, Ramos' petition regarding Article 2 paragraph (1) and paragraph (2), as well as Article 8 letter f of the Marriage Law, does not contradict the principles of the guarantee of the right to embrace and practice one's religion, equality before the law and government, the right to life and freedom from discriminatory treatment, the right to form a family and continue one's lineage, the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law, as guaranteed by Article 29 paragraph (1) and paragraph (2), Article 28E paragraph (1) and paragraph (2), Article 27 paragraph (1), Article 28I paragraph (1) and paragraph (2), Article 28B paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. Thus, the petitioner's request is entirely groundless.

As a result, in the plenary hearing held at the Constitutional Court on Tuesday, January 31, 2023, nine constitutional judges rendered their decision on the constitutional review petition of the Marriage Law filed by E. Ramos Petege. In the operative part of the decision, the Constitutional Court declared to reject Ramos' petition.

"The operative part of the decision, adjudicate, reject the petitioner's petition in its entirety," said Chief Justice Anwar Usman, reading out Decision No. 24/PUU-XX/2022. ■

NUR ROSIHIN ANA.

DIFFERENT REASONS

The nine constitutional judges were not unanimous in making Decision No. 24/PUU-XX/2022. Two Constitutional Judges, namely Constitutional Judge Suhartoyo and Constitutional Judge Daniel Yusmic P. Foekh, have a different reason (concurring opinion).

Constitutional Judge Suhartoyo

The phenomenon of interfaith marriages seems to occur due to the "lack of attention" from the state, which does not recognize and considers interfaith marriages as "religiously invalid" because the legalization of marriages under civil law is merely an administrative registration.

Therefore, it is expected that the state should be present to address this issue through the development or amendment of the Marriage Law. The substance of such amendments should be made while adjusting to the social dynamics and other related aspects that occur in society, while also striking a balance between religious freedom on one side and accommodating the phenomenon of interfaith marriages and their registration process wisely on the other side. Currently, in fact, the legal recognition of interfaith marriages by the state is limited to administrative acknowledgment only.

"Hence, I believe it would be more appropriate for the Constitutional Court to return this matter to the lawmakers who have the authority to make amendments to the Marriage Law if changes are to be made. This way, the issue of interfaith marriages can be resolved from its root cause and not just limited to administrative registration, but also find a wise middle ground while still upholding the fulfillment of citizens' rights to freedom of religion and worship according to their respective beliefs," said Suhartoyo.

Constitutional Judge Daniel Yusmic P. Foekh

The state will be fair and act justly by providing the rightful place for the various diversities of religions and beliefs embraced by Indonesian citizens. The state must address this issue, especially regarding the registration of marriages for citizens. The registration or administrative order in marriage registration is of utmost importance in protecting the rights of citizens as guaranteed in the 1945 Constitution. The marriage registration not only serves to protect interfaith couples/believers but also safeguards the children born from such marriages.

"It is only appropriate for the DPR (The House of Representatives) and the President/Government to restructure the regulation of the aforementioned articles in a more humane manner, accommodating various interests, and providing better protection to all citizens, so that the provisions of Article 2 paragraphs (1) and (2) and Article 8 letter f of the Marriage Law should be an open legal policy or an open legal approach," said Daniel. ■

NUR ROSIHIN ANA.

PROS AND CONS OF INTERFAITH MARRIAGE

The review process in the hearing of the Marriage Law test case is marked by contrasting opinions from the parties involved. These include opinions from the President/Government, the DPR (The House of Representatives), and experts.

Rocky Gerung attended as an expert on behalf of the Petitioner and provided testimony during the virtual hearing of the Marriage Law test case at the Constitutional Court on Thursday (July 28, 2022).

Arsul Sani, *a member of the DPR Commission III*

"...the state does not prohibit individuals from entering into marriages based on their free will, but the state only registers marriages that are valid according to their respective religions. The state does not impose, deceive, or pressure prospective spouses to adopt the same religion and belief as their partners, thereby not violating any human rights."

Kamaruddin Amin, *Director-General of Islamic Guidance at the Ministry of Religious Affairs*

"...the provisions of Article 2 and Article 8 letter f of the Marriage Law are intended to provide justice and legal certainty for every religious believer in conducting marriages according to the laws of their respective religions and beliefs. Since the marriage laws of different religions and beliefs in Indonesia vary, it is not possible to unify them under one law."

Usman Hamid, *an expert for the Petitioner*

"Currently, due to the equal status of men and women, it is permissible for a Muslim woman to marry a non-Muslim man or vice versa."

Risa Permanadeli, *an expert for the Petitioner*

"...religion is placed as part of the collective elements of change. To progress towards the agreed way of upholding sovereignty as Indonesians, religion is considered as one of the elements of change, just like production, politics, ideology, culture, and language."

Ade Armando, *an expert for the Petitioner*

"As long as the text in the Marriage Law remains open to various interpretations, it will continue to cause confusion and uncertainty. I personally believe that the right to marry a person based on one's beliefs should be respected and protected in Indonesia."

Hairunas, *an expert for the President/ Government*

"There is no mandate that everyone must be religious. Therefore, if the state utilizes religion to regulate marriage, it means that only religious people are allowed to have offspring, and marriage is only allowed among religious people. However, having offspring is different from having a marriage. While it is good if everyone is religious, it is not imperative."

Euis Nurlaelawati, *an expert for the President/Government*

"The psychological and social harm arising from permitting interfaith marriages outweighs its benefits. Allowing interfaith marriages will create a dissonance with relevant legal provisions concerning guardianship, inheritance, and others."

Muhammad Amin Suma, *an expert from the Indonesian Ulema Council (Majelis Ulama Indonesia)*

"The fatwa from the Indonesian Ulema Council (MUI), Number: 4/MUNAS VII/MUI/8/2005 on Interfaith Marriages, which determines: (1) Interfaith marriages are prohibited and invalid; (2) Marriage between a Muslim man and an *Ahlu Kitab* woman, according to the *qaul mu'tamad*, is prohibited and invalid."

LIST
OF VERDICT

JUDICIAL REVIEW DECISIONS

No.	Case Number	Case Subject	Petitioners	Decision	Date	Decision Link
1	116/PUU-XX/2022	Material Review of Law Number 12 of 2011 concerning Formation of Legislation	Bonatua Silalahi (Petitioner I) and PT. Bina Jasa Konstruksi (Petitioner II)	Withdrawn	31 January 20223	Click Decision
2	24/PUU-XX/2022	Material Review of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage	E. Ramos Petege	Denied in its Entirety	31 January 20223	Click Decision
3	75/PUU-XX/2022	Material Review of Law Number 13 of 2003 concerning Manpower	Muhayati, Een Sunarsih, Dewiyah, Kurniyah, and Sumini	Denied in its Entirety	31 January 20223	Click Decision
4	86/PUU- XX/2022	Material Review of the Criminal Code (Law Number 1 of 1946 concerning Criminal Law Regulations)	Robiyanto	Denied in its Entirety	31 January 20223	Click Decision
5	105/PUU-XX/2022	Material Review of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Health	Teguh Boediyana (Petitioner I), Gun Gun Muhamad Lutfi Nugraha (Petitioner II), Ferry Kusmawan (Petitioner III), and Irfan Arif (Petitioner IV)	Denied in its Entirety	31 January 20223	Click Decision
6	109/PUU-XIX/2021	Material Review of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims	Muh. Ibnu Fajar Rahim	Denied in its Entirety	31 January 20223	Click Decision

7	117/PUU-XX/2022	Material Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution	Muchdi Purwopranjono (as Chairman of the Central Leadership Council) and Fauzan Rachmansyah (as Secretary General of the Central Leadership Council) of Berkarya Party	Denied in its Entirety	31 January 20223	Click Decision
8	118/PUU-XX/2022	Material Review of the Criminal Code	Juliana Helemayana (Petitioner I) and Asril (Petitioner II)	Grant the Petition partially	31 January 20223	Click Decision
9	119/PUU- XX/2022	Material Review of Law Number 29 of 2004 concerning Medical Practice	dr. Gede Eka Rusdi Antara, dr. Made Adhi Keswara, dr. Heryani HS Parewasi, M.Kes., Sp.OG., dr. A. Wahyudi Pababbari, Sp.PD., and Dwi Bagas Andika	Denied in its Entirety	31 January 20223	Click Decision
10	115/PUU-XX/2022	Material Review of Law Number 14 of 2013 concerning Amendments to Law Number 56 of 2008 concerning the Establishment of Tambrauw Regency in West Papua Province	Hermus Indou (Regent of Manokwari), as Petitioner I and Edi Budoyo (Vice Regent of Manokwari), as Petitioner II	Denied in its Entirety	31 January 20223	Click Decision
11	1/PUU-XXI/2023	Material Review of Law Number 1 of 2023 concerning the Criminal Code (KUHP)	Zico Leonard Djagardo Simanjunta	Unacceptable	28 February 2023	Click Decision

LIST OF VERDICT

12	7/PUU-XXI/2023	Material Review of Law Number 1 of 2023 concerning the Criminal Code	Fernando Manullang (Petitioner I), Dina Listiorini (Petitioner II), Eriko Fahri Ginting (Petitioner III), and Sultan Fadillah Effendi (Petitioner IV)	Unacceptable	28 February 2023	Click Decision
13	10/PUU-XXI/2023	Material Review of Law Number 1 of 2023 concerning the Criminal Code	Andi Redani Suryanata, Abdullah Ariansyah, Muhammad Ridwan, Muhammad Nurfaldi Hanafi, M. Rony Syamsuri, etc.	Unacceptable	28 February 2023	Click Decision
14	2/PUU-XXI/2023	Material Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to Become Law	Drs. Edi Damansyah, M.Si	Denied in its Entirety	28 February 2023	Click Decision
15	3/PUU-XXI/2023	Material Review of Law Number 48 of 2009 concerning Judicial Powers and Law Number 14 of 1985 in conjunction with Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 concerning the Supreme Court	Ihda Misla	Unacceptable	28 February 2023	Click Decision

16	4/PUU-XXI/2023	Material Review of Law Number 7 of 2017 concerning General Elections	Herifuddin Daulay	Denied in its Entirety	28 February 2023	Click Decision
17	12/PUU-XXI/2023	Material Review of Law Number 7 of 2017 concerning General Elections	Association for Elections and Democracy (Perludem), which in this case was represented by Khoirunnisa Nur Agustyati as the Chairperson of the Perludem Foundation and Irmalidarti as the Treasurer of the Perludem Foundation	Grant the Petition partially	28 February 2023	Click Decision
18	8/PUU-XXI/2023	Article 7 paragraph (1) letter b and explanation in conjunction with Article 18 letter b and explanation of Law Number 12 of 2011 concerning Formation of Legislation	Trijono Hardjono, Muhammad Afif Syairozi, Salyo Kinasih Bumi, Hendrikus Rara Lunggi, Muhammad Fajar Ar Rozi, Abdul Ghofur, and Fredikus Patu	Unacceptable	28 February 2023	Click Decision
19	9/PUU-XXI/2023	Material Review of Law Number 15 of 2006 concerning the Supreme Audit Board	Patuan Siahaan (Petitioner I), Tyas Muharto (Petitioner II), dan Poltak Manullang (Petitioner III)	Unacceptable	28 February 2023	Click Decision

REHGENT OF KUTAI KARTANEGARA REVIEWS THE PHRASE "IN OFFICE" IN THE REGIONAL ELECTION LAW

The Constitutional Court (MK) held a preliminary hearing on Monday (January 16, 2023) to review Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Regional Election Law). The petition registered under Number 2/PUU-XXI/2023 was filed by Edi Damansyah, who is the Regent of Kutai Kartanegara for the 2021-2026 period.

During the virtual hearing presided over by Constitutional Judge Arief Hidayat, Muhammad Nursal mentioned the constitutional rights provided by the law to ensure equal opportunities in governance. The petitioner questioned the clarity and concreteness of a provision in the Regional Election Law, namely Article 7 paragraph (2) letter n, due to the presence of vague norms that may lead to discrimination because of different interpretations and meanings.

In the petition, the petitioner stated that Article 7 paragraph (2) letter n of the Regional Election Law could be interpreted as the petitioner having served as the Regent for two consecutive terms from 2016 to 2021 and from 2021 to 2026. According to the Regional Election Law, it can be interpreted that the petitioner has completed one term in the first stage (2016 to 2021) because the petitioner served as Acting Regent and subsequently as the Definitive Regent for a combined duration of 2 years, 10 months, and 12 days. Furthermore, in the second term as Regent (2021 to 2026/2024), the petitioner has also completed one term as the term spanned 4 or 5 years.

The petitioner stated that a Vice Regent who later serves as Acting Regent and then becomes the Definitive Regent would still be eligible for two terms as stipulated in the aforementioned provision, as long as the Definitive Regent's term lasts for 2.5 years or more. Such a situation would not potentially lead to creating a lifelong regional government official or a system of inheritance-based (hereditary) governance, as limitations can also be applied to the position of Acting Regional Head when considering running again as a candidate for Vice Regent.

In response to the petitioner's petition, Constitutional Judge Saldi stated that the petitioner needs to clarify the difference between a regional government official and an acting official. Additionally, Saldi asked the petitioner to simplify the petition. The same opinion was echoed by Constitutional Judge Arief Hidayat, who said that the petition could be simplified as the issue at hand is already clear. (Utami Argawati/Lulu Anjarsari P./Andhini S.F.)

QUESTIONING THE CONSTITUTIONALITY OF REVIEW

The Constitutional Court (MK) held a Preliminary Hearing on the petition to review the constitutionality of Law Number 48 of 2009 on the Judicial Power and Law Number 14 of 1985 juncto Law Number 5 of 2004 juncto Law Number 3 of 2009 on the Supreme Court (Supreme Court Law) on Monday (January 16, 2023) in the Plenary Courtroom of the Constitutional Court. The petition, registered with MK under Number 3/PUU-XXI/2023, was filed by Ihda Misla, a retired Civil Servant.

The petitioner questioned the norms stated in Article 24 paragraph (2) of Law 48/2009, which states that a review cannot be conducted for a review decision, and Article 66 paragraph (1) of Law 14/1985 juncto Law 5/2004 juncto Law 3/2009, which states that a review petition can only be filed once. During the preliminary hearing led by Constitutional Judge Enny Nurbaningsih, Henny Aliah Zahra, as the legal representative, explained that the petitioner had previously filed an extraordinary legal measure or a review petition, which was decided by the Tipikor Court at the Banda Aceh District Court under Decision Number 55/Pid. SusTPK/2019/PN.Bna juncto the Review Decision Number 763/PK/Pid.Sus/2022 dated August 4, 2022.

Henny stated that in criminal law, justice takes precedence over legal certainty, so if one has to choose, justice should outweigh legal certainty. Therefore, a review can be filed more than once in order to seek and obtain justice, even if it compromises legal certainty. On the other hand, it is clear that a review has no relevance to legal certainty.

Responding to the petitioner's request, Constitutional Judge M. Guntur Hamzah said that the format and arrangement of the petition need to be improved. Furthermore, Guntur also requested the petitioner to study the existing decisions of the Constitutional Court. There have been 11 decisions by the Constitutional Court, which means there have been 11 reviews for Article 24 paragraph (2), and there have been 2 reviews for Article 46, with the decisions not being accepted, and some being rejected. (Utami Argawati/Lulu Anjarsari P./Raisa Ayudhita)

NEWS FLASH

LIMITATION OF PRESIDENTIAL TERMS CONSIDERED TO HAVE MANY DRAWBACKS

The Constitutional Court (MK) held a preliminary hearing for the review of Article 169 letter n and Article 227 letter i of Law Number 7 of 2017 concerning General Elections (Election Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945) on Thursday (January 19, 2023). The case with petition number 4/PUU-XXI/2023 was filed by Herifuddin Daulay.

During the virtual hearing, Herifuddin Daulay expressed that he felt his constitutional rights were violated due to the application of Article 7 of the UUD 1945, which imposes a personal limitation on the presidential term, allowing the President to only register and/or be elected for 2 (two) terms. Furthermore, the Petitioner argued that there are errors in the text of Article 7 of the UUD 1945 regarding the presidential term, either errors in writing the text or errors in understanding the text. The implicit error contains the meaning of "if," which implies a "conditional clause."

According to the Petitioner, the mentioned error arises from the ambiguity of the text. With the meaning of a "conditional clause," additional regulations are needed to strengthen the intention of the mentioned norm so that the overall essence of Article 7 of the UUD 1945 is primarily intended to establish 2 (two) terms of presidency and, if desired, through permission or a decision of the constitutional court, namely the Constitutional Court.

The additional regulations in the form of Article 169 letter n and Article 227 letter i in the Election Law, according to the Petitioner, become the fundamental basis for the personal limitation of the candidacy for President and/or Vice President to serve more than 2 (two) terms, whether consecutively or with intervals. Hence, the Petitioner argues that the limitation of the presidential term has more drawbacks than benefits, and the norm governing the limitation of the presidential and vice-presidential terms to only 2 (two) terms should be eliminated.

Responding to the petitioner's request, Constitutional Judge Wahiduddin Adams suggested that the petitioner should review the petitions that have been granted by the Constitutional Court. Additionally, Wahiduddin also asked the petitioner to explain his legal standing in filing the petition. Meanwhile, Constitutional Judge Suhartoyo advised the petitioner to elaborate on his legal standing. (Utami Argawati/Nur R./Fitri Yuliana)

JOB CREATION LAW IS DEEMED NOT MEETING URGENT REQUIREMENTS

After the government issued Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation on December 30, 2022, several Petitioners filed formal and material petitions regarding the Government Regulation in Lieu of Law to the Constitutional Court (MK). The inaugural hearing to review the petitions with case numbers 5/PUU-XIX/2023 and 6/PUU-XIX/2023 on the review of Government Regulation in Lieu of Law 2/2022 concerning Job Creation was held in the Panel Courtroom of the MK on Thursday (January 19, 2023).

Petition number 5/PUU-XIX/2023 was filed by Hasrul Buamona (Health Law Lecturer/Petitioner I), Siti Badriyah (Migrant Care Executive/Petitioner II), Harseto Setyadi Rajah (Legal Consultant/Petitioner III), Jati Puji Santoro (Entrepreneur/Petitioner IV), Syaloom Mega G. Matitaputty (Law Student at Usahid University/Petitioner V), and Ananda Luthfia Rahmadhani (Law Student at Usahid University/ Petitioner VI). Meanwhile, petition case number 6/PUU-XIX/2023 was filed by the Confederation of All-Indonesia Labor Unions (KSBSI).

The hearing was presided over by Constitutional Judge Wahiduddin Adams, accompanied by Constitutional Judges Manahan MP Sitompul and Daniel Yusmic P. Foekh. Legal representatives for case number 5/PUU-XIX/2023, Viktor Santoso Tandiasa, and Zico Leonard, alternatively stated that the Job Creation Perpu was in conflict with Article 1 paragraph (3), Article 22 paragraph (1), and Article 22A of the 1945 Constitution, as well as Constitutional Court Decisions Number 138/PUU-VII/2009 and Number 91/ PUU-XVII/2020.

According to the Petitioners, the subjectivity of the President in issuing Government Regulation in Lieu of Law must be based on objective circumstances. When measured against three criteria, the existence of this Government Regulation in Lieu of Law does not meet the requirements because so far, the government has used Law 11/2020 (Job Creation Law) to address urgent needs in resolving legal issues within its scope, and there has been no legal vacuum.

Meanwhile, Petitioner of case number 6/PUU-XXI/2023, represented by Saut Pangaribuan, stated that the 55 articles contained in Government Regulation in Lieu of Law 2/2022 were contrary to the 1945 Constitution. He argued that the norms in the Government Regulation in Lieu of Law eliminate the constitutional rights of workers that have been guaranteed in the 1945 Constitution and Law 13/2003 concerning Manpower. In the field of labor law, Saut noted that there was no legal vacuum. Up until now, Law 13/2003 and several other regulations are still in force in Indonesia.

Regarding both cases, Constitutional Judge Manahan MP Sitompul provided some notes on the formal and material review of Government Regulation in Lieu of Law 2/2022 concerning Job Creation. There cannot be an equal treatment between formal and material review, so there is a special treatment for formal hearing. Manahan mentioned that Petitioner of case 5/PUU-XXI/2023 has not elaborated on the requirements and direct relation between the norms under review and the existence of constitutional rights of the Petitioners. As for Petitioner of case 6/PUU-XXI/2023, Manahan advised that the Petitioner should elaborate on the conditions that must be met in filing oneself as a party to this case. Additionally, Manahan also highlighted the representatives of organizations inside and outside the court in filing this petition. (Sri Pujianti/Nur R./Tiara Agustina).

A NUMBER OF ACTIVISTS QUESTION THE POSITION OF THE PEOPLE'S CONSULTATIVE ASSEMBLY IN THE INDONESIAN CONSTITUTIONAL LAW

Several activists who are part of the Step for the Langkah Juang Pemulihan Kedaulatan Rakyat have filed a constitutional review of Law Number 12 of 2011 concerning the Formation of Legislation (Law P3) with the Constitutional Court (MK). Trijono Hardjono, Muhammad Afif Syairozi, Salyo Kinasih Bumi, Hendrikus Rara Lunggi, Muhammad Fajar Ar Rozo, Abdul Ghofur, and Frederikus Patu are registered as the petitioners in Case Number 8/PUU-XXI/2023, reviewing Article 7 paragraph (1) letter b and its Explanation; Article 18 letter b and its Explanation. The inaugural hearing for this case was held in the Panel Hearing Room of the MK on Tuesday (24/1/2023) with the Panel Hearing Assembly composed of Justices M. Guntur Hamzah, Manahan M.P. Sitompul, and Enny Nurbaningsih.

The Petitioners, through Trijono Hardjono as the principal representative, stated that their struggle aims to restore the sovereignty of the people within the People's Consultative Assembly (MPR). In other words, regarding the position of the MPR, since the amendment of the 1945 Constitution, it has only been treated as a communication forum between the People's Representative Council (DPR) and the Regional Representative Council (DPD). Furthermore, the Petitioners also argue that the restriction on the implementation of MPR's Decisions within the scope of the National Legislation Program Preparation, as stated in the Explanation of Article 18 letter b of Law P3, leads to legal uncertainty. Trijono emphasized that the manipulative actions of law-makers in limiting the enforceability of MPR's Decisions imply that the MPR no longer holds constitutional authority in deciding on legal products.

Justice Enny, in her advice during the Panel Hearing Assembly, provided some notes to the Petitioners. She addressed the handling of the petition, which was considered not in line with the typical petitions received by the Constitutional Court, including the identification of the Petitioners, the authority of the Constitutional Court, the constitutional harm incurred, and the requested review of the questioned norms by the Constitutional Court. Enny also requested the Petitioners to read previous decisions of the Constitutional Court as references for the qualifications of each Petitioner filing this case. "Another crucial aspect is the five requirements for constitutional harm, which are not included in this petition at all. If it's not clear, the decision will be negative," explained Enny.

Meanwhile, Justice Manahan, in his advice, suggested that the Petitioners carefully review the Constitutional Court Regulation Number 2 of 2021, especially Articles 8 to 10, where the format for both formal and material petitions has been explained. He encouraged the Petitioners to seek legal consultation from parties who are more knowledgeable about the petitions filed to the MK. (Sri Pujianti/ Lulu Anjarsari P./Andhini S.F.)

QUESTIONING THE ARTICLE ON INSULTING THE GOVERNMENT

Provisions concerning insult and defamation against the government, as stated in Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code (KUHP), are being reviewed at the Constitutional Court (MK). The petition is filed by Fernando Manullang (Lecturer at the Faculty of Law, University of Indonesia/Petitioner I), Dina Listiorini (Lecturer at the Faculty of Social and Political Sciences, Atma Jaya University Yogyakarta/Petitioner II), Eriko Fahri Ginting (Content Creator/Petitioner III), and Sultan Fadillah Effendi (Student/ Petitioner IV). The inaugural hearing for case Number 7/PUU-XXI/2023 was held on Tuesday (24/1/2023) in the Panel Hearing Room of the Constitutional Cout. The Petitioners, represented by their legal counsel Zico Leonard Djagardo Simanjuntak, stated that as the entity responsible for the continuity of the state, the government often receives various criticisms and suggestions from citizens. However, sometimes the manner in which these criticisms are delivered lacks ethics, resulting in insult and defamation. Therefore, it is only appropriate that the government is also protected from acts of insult and defamation. However, this does not mean that a specific article regarding the prohibition of insulting the government should be created.

Additionally, Zico also mentioned that the existence of special regulations regarding insult against the government indirectly violates Human Rights as stipulated in Law Number 39 of 1999 concerning Human Rights (UU HAM). Hence, the Petitioners request that the Constitutional Court declares Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of the Criminal Code (KUHP) as contradictory to the 1945 Constitution and without legal binding force.

During the advice hearing of the Panel of Judges, Justice Arief mentioned the difference between the Child Justice System Law and the Criminal Code currently under review in the MK. Arief stated that the implementation of the Child Justice System Law has been postponed, while the Criminal Code petitioned by the Petitioners is still based on the old law. Furthermore, the revised or updated version of the Criminal Code, which is the subject of this case, is still in the process of socialization and will only take effect after a delay of three years.

Meanwhile, Justice Daniel Yusmic P. Foekh requested each Petitioner to specify the constitutional harm they have experienced. On the other hand, Justice Suhartoyo reviewed the Petitioners' legal standing, which is based on their activities in providing criticism to the government. "(Sri Pujianti/Nur R./Muhammad Halim)"

TIGHTENING THE REQUIREMENTS FOR FORMER PRISONERS TO BECOME SENATOR CANDIDATES

The Constitutional Court held a preliminary hearing to review the Law No. 7 of 2017 on General Elections (Pemilu) on Monday, February 6, 2023. The petition in Case Number 12/PUU-XXI/2023 was filed by Perludem. In the hearing conducted offline in the Plenary Hearing Room of the Constitutional Court building, Perludem, represented by their attorney, Fadli Ramadhanil, stated that the Petitioner considered the provision of Article 182 letter g of the Election Law to be in conflict with Article 1 paragraph (2), (3), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. Subsequently, Fadli elaborated on the reasons for the petition.

Therefore, as Fadli continued, in such a situation, it is essential to have a legal framework that provides opportunities for candidates in the elections to be individuals of good integrity, and the election administration provides space to implement democracy and sustainable development. Fadli revealed that the Constitutional Court has issued decisions to tighten the requirements for candidates participating in regional elections or general elections. These decisions are in the form of Decision Number 56/PUU-XVII/2019, which regulates the requirements for former convicts in the elections of Governors, Regents, and Mayors, and Decision Number 87/PUU-XX/2022, which sets out the requirements for candidates for the People's Consultative Assembly (DPR) and Regional People's Representative Councils (DPRD) who have a status as former convicts.

However, the requirement for former convicts for candidates for the Regional Representative Council (DPD) creates inconsistency as it is still not the same as the requirement for former convicts for candidates for regional elections, let alone elections to the DPR and DPRD. Yet, in principle, members of the DPD are also directly elected by the people, so the requirements, especially the status of former convicts, should be aligned with the requirements for candidates for the DPR and DPRD.

In response to the petition, Judge Wahiduddin Adams of the Constitutional Court provided suggestions for improvement. Wahiduddin requested the Petitioner to elaborate on the arguments for both actual and potential losses related to the Petitioner's advocacy work, especially concerning the DPD. Meanwhile, Judge Suhartoyo of the Constitutional Court asked the Petitioner to present their views to the Court regarding their petition. This is because the current petition by Perludem is different from Decision Number 56/PUU-XVII/2019 and Decision Number 87/PUU-XX/2022. (Utami Argawati/Nur R.)

PENSIONED ATTORNEY CIVIL SERVANTS QUESTION THE AGE LIMIT OF BPK MEMBERS

The Constitutional Court (MK) held its inaugural hearing for the review of Article 18 letter c of Law No. 15 of 2006 concerning the Supreme Audit Agency (UU BPK) on Tuesday, February 7, 2023. Case Number 9/PUU-XXI/2023 was petitioned by Patuan Siahaan, Tyas Muharto, and Poltak Manullang, who are pensioned attorney civil servants. The Panel of Judges for this case consists of Constitutional Judges Saldi Isra, Suhartoyo, and Daniel Yusmic P. Foekh.

Kores Tambunan, as the legal representative of the Petitioners, stated that the mentioned article is in conflict with Article 1 paragraph (3), Article 27 paragraph (2), Article 28C paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution. According to the Petitioners, the presence of the phrase "has reached the age of 67 (sixty-seven) years" results in the termination of a BPK member's term upon reaching the age of 67. However, the term limitation has already been set for a period of five years and can be re-elected for one more term, meaning the term of office cannot exceed two terms to be an BPK member. This condition deprives the Petitioners of their constitutional rights as they cannot register themselves for the selection of prospective BPK members as regulated in Article 13 of the UU BPK.

Upon receiving this petition, Constitutional Judge Suhartoyo suggested that a refinement of the constitutional loss be made by elaborating on the legal status of the Petitioners. This is considering the requirements needed to become a BPK member, with the minimum age set at 35, and the BPK's provision limiting the periodization of BPK member's term. Additionally, Suhartoyo also requested the Petitioners to consider the issue of retirement age, including age requirements for appointment. So far, the Constitutional Court has held that age requirements fall under the authority of the legislature. Suhartoyo requested the Petitioners to present arguments as to why the age limit should be within the authority of the Constitutional Court.

Meanwhile, Constitutional Judge Daniel Yusmic P. Foekh inquired whether any of the three Petitioners have ever applied as candidates for BPK members. This information could serve as evidence to strengthen the legal standing of the Petitioners.

Subsequently, Constitutional Judge Saldi Isra, in his advice, mentioned that the principal petitioner, being a pensioned individual, should include their current occupation to demonstrate the relevance between the potential constitutional loss experienced by the Petitioners. (Sri Pujianti/Nur R./Tiara Agustina)

QUESTIONING THE CONSTITUTIONALITY OF SEVERAL PROVISIONS IN THE NEW CRIMINAL CODE

The Constitutional Court (MK) held a material review hearing on Article 256, Article 603, and Article 604 of Law Number 1 of 2023 concerning the Criminal Code against the 1945 Constitution of the Republic of Indonesia (UUD 1945) on Tuesday, February 7, 2023, in the MK Panel Hearing Room. Petition Number 10/PUU-XXI/2023 was filed by Andi Redani Suryanata and others. The Petitioners, who are individual Indonesian citizens and current students, are reviewing the material of Article 256, Article 603, and Article 604 of the Criminal Code.

In the virtual hearing, Andi Redani Suryanata, one of the petitioners, stated that the Petitioners firmly adhere to the principle of fighting against and opposing corruption as a science inseparable from practical student life. The Petitioners also strive to distance themselves from corrupt behavior in the academic setting. The Petitioners argue that the eradication of corruption becomes futile and obstructed because Indonesia's legal system itself weakens the criminal sanctions against corruption in the new Criminal Code.

Andi emphasized that the Petitioners, as students, are actively involved in demonstrating against problematic policies, including demonstrating against problematic provisions in the case at hand. The Petitioners are concerned that if the tested provisions come into effect, no one will dare to protest anymore, including the Petitioners themselves, out of fear of being prosecuted under the provisions currently being reviewed by them. Therefore, in the future, the Petitioners and other students may no longer be able to protest.

According to Andi, in the questioned provisions, there is a phrase "resulting in disruption of public interest, causing disturbances, or turmoil in society." It is something that cannot be avoided when conducting public actions such as parades, demonstrations, or protests, as they can disrupt public interests, for example, causing traffic jams or redirecting access roads to the detriment of others. It is not uncommon that clashes occur between citizens and authorities during demonstrations or protests, leading to disturbances or turmoil. Therefore, the presence of the questioned provisions once again increases the potential for criminalization of citizens.

Judge of the Constitutional Court Arief Hidayat advised the petitioners to explain the substance of Constitutional Court's authority in depth. Meanwhile, Judge of the Constitutional Court Enny Nurbaningsih mentioned that the signatures in the power of attorney differ from those in the current petition. Enny also asked the Petitioners to clarify their legal standing and the constitutional losses they experienced. (Utami Argawati/Lulu Anjarsari P./Tiara Agustina)

IMPACTING REDUCED AUTHORITY, SEVERAL CURATORS REVIEW THE BANKRUPTCY LAW

The Constitutional Court (MK) held its inaugural hearing on the review of Article 31 paragraph (1) and the Explanation of Article 31 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law) on Wednesday, February 8, 2023. Case Number 11/PUU-XXI/2023 was filed by Umar Husin, Zentoni, Sahat Tambunan, Paulus Djawa, who work as curators.

The Petitioners, represented by Donny Tri Istiqomah, mentioned that the existence of Article 31 paragraph 1 of the Bankruptcy Law creates legal uncertainty as curators constantly face legal debates with creditors who are classified as Separated Creditors, whose debtors have been declared bankrupt. Separated creditors will refuse to comply with Article 31 paragraph 1 of the Bankruptcy Law, which affects the loss or at least reduction of the Petitioners' authority to take over and sell the assets of the debtor who has been declared bankrupt. However, Donny added, the authority held by the Petitioners is an attributive authority provided by law.

Regarding the bankruptcy situation, there are special and exceptional provisions for Separated Creditors who can also execute bankruptcy issues as regulated in Article 55 of the Bankruptcy Law. However, they cannot immediately execute their rights, but must go through a series of execution processes that cannot be interrupted as stipulated in Article 56 - 59 of the Bankruptcy Law.

Therefore, the Petitioners request the Court to declare the Explanation of Article 31 paragraph (1) of the Bankruptcy Law legally invalid and declare it removed as it has created ambiguity in the norm contained in Article 31 paragraph (1) of the Bankruptcy Law, thereby harming the constitutional rights of the Petitioners by causing injustice and legal uncertainty, and being contrary to Article 28D paragraph (1) of the 1945 Constitution.

In response to this petition, Judge of the Constitutional Court Suhartoyo made several suggestions for improvement to the Petitioners. The suggested improvements relate to the legal standing, especially regarding the assumption of constitutional losses experienced by the Petitioners acting as curators. Furthermore, Suhartoyo provided an explanation about the petitum in the petition, which is considered unusual, and thus, previous petitions to the Constitutional Court need to be reviewed. Additionally, Judge of the Constitutional Court Guntur, in his advice, mentioned the need to supplement the constitutional losses with Regulation Number 2 of 2021, specifically Article 4 paragraph (2). Moreover, the confusion between petitum and posita in the petition was noted, which could lead to the petition's ambiguity.

Lastly, Judge of the Constitutional Court Enny highlighted that the legal standing is still relatively simple, and the qualification and assumption of constitutional losses are still vague. The petition has not specified the rights guaranteed in the constitution that have been violated by the norms being reviewed in this case. (Sri Pujianti/Lulu Anjarsari P./Andhini S.F.)

REVIEWING THE CONSTITUTIONALITY OF PRESS REPORTING CASES

The Constitutional Court (MK) held a hearing to review Article 15 paragraph (2) letter (d) of Law Number 40 of 1999 concerning the Press (Press Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945) on Monday, February 13, 2023, in the Panel Room of the Constitutional Court. Case Number 13/PUU-XXI/2023 was filed by Moch Ojat Sudrajat.

In the virtual hearing presided over by Judge of the Constitutional Court Daniel Yusmic P. Foekh, accompanied by Judges of the Constitutional Court Enny Nurbaningsih and Manahan MP Sitompul, Ojat (the Petitioner) explained the constitutional rights violations he suffered in obtaining recognition, guarantees, fair legal protection, and equal treatment before the law in cases related to "press reporting" conducted by journalists and/or press companies not registered with the Press Council and/or cases related to "press reporting" involving false news or hoaxes, defamation, insults, and/or libel of the character and dignity of individuals, legal entities, or public bodies, and news aimed at inciting hatred or hostility towards specific individuals and/or groups based on ethnicity, religion, race, and inter-group relations (SARA).

In response to the petitioner's request, Judge of the Constitutional Court Enny Nurbaningsih advised the petitioner to study PMK Number 2 of 2021. Furthermore, Enny suggested that the jurisdiction of the Constitutional Court should be traced back in a more systematic manner, including the 1945 Constitution, the Law on Judicial Power, the Law on the Constitutional Court, other laws, and regulations. Meanwhile, Judge of the Constitutional Court Manahan MP Sitompul recommended that the norms being reviewed should be placed in their legal context. (Utami Argawati/Nur R./Muhammad Halim)

LABOUR UNION FORMALLY REVIEWS JOB CREATION PERPPU

Approved on December 30, 2022, the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Job Creation Perppu) is being formally tested before the Constitutional Court (MK). A total of 13 labor unions are registered as Petitioners with Case Number 14/PUU-XXI/2023, alleging that the Job Creation Perppu is legally flawed as it does not meet the requirements for the formation of legislation. The first hearing of the case was presided over by Judge of the Constitutional Court Wahiduddin Adams and held in the Plenary Hearing Room of the Constitutional Court on Tuesday, February 14, 2023.

Muhamad Raziv Barokah, as the legal representative, stated that the Job Creation Perppu is deemed not to fulfill the provisions for the formation of laws based on Article 22A of the 1945 Constitution. In the core of the petition, the Petitioners stated that the Job Creation Perppu, which was stipulated and promulgated on December 30, 2022, by President Joko Widodo, is suspected to revive Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which was previously conditionally declared unconstitutional by the Constitutional Court through Decision Number 91/PUU-XVIII/2020.

"Essentially, the process of its formation (Job Creation Perppu) did not meet the requirements of urgent matters based on Article 22 paragraph (1) of the 1945 Constitution, as there were violations that were clearly evident and known to the public. In addition to formal flaws, there are also substantive issues," explained Raziv during the hearing presided over by Constitutional Judge Wahiduddin Adams, accompanied by Constitutional Judges Manahan M.P Sitompul and Daniel Yusmic P. Foekh as members of the Panel Hearing.

Therefore, in their petitum, the Petitioners requested the Panel of Judges to declare that the Job Creation Perppu does not fulfill the provisions for the formation of laws based on the 1945 Constitution. Furthermore, the Petitioners also stated that the Job Creation Perppu is contrary to the 1945 Constitution and does not have binding legal force.

In response to this petition, Judge of the Constitutional Court Manahan questioned the legal standing of the Petitioners, consisting of various labor unions, to demonstrate their articles of association and organizational household that show the existence of parties who can represent them inside and outside the court. Furthermore, Manahan also mentioned that the Petitioners need to elaborate on the legal standing, especially for formal testing, by explaining the direct connection with the norm being reviewed. Meanwhile, Judge of the Constitutional Court Daniel provided advice regarding the timing of the formal testing filing, which is 45 days from the promulgation of the norm. Therefore, the Petitioners need to be mindful not to exceed the formal review deadline. Furthermore, Daniel also requested the Petitioners to explain the unconstitutionality of the reviewed Job Creation Perppu. Lastly, Judge of the Constitutional Court Wahiduddin considered the legal standing of the Petitioners, which mostly explained the issues and concerns of the norm being reviewed, while the formal testing petition is what is being sought. (Sri Pujianti/Lulu Anjarsari P./Andhini S.F.)

REVIEWING THE TERM OF VILLAGE HEAD OFFICE

The Constitutional Court held a hearing on the Material review of Article 39 paragraph (1) and paragraph (2) of Law Number 6 of 2014 concerning Villages (Village Law) on Wednesday, February 15, 2023. The petition registered under Case Number 15/PUU-XXI/2023 was filed by Eliadi Hulu, a resident of Ononamolo Tumula Village, Alasa District, North Nias Regency.

The Panel hearing was chaired by Judge of the Constitutional Court Daniel Yusmic P. Foekh, accompanied by Judges of the Constitutional Court Enny Nurbaningsih and Arief Hidayat. Eliadi Hulu (Petitioner) stated during the virtual hearing that the enactment of Article 39 paragraph (1) of the Village Law, which grants the village head a term of 6 years in one period, has caused constitutional harm to the Petitioner.

According to the Petitioner, if the term of the village head is limited to 5 years, then the Petitioner's village will have a faster time to elect a new village head with good leadership and management skills, thus leading to an improvement and development in the Petitioner's village. Many positive changes can be achieved within one year. If the term of the village head is limited to 5 years, based on the norm found in the constitution, specifically Article 7 of the 1945 Constitution regarding the limitation of the term of office for the president and vice president, which serves as a reference for all limitations on executive terms, both at the central and regional levels, it will create harmonization of justice in the statehood of Indonesia.

In response to the Petitioner's petition, Judge of the Constitutional Court Arief Hidayat mentioned that the Petitioner did not sufficiently elaborate on the criteria for constitutional harm. Meanwhile, Judge of the Constitutional Court Enny Nurbaningsih explained that, in general, the Petitioner's petition has met the Constitutional Court's Regulations (PMK). However, Enny emphasized the need for further clarification and elaboration to make the petition stronger and more comprehensive. (Utami Argawati/Nur R./Fitri Yuliana)

PKN REQUESTS PRESIDENTIAL CANDIDATE ENDORSEMENT RIGHTS

The Party of Kebangkitan Nusantara (PKN) has raised concerns about the discrimination against political parties proposing presidential and vice-presidential candidates. This issue came to light during a hearing on the Material Testing of Law Number 7 of 2017 concerning General Elections (Election Law). The preliminary review hearing for case number 16/PUU-XXI/2023, which was filed by PKN, was conducted at the Constitutional Court's Plenary HEaring Room on Wednesday, February 15, 2023.

Rio Ramabaskara, as the legal representative of PKN (Petitioner), stated during the hearing that the participation of political parties (parpol) in each electoral period should be interpreted differently, even if the majority of participants remain the same. This means that every electoral period, political parties must re-register, regardless of whether they participated in the previous election or are new participants adopting an active-list system. Consequently, if a political party fails to register, it cannot participate in the next election, even if it currently has representatives in the national parliament.

As an illustration, during the 2019 General Election, there were 14 national political parties designated by the General Election Commission (KPU), along with several local parties from Aceh, namely Parta Aceh, Partai SIRA, Partai Daerah Aceh, and Partai Nangroe Aceh. Furthermore, Eko Prabowo, another legal representative of the Petitioner, mentioned that for the upcoming 2024 General Election, based on KPU Decree Number 518 of 2022, 17 parties have been designated as participants. Additionally, several local political parties from Aceh have also been included in the list. Consequently, there is a difference in party participation between the 2019 and 2024 elections. The fact that political

parties participating in each stage and period of the elections are not the same, but must go through the same predetermined process, has, according to the Petitioner, caused confusion when simultaneous elections impose the requirements of previous elections, especially regarding the endorsement of presidential and vice-presidential candidates.

According to the Petitioner, the decision to hold simultaneous elections where Legislative and Presidential Elections are held together is peculiar, and it becomes awkward and inconsistent to base calculations on different voter data for the implementation of one electoral period. Therefore, the rules should not nullify or eliminate the constitutional rights of other participating political parties who cannot choose between these two requirements. By considering Article 6A paragraph (2) of the 1945 Constitution and relating it to Article 222 of the Election Law, there appears to be a norm vacuum that has resulted in the deprivation of constitutional rights for some valid political parties participating in the elections.

Regarding this petition, Judge of the Constitutional Court Wahiduddin Adams provided advice, including clarifying the legal standing of the Petitioner. Since the testing is related to the presidential threshold, it is essential to elaborate on the direct relationship between the Petitioner and this issue. Meanwhile, Judge of the Constitutional Court Manahan advised to ensure that each element in the petition, from identity, the court's authority, to the petitum, adheres to PMK No. 2 of 2021. Additionally, Manahan emphasized the need for the Petitioner to focus on the specific article under review in the petition. Furthermore, Judge of the Constitutional Court Saldi provided comments regarding the chairman and secretary-general based on the organization's statute, who can represent the party in legal matters, including in the Constitutional Court. The Petitioner should also pay attention to the potential and factual harm to constitutional rights caused by the enforcement of the norm. (Sri Pujianti/Nur R./Raisa Ayuditha)

JUDGES OF THE CONSTITUTIONAL COURT SPEAK ON HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS

Entering the second month of 2023, judges of the constitutional court are once again present in discussion forums with academics. Through public lectures, national seminars, and similar events, participants are invited to gain a deeper understanding of constitutional rights, human rights, and the legal procedures of the Constitutional Court (MK). Here is a glimpse of documentation of the judges of constitutional court in the mentioned discussion forums:

MK Protects Citizens' Right to Education

Education is one of the fundamental goals of the state and a constitutional right guaranteed by the 1945 Constitution. Hence, the Constitutional Court (MK), which plays a role in safeguarding citizens' constitutional right to education, has been involved in numerous cases related to education. This was highlighted by the Judge of the Constitutional Court Daniel Yusmic P. Foekh during the National Seminar on Education organized by the Private Universities Consultation Agency (BMPS) in Jakarta on Friday (January 20, 2023).

Saldi Isra and M. Guntur Hamzah as Speakers in the Indonesian Young Statesmen Festival 2023

Judges of the Constitutional court Saldi Isra and M. Guntur Hamzah were invited as speakers in the Indonesian Young Statesmen Festival 2023 held at the National Library in Central Jakarta on Wednesday (February 8, 2023). Judges of the Constitutional court Saldi Isra delivered a presentation on "The Constitutional Court and Human Rights Protection in Indonesia," while Constitutional Judge M. Guntur Hamzah spoke about "The Judiciary and Digital Culture in the Constitutional Court."

Procedural Law of the Constitutional Court

Judge of the Constitutional Court Daniel Yusmic P. Foekh acted as a resource person in the "University Accreditation" event at Nusa Cendana University, Kupang, on Friday (February 10, 2023). Daniel, who was present on campus, shared various insights about the Constitutional Court and its authorities.

Discussing Labor Law Developments

Judge of the Constitutional Court Manahan MP Sitompul providing an overview at the Book Discussion event organized by Pelita Harapan University on Friday (February 10, 2023). Chief Justice of the Constitutional Court (MK) Anwar Usman attended and delivered a speech during the book discussion entitled "Labor Law Developments and Constitutional Protection of Indonesian Workers' Rights," written by Judge of the Constitutional Court Manahan MP Sitompul, held at the HOPE Building, Pelita Harapan University, Karawaci, Tangerang City, Banten.

Nationality Insight at Nusa Cendana University

Judge of the Constitutional Court Arief Hidayat began his presentation as a resource person at the Nationality Insight Socialization. The event was held at the Faculty of Law, Nusa Cendana University, Kupang, on Saturday (February 11, 2023) afternoon. Judge of the Constitutional Court Daniel Yusmic P. Foekh also delivered a presentation on the position of Pancasila as the state ideology and the manifestation of values in society.

The Constitutional Court's Preparation for Handling PHPU in 2024

Judge of the Constitutional Court Enny Nurbaningsih served as the keynote speaker at "The 2nd International Postgraduate Student Conference" with the theme "How does the Constitutional Court anticipate disputes over the 2024 elections?" organized virtually by the Faculty of Law, Gadjah Mada University (FH UGM), on Friday (February 10, 2023).

Election System in the Constitution

Judge of the Constitutional Court Saldi Isra was the main speaker at the National Seminar and the launch of the Society of Constitutional Law and Election Researchers (Mahapatih) on Wednesday (February 16, 2023). The event themed "The Role of Constitutional Law and Election Researchers in the Success of the 2024 Elections" was organized by Mahapatih and attended by various constitutional law lecturers, students, and legal observers from different regions in Indonesia, held virtually.

Constitutional Discussion at Mekar Sari Constitutional Village

The Constitutional Court (MK) in collaboration with Mekar Sari Constitutional Village held a Constitutional Discussion themed "The Implementation of Pancasila Values in Upholding the Constitution" on Friday (February 17, 2023). Judge of the Constitutional Court Manahan M. P. Sitompul participated as a speaker along with the Dean of the Faculty of Law, Tanjungpura University, Syarif Hasyim Azizurrahman.

Realizing Electoral and Regional Election Justice

The Chief Justice of the Constitutional Court (MK), Anwar Usman, delivered a keynote lecture at the Inauguration of the Utilization of Smart Board Mini Court Room & National Seminar themed "Challenges in Realizing Electoral and Regional Election Justice for 2024" on Friday (February 17, 2023) at the Sultan Agung University (Unissula) Campus in Semarang, Central Java. The event was also attended by the Acting Secretary General of MK, Heru Setiawan, the Chair of the Board of Trustees of the Sultan Agung Endowment Foundation, Ahmad Azhar Combo, the Rector of Unissula, Gunarto, the Dean of the Faculty of Law (FH) Unissula, Bambang Tri Bawono, the Vice Dean 1 of FH Unissula, Widayati, and the Chairman of the Central Java Provincial Election Supervisory Board (Bawaslu), Muhammad Amin, who also acted as a resource person.

The Dynamics of Elections and Regional Elections and the Role of MK

Judge of the Constitutional Court Daniel Yusmic Pancastaki Foekh inaugurated the Utilization of Smart Board Mini Court Room and delivered a public lecture on the theme "Challenges in Realizing Electoral and Regional Election Justice for 2024" on Friday (February 17, 2023) at the University of Balikpapan, East Kalimantan. In front of the academic community of Uniba, Daniel explained the history of elections, regional elections, and the resolution of disputes in Indonesia.

ANTICIPATING THE 2024 SIMULTANEOUS ELECTIONS

In anticipation of the upcoming national grand agenda, the Center for Pancasila and Constitutional Education (Pusdik) has started periodically conducting legal education on the Constitutional Court's procedural law for political parties. In February, the Party of Kebangkitan Bangsa (PKB), the Party of Gerakan Indonesia Raya (Gerindra), and the Indonesian Democratic Party of Struggle (PDI Perjuangan) have the opportunity to learn directly from experts at the Constitutional Court regarding the handling of election dispute cases (PHPU).

National Awakening Party (PKB)

Chief Justice of the Constitutional Court Anwar Usman delivered a speech and officially opened the Technical Guidance (Bimtek) on Election Dispute Resolution for 2024 for the Party of Kebangkitan Bangsa (PKB) on Monday (February 6, 2023).

Great Indonesia Movement Party (Gerindra)

Judges of the Constitutional Court Manahan M.P Sitompul and Saldi Isra provided materials during the Technical Guidance (Bintek) on Election Dispute Resolution for the Party of Gerakan Indonesia Raya (Gerindra) on Monday (February 13) at Pusdik of the Constitutional Court.

Indonesian Democratic Party of Struggle (PDI Perjuangan)

Chiwf Judge of the Constitutional Court (MK) Anwar Usman, as the keynote speaker, opened the Technical Guidance on Election Dispute Resolution Law for the 2024 General Election for the Indonesian Democratic Party of Struggle (PDIP) on Monday (February 20, 2023). Also present on this occasion were the Chairman of the Legal, Human Rights, and Legislative Affairs Division of PDIP Central Executive Board, Yasonna Laoly, as well as the Acting Head of the Center for Pancasila and Constitutional Education (Pusdik of the Constitutional Court), Elisabeth.

FOSTERING CROSS-ISLAND AND CROSS-CONTINENTAL COOPERATION

At the beginning of 2023, to strengthen its role in the fields of law and human rights, the Constitutional Court (MK) has been engaging in discussions to expand cooperation with various institutions. Below are portraits of the audiences and signing of memoranda of understanding conducted by the Constitutional Court in February 2023.

Exploring Cooperation in the Field of Education

Judge of the Constitutional Court Saldi Isra, accompanied by the Acting Secretary General of the Constitutional Court, Heru Setiawan, received an audience from Sascha Hardt, who is an Assistant Professor at the Faculty of Law of Maastricht University (UM), the Netherlands, on Wednesday (January 25, 2023) at the Constitutional Court Building in Jakarta. In the presentation entitled "Expertise, Capacity, and Network: Potential for Cooperation," Sascha, along with Radian Salman and Rosa Ristawati from the Center for Constitutional Studies and Governance of Airlangga University's Faculty of Law, explained several steps in exploring cooperation that can be undertaken by MKRI with the Faculty of Law of Maastricht University.

Memorandum of Understanding with Muhammdaiyah University (UM) of Bima

The Constitutional Court (MK) established cooperation with Muhammadiyah University of Bima (UMBima) on Saturday (February 11, 2023) at UM Bima, Bima, West Nusa Tenggara. This cooperation was officially inaugurated through the signing of a memorandum of understanding by the Acting Secretary General of the Constitutional Court, Heru Setiawan, and the Rector of UM Bima, Ridwan, witnessed by Chief Judge of the Constitutional Court Anwar Usman. The signing event was also accompanied by the inauguration of a smart board mini court room and the organization of a national seminar titled "The Potential of Election/Regional Election Disputes in 2024: The Position and Role of The Constitutional Court of the Republic of Indonesia."

PREPARATIONS FOR PHPU

In anticipation of the grand democratic event in Indonesia, the Constitutional Court, entrusted by the constitution to safeguard the constitutional rights of citizens, is preparing with various necessary measures. Here are some of the preparation agendas carried out by the Constitutional Court and the task force of the constitution.

Trainers Convention Event

The Center for Pancasila and Constitutional Education of the Constitutional Court of the Republic of Indonesia held a Trainers Convention for the Preparation of Technical Guidance on the Law of Election Dispute Resolution for the 2024 General Election on Wednesday (January 25, 2023) in Bogor. The event was directly opened by the Chief Judge of the Constitutional Court, Anwar Usman. In his speech, Anwar explained that MK will soon adjudicate one of the biggest constitutional legitimacy issues of the nation, which is to hear the Election Dispute Resolution for the 2024 General Election.

Consignment of the Finalization of the Drafting of PMK for PHPU

The Constitutional Court held a consignement event related to the Finalization of the Drafting of the Constitutional Court Regulation on Handling Election Dispute Cases and Dispute Cases for Regional Head Elections in Gading Serpong, Tangerang, on Thursday (February 2, 2023). In this event, the Chief Judge of the Constitutional Court, Anwar Usman, gave a speech, attended by Judges of the Constitutional Court and the Constitutional Court staff.

GATHERING FACTS; SEEKING THE TRUTH; THEN, RENDERING JUDGMENT

BISARIYADI
Assistant Constitutional Judge

The court is a space for dispute resolution. The term used in English for resolving disputes through a judicial forum is "adjudication," which does not have an exact equivalent in the Indonesian language. Additionally, there is a form of dispute resolution that is not settled through the court, namely "arbitration." Unlike "adjudication," the term "arbitration" has been absorbed into the Indonesian language. The Indonesian Dictionary (Kamus Besar Bahasa Indonesia) defines "arbitrasi" or "arbitration" as "an intermediary effort in resolving disputes; referee judiciary." However, the definition provided by KBBI does not fully encompass the concept of arbitration and tends to oversimplify, leading to misunderstandings of the concept at hand.

Both adjudication and arbitration are methods of dispute resolution. The notable difference between them lies in the fact that "adjudication" is associated with the court process, while "arbitration" is dispute resolution outside the court known as alternative dispute resolution. Adjudication and arbitration seem to stand at two different poles. Adjudication is dispute resolution through the court system, reviewed, adjudicated, and decided by judges. On the other hand, in arbitration, the mediator in the dispute is not someone in the position of a judge.

Between these two poles, there is also a form of dispute resolution where the referee is neither a judge nor can be called an arbitrator or mediator. This refers to the settlement of violations of professional ethical codes. Cases involving violations of professional ethics cannot be adjudicated by a panel of judges, but they cannot be mediated in an arbitration model either.

Cases of violations of professional ethical codes have unique characteristics. Therefore, ethics hearings are generally led by panels with a deep understanding of the profession in question. When there is a violation of the ethical code in professions like doctors, pilots, notaries, election organizers, judges, there is a need for individuals who understand those professions to review and adjudicate the alleged violations.

Currently, the definition of a profession has been expanded to include state positions. Therefore, ethics hearings are not limited to professions traditionally understood, such as doctors, pilots, notaries, police officers, lawyers, judges, and others. State positions filled by individuals for a certain period are now also required to uphold the dignity of those positions. Individuals who violate the dignity of their positions can be seen as violating the ethical code. This applies to positions such as election organizers, for which the Election Organizers Honorary Council is specifically established. Similarly, members of the House of Representatives (DPR) who are deemed to violate the ethical

code can be reviewed by the Parliamentary Ethics Council as one of the complementing bodies of the House of Representatives. This also applies to judges of constitutional court, for the enforcement of the ethical code of judges the constitutional court, the Constitutional Court Honorary Council is established.

Characteristics and Status of Ethical Judiciary must also be understood correctly to avoid misunderstandings. Although it is an institution authorized to adjudicate and resolve legal cases or disputes, not everyone sitting on the ethics violation review panel holds the position of a "judge" automatically. Therefore, the ethics violation review panel does not necessarily wear the robes of a judge, and during the proceedings, they are not addressed as "Your Honor."

However, the ethics violation review panel should not be filled with just anyone either. Specific qualifications are required for those who wish to review cases of professional ethics violations. They must have a comprehensive understanding of a specific "profession" that falls within their area of review.

In this context, subjectivity plays a role. Those sitting on the ethics violation review panel should have a genuine affinity for the profession. This way, any violations of ethical codes that tarnish the public image of the profession or public office can be met with appropriate penalties. This is to restore the reputation and dignity of the profession and public office that has been tainted by the ethical code violation. Despite having a strong affinity for the profession, the ethics violation review panel has an obligation to render fair decisions supported by convincing arguments and strong evidence.

For anyone sitting on a panel with the authority to resolve legal disputes, whether in the process of adjudication, arbitration, or ethics violation, there is a process of considering everything before reaching a decision. The process of weighing the evidence in relation to legal disputes involves evaluating whether an action or event violates the law.

The spectrum of assessing a legal action varies from concrete to abstract levels. Resolving legal cases concerning specific incidents is generally easier than evaluating violations of constitutional rights resulting from government policies, for example.

Nevertheless, the process of reviewing legal disputes is fundamentally the same. There are three steps involved in the process of reviewing legal disputes: (i) gathering facts, (ii) seeking the truth, and (iii) rendering a fair decision.

The (Distinction) Between Facts and Law

Legal experts have debated the distinction between facts and law for centuries. Some view them as completely separate, while others argue that they are interconnected. There are also those who claim that the distinction between the two is merely a myth. The latter view was expressed by Ronald J. Allen and Michael S. Pardo in their article "The Myth of the Law-Fact Distinction" (2003).

Kelsen stated that facts and law are interconnected, where law determines the facts that become the subject of judicial fact-finding. In his book "General Theory of Law and State" (1945), Kelsen wrote, "The distinction between 'questions of fact' and 'questions of law' cannot rest on the ontological status of 'fact' and 'law.' There is no a priori objective definition of facts independent of legal relevance; rather, the law defines the facts that are the object of judicial fact-finding by

determining what 'facts' constitute the object of 'questions of fact.' 'Facts' are transformed into 'facts in law' exclusively by referencing the context within which they acquire legal significance."

Meanwhile, the view that distinguishes matters of fact from matters of law has been dominant in the thinking of legal scholars until now. Barbara Shapiro, in her writing "The Concept 'Fact': Legal Origins and Cultural Diffusion" (1994), traced the history of legal development and found that this distinction is rooted in the Roman legal system. According to her, the distinction between matters of fact and matters of law in the Roman legal system is reflected in the civil law tradition, where the expression *"da mihi facto dabo tibi ius"* (give me the fact, and I will give you the law) is found.

The idea of distinguishing matters of fact and matters of law in the Roman legal system migrated to the common law tradition. Although there seems to be some "deviation" in applying the concept of the dichotomy between facts and law. The distinction between matters of fact and matters of law can be seen in court models that utilize juries. Jurors are responsible for assessing matters of fact, while judges, trained in the science of law, evaluate matters of law. This is evident in the discourse brought forth by Sir Edward Coke (1818), a renowned classical legal scholar from England, who quoted the Latin adage *"ad quaestionem facti non respondent judices, ad quaestionem juris non respondent juratores,"* which translates to "judges do not answer questions of fact; juries do not answer questions of law," as cited from Black's Law Dictionary.

In Indonesia, as a country with a legacy of the civil law tradition, the judiciary institutionally recognizes the distinction between matters of fact and matters of law. This is seen from the perspective of the differentiation between the functions of the first-instance court and the appellate and cassation courts. The first-instance court is referred to as *"judex facti"* because it reviews and adjudicates matters of fact. In contrast, the appellate and cassation courts are referred to as *"judex jurist"* because they no longer review facts but assess the application of the law considered by the first-instance panel of judges.

Facts generally pertain to realities involving the senses. For example, a witness directly witnesses an incident that subsequently becomes a dispute. The testimony of a witness who directly witnessed the incident is considered a matter of fact. However, it is not limited to that alone. There are also scientific facts, established by scientific knowledge. A researcher with a reputation for expertise may be present in court as an expert witness, providing data and information that can be considered as factual.

The assessment of facts is closely related to evidence. Experts in the field of evidence classify facts into (1) material facts, (2) relevant facts, and (3) irrelevant facts.

Material facts have various designations. Wesley Newcomb Hohfeld, in his classic work "Fundamental Legal Conceptions – As Applied in Judicial Reasoning," identifies and defines material facts as follows: "... operative, constitutive, causal, or dispositive facts are those which, under the general rules that are applicable, suffice to change legal relations" (1978: 32).

The task of the court or other dispute resolution institutions in the fact-finding stage is also to filter the facts that emerge during the hearing. Thus, the panel of judges sorts and selects relevant and irrelevant facts pertaining to the case under review.

A superficial understanding of facts might lead to the conclusion that issues concerning

facts only arise in criminal or civil cases. However, David L. Faigman develops the theory that even in matters of the constitutionality of norms, there are facts that need to be reviewed. His article titled "A Unified Theory of Constitutional Facts" (2006) builds an argument that boldly advocates a theory concerning the assessment of facts in cases of norm constitutionality review.

Every fact must be supported by convincing evidence. A person's knowledge about a fact, whether presented in testimony or expert opinion, must still be cross-reviewed by the panel of judges. In relation to testimony, the principle "one witness is no witness" *(unus testis nullus testis)* applies. Moreover, in expert opinions that are based on expertise, the panel of judges is also obligated to review whether the theories presented by the experts have become universally accepted truths. Additionally, in hearings at the Constitutional Court, expert testimonies are often presented using a comparative law approach. The method of comparative law must be re-reviewed regarding its substance to determine whether it can be accepted as a fact and whether expert testimonies using the comparative law approach are also supported by convincing evidence, reaching the standard of beyond reasonable doubt.

The review of facts in cases of norm constitutionality review does indeed possess its own level of complexity. Its abstract nature makes the assessment of facts supported by evidence seem to have no place in the review of constitutionality review. However, academically, Margarida Lacombe Camargo attempts to convince the public in her writing "Constitutional Evidence" that there is categorization and evaluation of evidence in relation to the review of cases of norm constitutionality review.

Arriving at the Truth

The goal of resolving legal cases, whether in court or through alternative dispute resolution, where facts are disputed by the parties, is to find the truth. This statement does not originate from the author's personal views but is based on the opinion expressed by Robert S. Summers, who states that "A primary function of hearing court procedures (which I will also call adjudicative processes) and of rules of evidence in cases before courts in which facts are in dispute is to find the truth."

Furthermore, the purpose of assessing facts by the panel of judges is, ideally, to find the genuine truth or, in the terms proposed by Summers, substantive truth. The term "ideal" is used because it is not without the possibility that the assessment of facts by the panel of judges will encounter obstacles. Therefore, in the process of compromising with the encountered obstacles to find genuine truth, at least formal legal truth will be achieved.

This is in line with Ho Hock Lai's view that finding the truth is the primary goal but not an absolute one (truth as a primary, but not absolute, goal). Therefore, according to Ho Hock Lai in his book "A Philosophy of Evidence Law," truth as the primary goal, yet not absolute, justifies the existence of hindrances in attaining it. Failure to achieve genuine truth is allowed. In the pursuit of truth, the panel of judges often encounters obstacles that require a compromising attitude.

One form of hindrance encountered, as an example, is the lack of adequate evidence, resulting in limitations in evaluating the actual facts. In criminal cases, for instance, the panel of judges is not allowed to consider evidence obtained illegally (illegally obtained evidence); one example of this is recorded conversations obtained through unauthorized wiretapping. Although such recordings may later become strong evidence pointing to a certain criminal act,

the panel of judges is not allowed to use them as considerations for a ruling.

The distinction between substantive truth and formal legal truth is extensively discussed by Summers in "Formal Legal Truth and Substantive Truth in Judicial Fact-Finding – Their Justified Divergence in Some Particular Cases" (1999).

Legal experts believe that this distinction is inspired by debates among legal scholars from the Soviet legal system. George Ginsburgs, in "Objective Truth and the Judicial Process in Post-Stalinist Soviet Jurisprudence" (1961), states, "All Soviet philosophers and jurists now agree that the mainspring of Soviet legal procedure, civil as well as criminal, is the quest for objective truth."

Rendering Fair Decisions

After the panel of legal resolution, whether judges or arbitrators, arrives at a conclusion leading to the truth, the next task is to deliver the verdict. Based on the legal reasoning process that leads to truth, the form of the decision is binary. In criminal cases, the options for the verdict are guilty or not guilty. Similarly, in cases of constitutional review, the binary choices are compliant or non-compliant with the constitution.

However, rendering a decision is not confined to binary choices alone. There are other considerations that must also be taken into account. For example, in criminal cases, after the panel of judges finds the defendant guilty, their subsequent consideration is to impose a legally appropriate and fair punishment in line with the committed offense.

Similarly, in cases of ethical violations, when the panel has concluded that the accused has committed an ethical violation damaging the honor of a profession, their next consideration is to impose a suitable and fair punishment. The spectrum of options ranges from mild reprimands to severe sanctions resulting in the removal of the offender from the profession, all of which must be chosen by the reviewing panel while considering the principles of justice.

Even in cases of constitutional review, a similar situation arises. When the panel of judges declares that a government policy clearly contradicts the constitution, there is still an opportunity for that policy not to be invalidated immediately. The panel of judges, with considerations of justice, may temporarily suspend its implementation, taking into account the potential chaos that would ensue if the policy were to be annulled immediately.

It is not appropriate for this brief writing to delve extensively into the concept of justice. Besides, the author does not possess the capacity to claim expertise in discussing philosophical matters such as the concept of justice. Let the topic of justice remain in the realm of philosophers or those well-versed in this field.

What the author can do, as a concluding remark, is to remind judges and those entrusted to resolve disputes that acting justly is a rational attitude that should not be tainted by personal biases or emotional viewpoints, "... let not the hatred of a people incite you to act unjustly. Be just; that is nearer to righteousness ..." (Quran, Al Maidah:8).

MEASURING THE DEATH PENALTY FOR DRUG TRAFFICKERS (A COMPARISON BETWEEN AUSTRALIA AND INDONESIA)*

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In the international arena, Indonesia's choice to impose the death penalty on drug traffickers still faces criticism from activists, NGOs, and international governmental organizations (IGOs). Several countries demand the abolition of the death penalty, considering it a violation of the right to life and permitting torture. However, this criticism often seems to fall on deaf ears. On the other hand, Western criticism of third-world countries is usually constructive and accompanied by expert advice and various analyses. Nonetheless, these unilateral claims fail to consider the legal aspects and the reality of drug trafficking in Indonesia. It is unjust for developed countries to perceive Indonesia as archaic and backward merely because it still employs the death penalty for drug traffickers. At this point, throughout the histories of various nations, the application of the death penalty has been deemed appropriate. If there is no abuse of the death penalty, it plays a crucial role in maintaining public safety compared to other punishments whose effectiveness is yet to be proven.

When the two masterminds of the Bali Nine case (a heroin smuggling case involving Australian citizens in Bali in 2005, edited for clarity) were executed in 2015—and it became a major international news—the incident strained the relations between Australia and Indonesia. The then Prime Minister of Australia, Tony Abbott, deemed the death penalty for the two orchestrators of the Bali Nine too harsh and unnecessary. The two perpetrators could have undergone full rehabilitation. To gain a deeper understanding of the implementation of the death penalty in Indonesia, it is essential to review the background of its existence, the relationship between the death penalty and the right to life, the reality of the drug trafficking crisis, as well as alternative punishments that could replace the death penalty.

International Law on Narcotics

It is crucial to comprehend the value and measure in the application of the death penalty before labeling Indonesia as a backward country for still implementing it. One of the primary reasons for opposing the death penalty is its violation of the right to life. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) recognizes the right to life as inherent in every human being. The provision acknowledges the link between the death penalty and the right to life, clearly stated in Paragraph 2, while still tolerating some countries that continue to enforce the death penalty.

However, its application is only permissible for serious or extraordinary crimes. Nevertheless, this writing cannot be taken as a justification for the necessity of the death penalty in

countries that have abolished it. The UN considers that if a country abolishes the death penalty because it is deemed unnecessary, then that country is seen as ready to face "extraordinary crime attacks." This indicates tolerance for the application of the death penalty in several developing countries. As is known, in various international forums, many have not yet acknowledged that not every country can fully guarantee the right to life, as stated, "Abolishing the death penalty worldwide is necessary to enhance dignity and protect human rights."

Furthermore, another criticism regarding the application of the death penalty is the waiting time for its execution. This waiting time is considered a form of torture. Known as the phenomenon of death row, this demonstrates that postponing the implementation of the death penalty can lead to double punishment. This double punishment means that after being sentenced to death, death row inmates also experience imprisonment behind bars in fear and dread. Especially if there is no certainty about the time of execution. It is as if the death row inmates have already experienced death in advance. Such inhumane treatment is considered a violation of Article 7 of the ICCPR, which states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and the dignity of the human person shall be inviolable." However, activists must be cautious in making such accusations against countries that still apply the death penalty.

Regarding the phenomenon of death row in Indonesia, 60 death row inmates have been waiting for more than 10 years for the execution of the death penalty, with four of them waiting for 20 years, and one person died during detention (as of April 2020). In relation to this, the UN stated that the waiting time for the execution of the death penalty is not sufficient evidence of the phenomenon of death row. And even if such a phenomenon does exist, it means that the death penalty becomes a double punishment. Therefore, does this indicate that it is better to direct the decision towards rehabilitation or does it violate the rights of the inmates?

Narcotics Law in Indonesia

Both Australia and Indonesia have signed the ICCPR (in 1972 and 2005, respectively). Then, they have also incorporated international agreements into their legislation, albeit choosing different positions. Since 1985, Australia has opposed the death penalty under any circumstances and for anyone. At that time, all states in Australia implemented this, and it was not until 2010 that the law officially confirmed this. Regarding drug trafficking, the maximum penalty that can be imposed in Australia is 25 years of imprisonment and a specific fine.

Meanwhile, Indonesia, which guarantees the right to life, still maintains the necessity of the death penalty for drug traffickers. The guarantee of the right to life is enshrined in Article 28A and Article 28I of the 1945 Constitution, which state that this right cannot be revoked under any circumstances. Additionally, Indonesia has codified rules regarding the death penalty in Law No. 35 of 2009 concerning Narcotics (Narcotics Law). Six articles in the Narcotics Law stipulate the death penalty for drug traffickers, namely Article 113 paragraph (2), Article 114 paragraph (2), Article 116 paragraph (2), Article 118 paragraph (2), Article 119 paragraph (2), and Article 121 paragraph (2). Capital punishment is only imposed on drug traffickers.

This law shows that the lawmakers in Indonesia perceive the reality that drug smuggling and trafficking contribute to deaths. On the other hand, for Australian citizens who oppose the death penalty under any circumstances, it becomes essential to have a precise understanding between the guarantee of the right to life and the received punishment.

Between the Right to Life and the Death Penalty

In certain respects, the guarantee against the deprivation of the right to life while simultaneously retaining the death penalty presents a contradiction. However, this contradiction is not unique to Indonesia; the core issue is the lack of limitations on the guarantee of the right to life. In theory, a country that upholds the protection of the right to life cannot simply revoke that right under any circumstances.

The issue of the death penalty was brought before the Constitutional Court in connection with the Bali Nine case and was decided in 2007. Based on Constitutional Court Decision No. 2-3/PUU-V/2007, the Court ruled that imposing the death penalty on those convicted of drug-related crimes does not contradict the 1945 Constitution (although three out of nine constitutional judges provided dissenting opinions). Meanwhile, the National Narcotics Agency (BNN) stated, "Extraordinary efforts are needed as a form of the state's prevention against the destructive impact of drug crimes and to act as a deterrent to offenders. Drug crimes not only deprive others of the 'right to life' (resulting in 15,000 deaths of addicts per year or 41 people per day), but also disturb society, damage the younger generation/nation's children. Drugs can rob individuals of their freedom of thought and conscience, religion, and the right to be free from enslavement" (see Constitutional Court Decision No. 2/PUU-V/2005).

BNN also presented various experts from legal and social perspectives. The opinions of these experts stated that both the ICCPR and the 1945 Constitution allow for limitations on individual rights under certain conditions (imprisonment being a form of limiting freedom). Article 28J of the 1945 Constitution states that individual rights are limited following public order and security. This is in line with Article 29(2) of the ICCPR, which states, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The rights possessed by an individual cannot be violated, but if such rights have harmful consequences for others and society at large in terms of security and safety, then individual rights cannot be viewed in isolation. This reality is internationally recognized in the ICCPR. However, until that goal is achieved, violating an individual's rights to save the community is sometimes necessary—if no other solution can be found. The question that arises is whether drug trafficking, which can harm society, can be used as a "justification" for the death penalty?

Narcotics Emergency

Drug trafficking is classified as a serious crime, making the death penalty a fitting punishment. This is because drug trafficking has a detrimental impact on society, economically, socially, and politically. President Joko Widodo referred to the current situation in Indonesia as a narcotics emergency. He explained that around 4.5 million Indonesians are addicted to drugs, and 40-50 people die every day due to drug abuse.

The above comparison of data indicates that a narcotics emergency is indeed occurring in Indonesia. The mortality rate of drug users in Indonesia is seven times higher than in Australia.

Several factors contribute to the occurrence of this situation, namely the affordability of narcotics; significant economic losses; the availability of large quantities of illicit drugs, and a substantial portion of the illicit drug trade taking place from within prisons (which should ideally prevent drug circulation). It must be acknowledged that the population of Australia uses more illicit drugs (4.2 million vs. 3.5 million), and the Australian market is of higher value (USD 7 billion vs. USD 4 billion). However, these figures do not correlate to the number of deaths caused by narcotics.

Conclusion

This article cannot provide a comprehensive overview of all aspects related to combating drug trafficking. Nonetheless, it emphasizes the implementation of the death penalty in developing countries to address the rising trade in illicit drugs as a necessary measure to combat

Comparison Table

Explanation	Comparison		Description
	Indonesia	Australia	
Drug users	3.5 million people or 1.92% of Indonesia's population *)	4.2 million people or the equivalent of 16.4% of Australia's population	*) This figure does not include underage drug users with a total of 6 million people
Number of drug addicts	943,000 people	1 in 6 Australians is a drug addict	
Drug-related death	33 people per day or the equivalent of 44 people per 100,000 people of Indonesia	1,704 people or the equivalent of 6.6 people per 100,000 Australian residents*)	*) Total for 2021.
Drug prices	• Marijuana starts at IDR 1,300 – IDR 100,000 Crystal methamphetamine Rp. 700,000 – Rp. 3.5 million • Ecstasy IDR 185,000 – IDR 900,000	• Marijuana starts at A$ 10 – A$ 20 or the equivalent of IDR 1 million – IDR 2 million • Methamphetamine A$ 175 or the equivalent of IDR 1.9 million per gram (before the pandemic) to A$ 500 or the equivalent of IDR 5.3 million per gram (after the pandemic)	
Income from illicit drug trade	IDR 66 trillion or equivalent to $ 44 billion	A$10.3 million	
Smuggled drugs	4075 metric tons of drugs were successfully smuggled *)	38.5 tonnes seized **)	*) only 10% of smuggled drugs were confiscated in 2018 **) the confiscation was carried out in 2019
Circulation source	50% of drug trafficking is carried out from inside prisons	There are a number of cases that show the existence of drug trafficking from prison, but there is no statistical proof	

deaths resulting from illicit drug abuse.

On the regulatory level, Indonesia, Australia, and several countries worldwide share a similar perspective concerning the trade of illicit drugs. The right to life is not without limitations; rather, if seen as a form of protection, such limitations can be accepted. Once again, around 50% of illicit drug trade is controlled from within prisons. This poses a challenging issue to tackle due to underlying prison system problems, such as budget constraints, overcrowded prisons, and others. If the 50% figure is not considered substantial enough to warrant preventive action, then what measures can be accepted as preventative steps? The state's choice to impose the death penalty on drug traffickers

is viewed as a more preferable option than being passive when its citizens are under threat. Until a better solution emerges, such as tightening border control, reducing social stigma around illicit drug users, reforming the prison system, and improving the healthcare system, the death penalty in Indonesia remains necessary until the drug crisis is no more. This choice represents a step towards safeguarding and strengthening Indonesia. (*)

*) This article is the result of editing and translation from the final project of the ACICIS Student Internship Program in 2023, titled "Australians are Unfair in Their Critique of the Death Penalty in Indonesia in Relation to Drug Trafficking".

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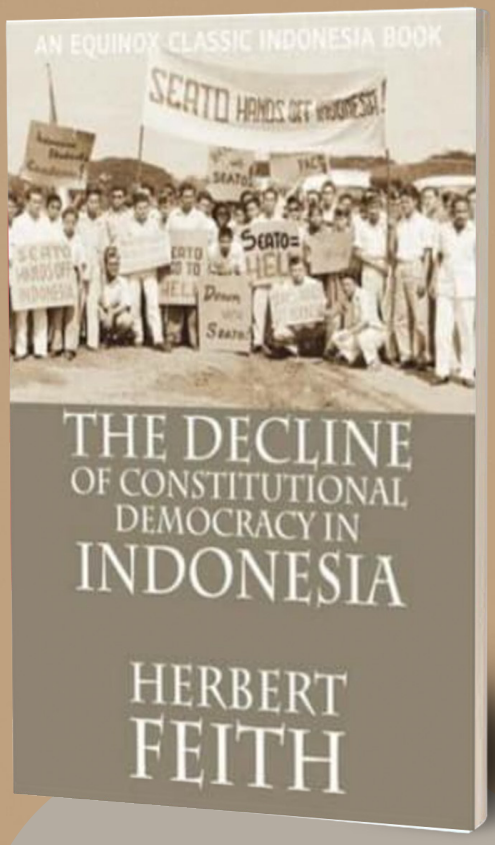
"AGREEMENT ON THE CONSTITUTIONAL DEMOCRACY OF INDONESIA OR OPPOSITION IN REALIZING THE SOCIO-POLITICAL BALANCE OF INDONESIA?"

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

The book titled "The Decline of Constitutional Democracy in Indonesia," written by Herbert Feith, a historian and academic specializing in the heritage of the Dutch East Indies (then known as Indonesia), has presented his finest work in tracing every historical event in this republic. In this classic book, Herbert records and depicts the struggle for social, political, and economic development in Indonesia after its declaration of independence. In his writing, Herbert believes that the political scenario of Indonesia at that time, particularly from mid-December 1949 to March 1957, was filled with various social movements led by national figures. Each of these movements was inherently aimed at the welfare and liberation of Indonesia from the lingering traces of colonialism within Indonesian society. The spirit of nationalism that was agreed upon and proclaimed in Indonesia's declaration of independence and the enactment of the 1945 Constitution of the Republic of Indonesia marked a significant step for the Indonesian nation in realizing a social and political democracy deeply rooted in the hearts of its people.

In his work, Herbert has also represented scholars from other countries who were interested in the national issues of Indonesia during that time, despite the limitations of information available to him, in order to produce a masterful work that can serve as a reference for fellow law and political scholars.

In this book, the emphasis on



BOOK TITLE: THE DECLINE OF CONSTITUTIONAL DEMOCRACY IN INDONESIA

AUTHORS: HERBERT FEITH

PUBLISHER/YEAR OF PUBLISH: CORNELL UNIVERSITY PRESS / 1962

explanation begins with a concept that evolves into interconnected contexts. In this book, Herbert has asserted that the Indonesian nation, despite its dark historical events, is a chosen nation. A nation with myriad political, legal, and national dynamics that remain enduring through time. Civil liberties are the central theme addressed by Herbert in his work. The coercive power of law and political authority in the past did not dampen the spirit of socio-political movements ignited by national figures. The political system of that era, manifested through state transformation from a system burdened by various limitations and colonial pressures to a sovereign nation, was perceived by Herbert to have evolved into a government prioritizing the growth and development of democracy guided by the constitution, often referred to as constitutional democracy. Notably, Herbert also explains in his work that the proliferation of various movements emerging from national figures, particularly those within the elected cabinet at the time, marked the initial stages of the development of national politics in line with Indonesia's goals as an independent nation.

This book also includes several statements from Herbert regarding historical evidence he collected in the form of comprehensive research narratives. The historical evidence he compiled serves as quantitative data to gauge the extent to which these data points can be compared to the various socio-political discourses of that era. Herbert's effort to turn his dissertation into a book form was not exempt from the challenges and obstacles that may arise in each point of his ideas to be written down. Herbert believes that his contribution to researching the historical events of the Indonesian nation can serve as a reference for scholars, including practitioners in the fields of social, political, legal, and economic studies, to disseminate evidence-based information through a series of historical events that cannot be overlooked.

Each inch of Herbert's ideas and concepts that he will put forth begins with various fundamental questions concerning economic policies and the government's commitment in its strategic position at that time. Specifically, Herbert emphasizes that he actually supports the rationality of society based on various precedents from the colonial era that Indonesia endured before achieving independence. These precedents have inevitably positioned the patronage functions of the government as inconsistent and unable to achieve justice and prosperity for the entire Indonesian nation. This naturally did not provide economic benefit for Indonesia's socioeconomic development. A design is needed for the realization of social-political movements capable of reaching every aspiration of the people. Social-political movements began to emerge during the period from 1956 to 1960. The movement, first initiated by the Hatta Cabinet, emphasized the transition and unification of power and sovereignty of the Indonesian nation. This movement essentially underscored the differentiation between a federal state and a unitary state.

This movement produced two significant decisions in Indonesian national history. The first decision was related to deliberative negotiations as the government's effort to take further responsibility in the division of regions in Indonesia. The perspective sought to be addressed by the Hatta cabinet related to the convergence point to unify every region in Indonesia as a territorial entity of the state without separation. This was consistent with the final decision of this movement, which was the creation of the form of the state constitution in the unitary state, accompanied by all the consequences and implications that might occur at that time. Furthermore, this social-political movement was followed by the emergence of the Natsir cabinet movement in 1950-1951. In this movement, a

political formation was proposed to provide perspectives on economic and regional issues, as well as the flourishing political interests of the time, to achieve policies encompassing the entire interests and needs of post-independence Indonesia.

Political leaders and the position of political leaders must be capable of offering new insights into the patterns and benchmarks of personal and communal political development that are not solely reliant on the inconsistency of agreed-upon policies. The demand for the emergence of these movements is to realize the capability and compatibility of political leaders who still hold their positions, ensuring that they continue to exercise their prescriptive power that encompasses various crises and subsequent issues that may arise post-Indonesian independence.

This movement was subsequently followed by the emergence of the Sukiman cabinet movement in 1951-1952. The Sukiman cabinet movement was fundamentally based on the growing political awareness of the entire Indonesian nation as citizens through the formation of political parties. The foundation of these political parties began with the young generation of that era who believed that many speculations arose from the socio-political movements of figures that could not be accounted for in realizing the noble ideals of the Indonesian nation. The growth of political parties and the recognition of their existence became the precursor for Indonesia's efforts to fight for equality and solidarity among members of society. This movement can be seen as a movement that provided sensory awareness to the Indonesian nation to risk their ideas and concepts through communal political movements, no longer limited to personal socio-political movements of figures.

The emergence of the Wilopo cabinet movement in 1952-1953 stemmed from the resignation of the Sukiman cabinet, which had fostered an anticipatory spirit regarding future events, related to the anticipation of achieving leadership not just based on group thinking but capable of inspiring the community. This was in line with the goals of various movements initiated by figures based on the achievement of constitutional democracy. The subsequent development of this movement became the foundation for each member to enhance their individual qualities when facing the political elite of that era. Eventually, the primary foundation of this cabinet movement triggered public reactions. These reactions were related to the need to expand and position the proliferation of figure-driven movements and accommodate the growth of myriad movements within a broader framework of aspirations.

Ideas and concepts emerged to form political parties based on communal spirit to collectively realize the goals and ideals of Indonesia's declaration of independence. The assertion of Indonesia's independence was not limited to the sovereignty of the nation, but also the freedom of the Indonesian people to assemble and associate. Various decisions emerged from public consensus in the form of collective decisions that were not hindered by social backgrounds, whether religious or cultural. These decisions were initiated on a national scale, encompassing all aspects of Indonesia's statehood. During this cabinet's tenure, alongside the idea of forming political parties, concerns also arose about the emergence of a communal party movement based on communist ideology. Various pressures and demands to dissolve this party were voiced by society at that time. The party's ideology and actions, which seemed to sow division, became the primary pressure behind the various threats that jeopardized Indonesia's existence as an independent nation and state. The difficulty in focusing more on the goals of a more inclusive communal movement became the forerunner to the

emergence of various oppositions from the existence of this party.

In his book, Herbert emphasizes that the call for the dissolution of the party was not solely focused on the party's existence but also on the legitimacy of the laws and regulations enforced at that time. Furthermore, not only the party's legitimacy was questioned, but also the legitimacy of the power held by those responsible and entrusted with government positions had been lost. This had repercussions on various claims of influence from national leadership that shaped political organizations, which solely prioritized grouping by uniform professions, such as the extensive involvement of the military profession in these organizations.

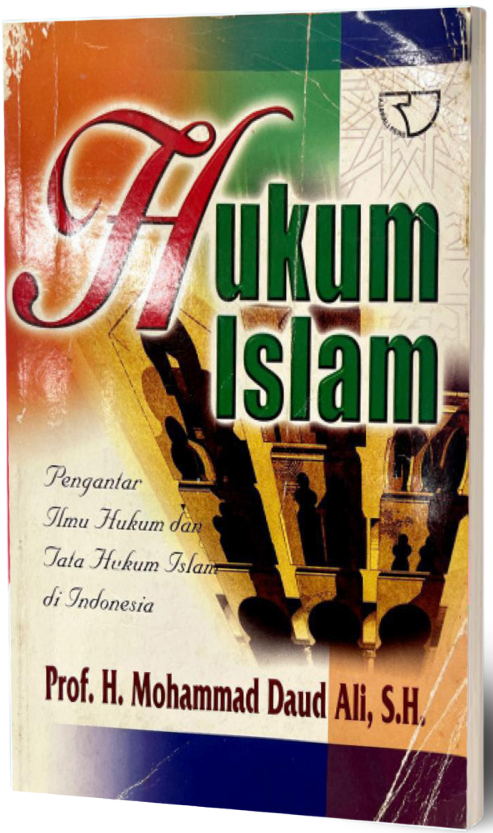
The thematic ideology directed towards the realization of constitutional democracy in every aspect of political and social movements post-independence becomes a necessity to be realized. Many began to question whether it was appropriate for Indonesia to uphold the values of constitutional democracy. Alternatively, had Indonesia already fallen into the dynamics of the nation, including socio-political dynamics that favored and prioritized the interests of certain factions? In this book, Herbert, as the author, raises these questions in a historian's language. Despite being of foreign nationality, he demonstrates concern and a desire to understand the causal relationships behind the series of events that unfolded in the Republic of Indonesia at that time.

Subsequently, the establishment of the Ali Sastroamidjojo cabinet movement in 1953-1955 was followed by the Burhanuddin Harahap cabinet movement in 1955-1956, and then the Ali Sastroamidjojo cabinet movement in 1956-1957. All of these movements triggered the Indonesian government to undergo political transformation. The goals of these three movements were intertwined with the previous movements, aiming to complement the utopian ideals with a glimmer of hope to achieve a more humane and inclusive constitutional democracy that respected differences. The dissatisfaction arising from the extensive formation of these movements undoubtedly birthed a historical fact that must be acknowledged, evaluated, and carried forward. Manipulation and expectations should be countered with collective efforts to meet the demands of the proclamation. Yes, the demand to truly achieve a just, prosperous, and fully independent Indonesian society. The meaning of "independence" should not be misinterpreted or limited to the smallest scope but rather embraced in its broader and true sense.

The conclusion drawn from the emergence of various personal socio-political movements and communal national political movements in post-independence Indonesia, as per Herbert's research, undoubtedly provides a historiographical blueprint for the nation and state of Indonesia. This blueprint is closely related to the effort to build a constitutional democracy that is not solely dependent on political interests. It can be constructed through the formulation and consensus of power rules that are not solely based on efficiency and pragmatically achieving targets. Most importantly, it involves bringing together ideas and concepts from different political rivals, not just homogenizing a particular perspective. Homogenization must be coupled with embracing differences within a framework that works towards realizing constitutional democracy within the nation and state. If this process remains inconsistent and on the brink of vulnerability, it is not surprising that constitutional democracy could become a stimulant for the rejection of the existence of political power that remains indifferent to the diverse issues of the nation. Long live the reformists!

ISLAMIC LAW

OLEH: DR. WILMA SILALAHI, S.H., M.H.



The book titled *Hukum Islam, Pengantar Ilmu Hukum Dan Tata Hukum Islam di Indonesia* "Islamic Law, Introduction to Legal Science and Islamic Legal System in Indonesia" explains the existence of Islamic law based on several reasons, including historical, demographic, juridical, constitutional, and scientific reasons. Islamic law differs from European law, which separates faith or religion from law and law from morality. In the Islamic doctrine, law is an inseparable part of faith or religion in a narrow sense. Law cannot be separated from morality and ethics. This is because the three core components of Islamic doctrine, namely faith or religion in a narrow sense, law, and ethics or morality, form a unified framework that shapes the Islamic religion. Islam without law and morality is not true Islam.

BOOK TITLE: HUKUM ISLAM, PENGANTAR ILMU HUKUM DAN TATA HUKUM ISLAM DI INDONESIA

AUTHOR: PROF. H. MOHAMMAD DAUD ALI, S.H.

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The book also explains that a Muslim is someone who freely chooses to file their will to the will of Allah. A Muslim is someone who accepts the guidance of God and surrenders themselves to follow divine will. This means a Muslim, through the use of reason and freedom, accepts and obeys the will or guidance of God. Furthermore, the laws of God, also known as natural law or Sunnatullah in Islamic teachings, are the regulations or laws of Allah that apply to the universe. Sunnatullah governs the universe and is responsible for the order in the relationships among entities within the cosmos.

Islam, classified by scholars as a revealed religion along with Judaism and Christianity, has a distinct scope and doctrine system compared to other revealed religions. The author explains that Islam, as the final revealed religion, encompasses teachings that form a unified system consisting of creed (faith and belief), sharia (law), and akhlak (morality), governing all human behavior in various relationships – whether between humans and God, humans and themselves, society, objects, or other beings. This foundational framework and scope differentiate Islam fundamentally from Christianity or other religions. The author then describes the basic framework of Islam consisting of: (1) creed; (2) sharia; and (3) akhlak. Islam as a religion has its own integrated system in which its components work together to achieve a goal. Its source is monotheism (Tawhid), which forms the core of the creed. From creed flow sharia and Islamic ethics (akhlak). Sharia and akhlak regulate actions and attitudes of individuals, both in matters of worship and transactions.

Islamic law is law derived from and a part of Islam. Meanwhile, 'Islamic civil law' includes: (1) munakahat, governing everything related to marriage, divorce, and their consequences; (2) wirasah, dealing with inheritance matters, heirs, inheritance property, and distribution of inheritance. Islamic inheritance law is also called fara'id; (3) muamalat, in a specific sense, regulating material matters and rights over property, the interactions in buying and selling, renting, lending, partnerships, and so on. Additionally, Islamic public law includes: (1) jinayat, containing regulations for actions subject to punishment, both under hudud and ta'zir; (2) ahkam as-sulthaniyah, discussing matters concerning the head of state, governance, both central and regional governments, military, taxes, and so on; (3) siyar, governing matters of war and peace, relations with followers of other religions and other states; (4) mukhasamat, governing matters of justice, judiciary, and procedural law.

The author also outlines the main characteristics of Islamic law, namely: (1) being a part of and derived from Islam; (2) having a close and inseparable relationship with faith or creed and Islamic ethics or morality; (3) involving two key terms, namely: (a) sharia, consisting of Allah's revelation and the Prophet Muhammad's Sunnah; and (b) fiqh, which is human understanding and the result of understanding sharia; (4) being divided into two main areas: (a) worship; and (b) transactions; (5) having a layered structure, consisting of: (a) Quranic text (nas); (b) the Sunnah of the Prophet Muhammad (for sharia); (c) human jurisprudential efforts that fulfill the criteria of revelation and Sunnah; (d) implementation in practice, either as judicial decisions or as the practices of the Islamic community (for fiqh); (6) prioritizing obligations over rights, actions over rewards; (7) being categorized as: (a) prescriptive law (hukum taklifi), including the five principles, five types of law, five categories of law, and five classifications of law: permissible (ja'iz), recommended (sunnah), disliked (makruh), obligatory (wajib), and forbidden (haram); and (b) informative law (hukum wadhi'), which includes the causes, conditions, and obstacles for the establishment or occurrence of legal relationships; (8) being universal in nature, applicable to Muslims wherever they are, not limited to a specific place or time; (9) respecting the dignity of humans as holistic beings – spiritual and physical – while upholding their honor and humanity; and (10) the practical application being driven by faith

(creed) and the ethics of the Muslim community.

Furthermore, the author expounds that Islamic law, as an integral part of the Islamic religion, safeguards human rights. Islamic law regards human rights as theocentric, meaning centered on God. While humans are significant, the primacy lies with Allah. Allah is the center of all things. For instance, in the Cairo Declaration of 1990 issued by the Organization of Islamic Cooperation (OIC), this represents the official stance of the Muslim community regarding human rights. It is declared that all rights and freedoms outlined in the declaration are subject to sharia or Islamic law. The sole criterion for human rights is Islamic law.

This book outlines the sources of Islamic law, namely the Quran, the Sunnah, and reason. These three sources of Islamic law are an interconnected continuum. Moreover, the book also elucidates methods of ijtihad (independent legal reasoning), Islamic law, and societal development, principles of Islamic law, and several principles of Islamic law. The growth and evolution of Islamic law are divided into five periods: (1) the era of Prophet Muhammad (610 CE – 632 CE); (2) the era of the Rightly Guided Caliphs (632 CE – 662 CE); (3) the era of Development, Expansion, and Codification (7th – 10th centuries CE); (4) the era of Intellectual Decline (10th – 19th centuries CE); (5) the era of Revival (19th century CE to the present).

The prevailing legal systems include: (1) the Common Law system practiced in the United Kingdom and its former colonies, which, in general, are now part of the Commonwealth nations; (2) the Civil Law system stemming from Roman law, adopted in Western Continental Europe and introduced to colonies or former colonies by Western colonial powers; (3) the Customary Law system in Asian and African nations; (4) the Islamic Law system adhered to by Muslims wherever they reside, both in Islamic countries and in non-Islamic countries where the population is Muslim, spanning North Africa, East, the Middle East (Western Asia), and Asia; and (5) the Communist/Socialist Law system implemented in communist/socialist countries such as the former Soviet Union and its satellites.

Furthermore, the book elaborates on the state of Islamic law, its forms, goals, sources, and structure. In Islamic law, obligations are prioritized over rights, whereas in Western law, rights are prioritized over obligations. Additionally, the author discusses the relationship between customary law and Islamic law, which Western/Dutch authors have deemed an irreconcilable conflict. This issue was resolved by the Minangkabau people themselves through agreements at Bukit Marapalam, the Four Types of Nature Minangkabau Gathering in Bukittinggi, and seminars in Padang. In Minangkabau, an ideology has developed stating that "Islamic law is the refinement of customary law." Thus, in case of disputes between the two, the benchmark becomes the more perfect one, namely Islamic law.

In Aceh society, there has also been development concerning marriage and property matters, including inheritances that are desired to be regulated according to Islamic law. In Aceh, a legal principle has emerged, stating that customary law can only apply and be enforced in society if it does not contradict Islamic law. This is contrary to the reception theory, which posits that Islamic law is not law until accepted by customary law.

According to the author, the position of Islamic law in Indonesia's legal system can be summarized as follows: (1) Islamic law stipulated and determined by legislation can be directly applicable without requiring adherence to customary law; (2) the Republic of Indonesia can regulate a particular issue in line with Islamic law, as long as the regulation only applies to adherents of Islam; (3) the status of Islamic law in Indonesia's legal system is equal and equivalent to customary law and Western law;

thus, (4) Islamic law also serves as a source for shaping future national laws.

Meanwhile, the relationship between Islamic law and National Legal Development is outlined in this book, where Islamic law has been recognized as one of the source materials for national legal development. Consequently, its position and role in the process of national legal development are clearly defined.

This book further elaborates on Religious Courts, which involve the process of dispensing justice based on Islamic religious law for Muslims, conducted in Religious Courts and High Religious Courts. With the enactment of the Religious Judiciary Law, significant and fundamental changes have occurred within the realm of Religious Courts, as follows:

1. Religious Courts have gained independent status, truly equal and on par with General Courts, Military Courts, and Administrative Courts.
2. The names, structure, authority, and procedural law have been made uniform throughout Indonesia. The establishment of unified procedural law for Religious Courts will facilitate the realization of order and legal certainty, fundamentally rooted in justice within the domain of Religious Courts.
3. Enhanced protection for women has been achieved, primarily through granting equal rights to wives in legal proceedings and safeguarding their interests before Religious Courts.
4. The endeavor to extract various principles and doctrines of Islamic law as source materials for the formulation and development of national law through jurisprudence has been solidified.
5. Provisions stipulated in the Basic Law on the Judiciary (1970), particularly Article 10 paragraph (1) regarding the status of courts within the domain of Religious Courts and Article 12 concerning the structure, authority, and procedural law, have been realized.

In the closing section, the author outlines the principles of Islamic inheritance law. It pertains to the law that governs all matters related to the transfer of rights and/or obligations over an individual's wealth after their passing to their heirs. Islamic inheritance law is also referred to as the law of Fara'id, denoting obligations that must be fulfilled. Its sources are mainly the Quran, particularly Surah An-Nisa' (4) verses 11, 12, 176, and the Hadith that contains the Prophet's Sunnah. This law was subsequently elaborated in detail by Islamic jurists through a systematic process that involves qualified individuals, in accordance with their respective contexts, situations, and conditions. As a law originating from Divine revelation conveyed and elucidated by Prophet Muhammad through his Sunnah, Islamic inheritance law encompasses principles that are also found in man-made inheritance laws of certain regions or places. However, due to its sui generis nature (unique in its kind), Islamic inheritance law possesses its distinct characteristics.

Furthermore, the principles of Islamic inheritance law are regulated in the Compilation of Islamic Law and the Jurisprudence of Inheritance, as well as in the context of National Legal Development.

This book comes highly recommended for educators in all fields of study, particularly those seeking to enrich their understanding of Islamic law and inheritance law. It is also a valuable reference for students, legal practitioners, and the general public. Do not miss out on this resource.

Happy reading!

"Reading is one of the ways to enrich the knowledge we possess."

REGIONAL REPRESENTATIVE COUNCIL OR REGIONAL DEPUTY COUNCIL?

LUTHFI WIDAGDO EDDYONO
Researcher of the Constitutional Court

In the amendments to the 1945 Constitution, the naming of a new state institution represents a distinct point of controversy. One of these concerns is related to the naming of the Regional Representative Council, which was initially proposed to be named the Council of Regional Delegates. In a simple sense, it can be understood that the Regional Representative Council indeed evolved from the initial concept of regional delegates and groups that even formed their own faction within the People's Consultative Assembly (MPR).

During the 38th Hearing of the First Hearing of the People's Consultative Assembly in 2000, discussions about the naming of this institution took place. As revealed in the Comprehensive Text of the Changes to the Constitution of the Republic of Indonesia of 1945, Background, Process, and Discussion Results 1999-2002, Volume V General Elections, (Jakarta: Secretariat General and Secretariat of the Constitutional Court; Revised Edition, July 2010), a representative from the Functional Groups Faction (F-PG), Theo L. Sambuaga, brought up this topic. Theo expressed his viewpoint:

"... regarding the name of this Council of Regional Delegates, once again, we are open to discussing it being named the Regional Representative Council. We do not see any issues with this matter. Secondly, the council represents the People's Representative Council, representing the people, whereas the Regional Representative Council represents the regions or spaces. Both have legislative functions, and the function of overseeing the execution of government tasks and the implementation of laws, even though explicitly in the articles, we have also stated that the People's Representative Council holds greater weight in the execution of lawmaking tasks, and this is reflected in the articles we have proposed, both in the People's Representative Council and the Regional Deputy Council."

Theo then conveyed his opinions regarding the constitutional system and the Preamble of the 1945 Constitution and its relevance to the bicameral representative system:

"By establishing a representative system where the People's Consultative Assembly consists of two councils or two chambers, we do not see any inconsistencies here, either implicitly or directly, nor indirectly, with the Preamble of the 1945 Constitution. With this representative system, we do not perceive any aspects that are inconsistent with the principles of the Unitary State of the Republic of Indonesia, the principles of deliberation, and the principles of consensus. Rather, what is emphasized by building a representative system with two separate council bodies is the principle of democratization, transparency, checks and balances, and the sovereignty of the people being implemented to the best of its ability by institutions trusted by the people."

Theo compared this to other countries with bicameral systems as follows:

"In this context, Honorable Chairperson and esteemed members, there might be those who claim that a representative system with two councils or two chambers only exists in countries involving a federal government structure. This claim is actually not accurate, as in reality, many unitary government or unitary state principle countries also implement a bicameral representative system. To name a few examples: the United Kingdom, a unitary state with a bicameral system; Japan, a unitary state with a bicameral system; the Netherlands, a unitary state with a bicameral principle, and several other examples that cannot be mentioned directly here. Therefore,

Ladies and Gentlemen, and esteemed Chairperson, with such a background, perhaps the most logical reason that can be found in establishing this representative system is to provide stronger accommodation and empowerment for the representatives from the regions, which is very reasonable given the vast territory of our country."

Finally, with such background and considerations, the Functional Groups Faction (F-PG) drafted the Draft Constitutional Amendment with the following articles:

Article 21:

Clause (1): "The Regional Deputy Council shall be located in the capital city of the State, with its members chosen by the people through general elections held every five years."

Clause (2): "Members of the Regional Representative Council shall be elected from each province in equal numbers."

Clause (3): "The structure and position of the Regional Deputy Council shall be regulated by law."

On the subsequent occasion, Lukman Hakim Saifuddin from the Functional Groups Faction of the United Development Party (F-PPP) was given the opportunity to express his views on the choice of the name for the Regional Deputy Council, as follows:

"So, we propose that this discussion should be given a separate chapter with the name Chapter of the Regional Deputy Council. Why do we prefer the term 'Regional Deputy Council' over 'Regional Representative Council'? Because, in our view, the term 'representative' connotes something related to the community or the people. So, 'representative' implies representing the people, whereas 'regional,' since it does not refer to individual representation but rather to the representation of a specific region or area, we use the term 'deputy' to distinguish between representatives of the people and deputy of the region. One represents the people, the other represents a specific region."

Regarding the membership of the Regional Representative Council, Lukman explained the following:

"Firstly, each province is represented by five members of the Regional Deputy Council, who are directly elected in special general elections held within the respective region and regulated by law. In essence, the number of members of the Regional Deputy Council is five from each province, and they are directly elected in special general elections held within the respective region. Secondly, members of the Regional Deputy Council are Indonesian citizens who have been citizens of Indonesia for a minimum of ten years and have resided in the respective region for a minimum of five years. So, this requirement regarding members of the Regional Deputy Council is proposed to be applied not only to citizenship but also to the fact that members of the Regional Deputy Council should be domiciled or reside in the region for at least five years."

Regarding the debate over the name "utusan" (deputy) or "perwakilan" (representative), Hamdan Zoelva from the Functional Groups Faction of the Crescent Star Party (F-PBB) expressed his opinion as follows:

"As for the issue of regional council or regional representation, we have no problem discussing the name, which one is more appropriate, but we can also opt for a middle ground by using 'Regional Council.' So, there's no need to use 'utusan' (deputy) or 'perwakilan' (representative); we can simply use the term 'Regional Council,' avoiding any confusion about 'deputy' and 'representative.'"

Furthermore, Hamdan Zoelva presented his party's proposed formulation as follows:

"... we still maintain our previous proposal, suggesting a linkage between the People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Deputy Council (DPD), where they are interrelated. Regarding the Regional Representative Council, we have not specified the article number yet.

Clause (1): "The term of office for members of the Regional Deputy Council is six years."

Clause (2): "Members of the Regional Deputy Council are directly elected by the people in each province, with each province sending five deputies."

REVIEW

INCONSTITUTIONALITY OF INTERRELIGIOUS MARRIAGE

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Marriage is a spiritual and physical union between a man and a woman as husband and wife, aimed at forming a happy and enduring family (household) based on the belief in the One Almighty God. Marriage is a chosen way by the divine to ensure the continuation of human life on Earth while preserving the honor and dignity of humanity. A marriage is considered valid when conducted according to the laws of each respective religion and belief system. The term "laws of each respective religion and belief system" includes provisions of the prevailing legal regulations applicable to their religious groups and beliefs, as long as they are not contradictory or specified otherwise in the Marriage Law. In the execution of a marriage, there may occur a marriage between a man and a woman of different religions, as further elaborated. Interfaith marriage can be defined as a marriage between a man and a woman who each possess different religions or beliefs. Such interfaith marriages can occur among Indonesian citizens (WNI) who have differing religions or beliefs, and can also extend to cases of differing citizenships, wherein one is a foreign national and the other is an Indonesian citizen, yet they have differing religions/beliefs.

The Republic of Indonesia acknowledges various religions and beliefs, making the regulation concerning interfaith marriages a unique challenge. Looking across various countries, regulations on interfaith marriages vary significantly. Some countries permit interfaith marriages, while others either expressly or implicitly prohibit them. Muslim-majority countries tend to prohibit marriages between Muslims and non-Muslims. In contrast, marriage laws in Western countries, such as Canada, do not categorically prohibit interfaith marriages. Furthermore, regulations on interfaith marriages vary among ASEAN countries; some permit them, while others prohibit them. For instance, Malaysia is one of the countries that prohibits interfaith marriages.

Conversely, Singapore is a nation that permits interfaith marriages. Singapore is a secular country, neutral in religious matters, and not biased against individuals with or without religion. Singapore claims to treat all its residents equally, regardless of their diverse religions, and avows not to discriminate against any particular religious community. Additionally, Singapore does not have a state religion. A primary requirement for marriage in Singapore is that the concerned individuals must reside in Singapore for a minimum of 20 consecutive days. Once this condition is met, prospective newlyweds can begin processing their documentation online through the Registration of Marriage office. The Singaporean government provides online marriage registration services to citizens of Singapore, permanent residents, and foreigners alike, totaling 100%.

According to the Catholic faith, interfaith marriages can result in an invalid marriage.

In the eyes of the Catholic Church, a marriage between a Catholic and a non-Catholic, not conducted according to Catholic religious laws, is deemed invalid. On the other hand, in the Protestant perspective, although differing faiths are generally discouraged, interfaith marriages are not categorically prohibited. For instance, in cases where a Protestant marries someone of a different faith, it is often recommended to undergo a civil marriage, with both parties maintaining their respective religious affiliations. In most cases, however, the church does not bless such marriages.

Furthermore, in Hinduism, interfaith marriages are not recognized, and Hindu priests will refuse to officiate such unions. In contrast, Buddhism, as sanctioned by the decision of the Indonesian Sangha Council, permits interfaith marriages, provided that the marriage is conducted in accordance with Buddhist practices. In Buddhism, non-Buddhist partners are not required to convert, but during the marriage ritual, both parties are required to say "in the name of the Buddha, Dharma, and Sangha," representing the Buddhist deities. Thus, Buddhism does not prohibit its followers from marrying individuals of other faiths, as long as the ceremony follows Buddhist customs.

Consequently, regarding the various challenges posed by interfaith marriages, although they have been addressed in Law Number 1 of 1974 on Marriage, the issue has also been brought before the Constitutional Court through a judicial review. The Constitutional Court ruled on this matter in Decision Number 24/PUU-XX/2022, dated January 31, 2023.

Constitutional Court Decision Number 24/PUU-XX/2022

In Decision Number 24/PUU-XX/2022, dated January 31, 2023, the Constitutional Court found that Article 2, paragraphs (1) and (2), and Article 8, letter f of Law 1/1974 were inconsistent with Article 29, paragraphs (1) and (2), Article 28E, paragraphs (1) and (2), Article 27, paragraph (1), Article 28I, paragraphs (1) and (2), Article 28B, paragraph (1), and Article 28D, paragraph (1) of the 1945 Constitution. This was presented by Petitioner: E. Ramos Petege, an Indonesian citizen of the Catholic faith, who intended to marry a woman of the Islamic faith. The Petitioner claimed to have suffered harm due to the application of the reviewed provision, preventing him from marrying someone of a different faith. According to the Petitioner, the provision has conflated the meanings of marriage and religious freedom and constitutes an unjustified state intervention into the private affairs of citizens by determining the validity of marriage solely based on the religious similarity of the prospective spouses. Since the Petitioner had adequately explained the alleged infringement of his constitutional rights resulting from the reviewed legal norm and demonstrated that such constitutional harm is specific, actual, or at least potential and reasonably foreseeable, the Court held that the Petitioner had legal standing to file the petition.

Legally, the Court reasoned that the validity of marriage falls within the purview of religious institutions or organizations with the religious authority or jurisdiction. The registration of marriages by state institutions, on the other hand, aims to provide administrative order and certainty in population records in line with the spirit of Article 28D, paragraph (1) of the 1945 Constitution. Considering the intertwined interests and responsibilities of both religion and state in marriage, as established by Constitutional Court Decision Number 68/PUU-XII/2014 regarding the validity of marriage and Constitutional Court Decision Number 46/PUU-VIII/2010 concerning marriage registration, the Court affirmed the constitutional foundation for the relationship between religion and the state in marriage law, where religion determines the validity of marriage while the state determines its administrative validity within legal boundaries.

Furthermore, with regard to the prohibition of marriages between individuals of different faiths, including their registration, the Court maintains that marriage

is an integral part of religious practice, a form of religious expression. As such, marriage is categorized as an external forum wherein the state may intervene, much like in the management of almsgiving (zakat) or the administration of the Hajj pilgrimage. The state's role is not intended to restrict an individual's beliefs, but rather to ensure that religious expression remains in accordance with the fundamental teachings of the faith. Marriage is an aspect of societal regulation in Indonesia, as codified in Law 1/1974. All actions and behaviors pertaining to marriage matters for citizens must comply with and adhere to prevailing laws and regulations. Legislative provisions concerning marriage are established to regulate and safeguard the rights and obligations of each citizen in relation to marriage. Such regulation is in line with Article 28J of the 1945 Constitution, stipulating that in the exercise of rights guaranteed by the 1945 Constitution, every citizen is obliged to abide by the restrictions determined by law, solely for the purpose of guaranteeing the recognition and respect of the rights and freedoms of others, as well as to fulfill just demands in accordance with moral considerations, religious values, security, and public order in a democratic society based on the rule of law.

In addition to legal regulations, the state's involvement in marriage administration does not extend to interpreting religious doctrine for the validity of marriage. In this context, the state follows the interpretations of religious institutions or organizations to ensure that marriages are conducted in accordance with their respective faiths and beliefs. These interpretations are then incorporated into legal regulations by the state. Thus, the interpretation of the validity of marriage, particularly the prohibition of interfaith marriages, remains the prerogative of religious leaders. In this regard, the interpretations agreed upon by religious institutions or organizations take precedence, rather than individual interpretations that could create legal uncertainty.

The freedom of each religion to conceptualize marriage in accordance with its teachings means that there is no imposition by the state on the conduct of marriages for any particular religion. In this regard, the role of the state is to follow the interpretations agreed upon by religious institutions or organizations. Moreover, one of the sources of substantive law is the teachings of religion and living customary practices within society. Therefore, the existence of Article 2, paragraph (1) in conjunction with Article 8, letter f of Law 1/1974 aligns with the essence of Article 28B, paragraph (1), and Article 29 of the 1945 Constitution, which relate to the state's obligation to ensure the implementation of religious teachings.

Furthermore, according to the Court, Marriage under Law 1/1974 is defined as a bond, both physical and spiritual, between a man and a woman, united by the marital bond and conferred the status of husband and wife. The purpose of marriage is to establish a happy and enduring family within a household based on the One Almighty God [Article 1 of Law 1/1974]. Regarding marriage, Article 28B, paragraph (1) of the 1945 Constitution states not only marriage itself but goes further, referring to "valid marriage." A valid marriage is one performed according to the religious laws and beliefs of each individual. In provision of Article 2 of Law 1/1974, the recording specified in paragraph (2) must be a recording that ensures the validity mentioned in paragraph (1). Thus, Law 1/1974 mandates that recorded marriages must be valid marriages. The requirement for state registration of marriage is an administrative obligation. As for the validity of marriage, the presence of Article 2, paragraph (1) does not preclude or hinder anyone's freedom to choose their religion and belief system.

The provisions of Article 2, paragraph (1) of Law 1/1974 provide a framework for the implementation of marriage, wherein a valid marriage is one conducted in accordance with the religious laws and beliefs of each individual. The implementation of Article 2, paragraph (1) of Law 1/1974 does not impede or obstruct the freedom of each individual to select their religion and belief system.

The principle of regulation within Article 2, paragraph (1) pertains to valid marriages according to religion and belief, not the right to choose religion and belief. The choice to embrace one's religion and belief remains the prerogative of each individual to choose, adopt, and believe in, as guaranteed by Article 29, paragraph (2) of the 1945 Constitution.

In its legal considerations, the Court holds that Article 34 of Law 23/2006 affirms that every citizen who has entered into a valid marriage according to prevailing laws and regulations has the right to record their marriage at the Civil Registry Office for couples of non-Islamic faiths and at the Office of Religious Affairs (KUA) for couples of Islamic faith. The assurance of recording marriages for every citizen can also be extended to marriages sanctioned by the court. Although the explanation indicates that marriages sanctioned by the court refer to marriages between individuals of differing faiths, the Court asserts that this does not imply state recognition of interfaith marriages. In this instance, the state follows interpretations previously issued by religious institutions or organizations possessing the authority to provide interpretations. Should differences in interpretation arise, it is the religious institution or organization of the individual in question that holds the authority to resolve them. As an event related to population matters, the state, or in this case, the government, aims to properly record changes in an individual's population status to ensure protection, recognition, personal status, and legal status in relation to each population event [vide Considerations, Letter b of Law 23/2006], including in this case the recording of marriages carried out through court rulings.

Furthermore, without intending to assess the constitutionality of the provisions within Law 23/2006, the Court asserts that these provisions must be understood as administrative regulations within the realm of population matters by the state. The issue of the validity of marriage must still refer to the norm stipulated in Article 2, paragraph (1) of Law 1/1974, which states that a valid marriage is one performed according to the religious laws and beliefs of each individual. The regulations governing the implementation of marriage recording mentioned above indicate that there are no constitutional issues with Article 2, paragraph (2) of Law 1/1974, which requires each marriage to be recorded according to prevailing laws and regulations. Conversely, the provision for recording marriages for all citizens who have entered into valid marriages demonstrates that the state has played a role in providing assurance, advancement, enforcement, and the fulfillment of human rights, which is the responsibility of the state and must be carried out in accordance with the principles of the rule of law, as established and enshrined in laws and regulations, as guaranteed by Article 28I, paragraphs (4) and (5) of the 1945 Constitution [vide Legal Considerations in Paragraph [3.12] of Constitutional Court Decision Number 46/PUU-VIII/2010].

Therefore, the Court concludes that the petitioner's application concerning the provisions of Article 2, paragraphs (1) and (2), as well as Article 8, letter f of Law 1/1974, has not been found to be in conflict with the principles of guaranteeing the right to adopt religion and engage in religious practices according to one's religion and belief, equality before the law and government, the right to life and freedom from discriminatory treatment, the right to form a family and continue one's lineage, the right to recognition, assurance, protection, fair legal certainty, and equal treatment before the law, as guaranteed by Article 29, paragraphs (1) and (2), Article 28E, paragraphs (1) and (2), Article 27, paragraph (1), Article 28I, paragraphs (1) and (2), Article 28B, paragraph (1), and Article 28D, paragraph (1) of the 1945 Constitution. Thus, the petitioner's application lacks legal justification in its entirety.

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

LOVE, JUSTICE, AND A DIFFERENT FAITH

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The story experienced by Ramos Petege—the Petitioner in Case Number 24/PUU-XX/2022 concerning interfaith marriage—is certainly not the first tale to occur within Indonesian society. In our daily interactions, we often come across stories of romantic relationships that are halted due to differing faiths. The story of Ramos, a Catholic believer, who intended to marry a Muslim woman, was unfortunately unable to fulfill his promise at the wedding due to the lack of accommodation for interfaith marriages under Law Number 1 of 1974 concerning Marriage (Marriage Law).

Ramos brought his case to the Constitutional Court (MK), feeling that his constitutional rights had been violated. He also felt that his freedom to embrace his religion and belief had been compromised, as he would need to give up this freedom if he intended to marry someone of a different faith. He argued that he lost the freedom to continue his lineage by forming a family based on free will.

The decision of the Constitutional Court has been delivered, and the love story ended unhappily for Ramos and his beloved. The Constitutional Court has clarified the constitutional perspective on the relationship between religion and the state within marriage law. In its legal considerations, the Constitutional Court stated that the validity of marriage lies within the domain of religion through institutions or organizations authorized to provide religious interpretations. The state's role is to follow the interpretations provided by these institutions or organizations.

But what if similar love stories were to unfold in several other countries? Let's explore.

PAKISTAN

Marriage in Pakistan is registered and conducted according to the regulations of religious groups. The laws governing the personal laws of Pakistani individuals are equipped with a series of provisions, such as the Child Marriage Restraint Act (Act No. XIX of 1929) and the Dissolution of Muslim Marriages Act, Pakistan, 1939. Under the government regulations concerning Muslim Family Laws Ordinance, 1961, it is stated that these regulations apply to all Muslim citizens of Pakistan, wherever they may be. These regulations encompass marriage, polygamy, divorce, and maintenance.

Because the state explicitly codifies religious regulations, in Pakistan, matters concerning not only Muslim marriages are governed, but also the Christian Marriage Act, 1872, is addressed, as the state manifests religious regulations explicitly.

And it becomes a distinct peculiarity when Muslim Private Law is given precedence over non-Muslim Private Law. Therefore, for instance, a marriage conducted under the Christian faith automatically becomes void if one of the parties converts to Islam (embraces Islam). According to Pakistani law, which is in alignment with Islamic law, Muslim women are not allowed to marry non-Muslim men. Meanwhile, Muslim men can marry non-Muslim women. Consequently, a marriage between a Muslim woman and a non-Muslim man is considered illegal, and the non-Muslim man must convert to Islam in order to marry a Muslim woman.

According to The Human Rights Commission of Pakistan, marriages between Muslim men and Christian women usually pose no problems, although the reverse situation could lead to "issues." A Pew Research Center survey published in 2013 revealed that in Pakistan, only 9% of Muslims felt comfortable with their sons marrying a Christian, and only 3% believed that their daughters could marry a Christian. (Pew Research Center, The World's Muslims: Religion, Politics, and Society, April 30, 2013).

As reported by Fides (a Christian news agency in Pakistan) in October 2014, a Christian man named Akram was arrested for marrying a Muslim girl. The girl's family filed a complaint against him, claiming that he had forced their daughter into marriage, even though Akram had converted to Islam. According to Akram's family, the couple married of their own free will. However, after appearing in court, the girl was allegedly coerced into signing a statement against Akram, and the marriage was declared null and void. The article stated that in Pakistan, the level of religious extremism is too high to tolerate a marriage between a Christian man and a Muslim woman, even if the Christian individual converts to Islam. (access: http://www.fides.org/en/news/36598-ASIA_PAKISTAN_Interreligious_marriage_canceled_after_threats_to_a_young_married_couple)

TURKEY

When the Justice and Development Party (AKP – Adalet ve Kalkinma Partisi) came to power in Turkey in 2002, the government declared a strong commitment to international human rights discourse by issuing several reform packages related to non-Muslim minority communities. Although this policy raised expectations of a more accommodating approach towards non-Muslim communities in Turkey, the hope for equal citizenship had to be postponed due to leadership changes in Turkey over the past decade. The ruling party's emphasis on the character of Sunni Muslim nation and the intensifying desecularization of the public sphere played a role.

However, in a unique twist, an article titled "Mixed Marriage Patterns of Non-Muslims Challenge Sociopolitical and Cultural Structures in Turkey" by Anna Beylunioglu and Ozgur Kaymak, published by the Berkley Center for Religion, Peace, and World Affairs, explains that during the same decade, interfaith marriages have increased in Turkey. With the diminishing non-Muslim population in Turkey, it has become nearly impossible for non-Muslim communities to maintain their living practices within their ethnic enclaves, as they did until about 15 years ago. Turkish citizens are leaving minority districts or traditional urban areas and dispersing into newly formed living spaces within the urban landscape.

As the market for non-Muslim marriages contracts and the likelihood of finding partners from the same religion and community diminishes, it opens

the way for the younger generation of Turkey to interact with individuals from outside their ethnic group, simultaneously increasing the likelihood of encountering people from different religious backgrounds.

The writing of Anna Beylunioglu and Ozgur Kaymak, as quoted in 2021, also presents data and facts indicating an increase in social mobility among the younger generation due to higher levels of education. This has led individuals from non-Muslim communities to enter more prestigious professions and earn better incomes. Ultimately, in line with broader societal changes, the way of practicing religion among non-Muslims has evolved. The younger generation of non-Muslims in Turkey prefers to practice their religious beliefs individually, detached from institutions, and adopts a secular-urban-modern lifestyle.

This is noteworthy as a pivotal observation, that interfaith marriages have paved the way for assimilation and are a primary cause behind objections to interfaith marriages within non-Muslim families. Indeed, it is not an easy task to preserve culture and tradition in interfaith marriages, as the topic of religious conversion often arises before or during such marriages. How to raise children often becomes a difficult matter to agree upon within families with interfaith marriages, such as deciding which religion should be registered on their identities. Should they be baptized? Circumcised? Not to mention the absence of mixed-faith burial grounds in Turkey, where couples in interfaith marriages can be buried together. This not only becomes a concern toward the end of the marriage but also underscores the importance of understanding the relationship between religion and the secular state in the Republic of Turkey.

Love of God, Love of Fellow Beings

Observing what takes place in Pakistan and Turkey, as countries with majority Muslim populations and citizens, what transpires empirically in Indonesian society would undoubtedly bear similarities, even though it might not be exactly the same as the practices in other nations. As a country with a belief in the Divine, Indonesia has pledged to infuse every breath with the spirit of devotion, which in practice is manifested through religious teachings. Therefore, it is understandable that if interfaith marriages are forced, they would encounter numerous challenges in life, particularly in interacting with Indonesian society.

In Greek, there are several words used to express love, including: eros, philia, and agape. Eros is a love based on desire, a directed and focused love for the satisfaction of the lover. Philia is a relational love, a love of friendship. The last is Agape, a love willing to suffer and sacrifice for others. Agape transcends egoistic patterns, goes beyond gender, appearance, wealth, intelligence, and overcomes barriers like religious differences, ethnicity, culture, race, and more.

As we understand the foundation established by the Constitutional Court (MK), it is intriguing to delve into the expression “I Love You,” which we may have just uttered to our loved ones. Has that expression been conveyed and proven with sacrifice? True love is patient, generous, selfless, not seeking personal gain, not rejoicing in injustice but rejoicing in truth.

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