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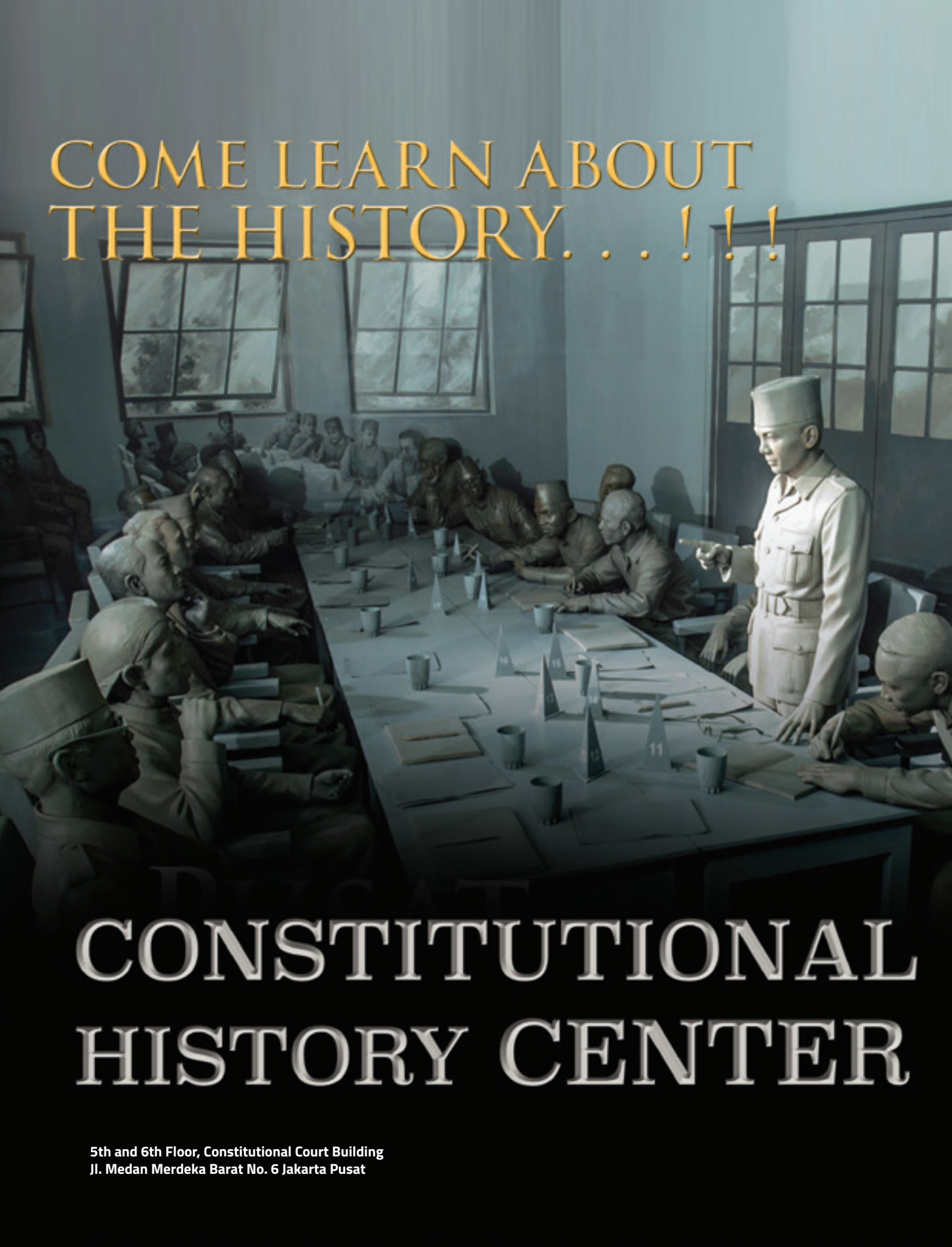
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COVER DESIGN:
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EDITOR'S ADDRESS:
Gedung Mahkamah Konstitusi
Republik Indonesia
Jl. Medan Merdeka Barat No. 6
Jakarta Pusat
Telp. (021) 2352 9000 ▪ Fax. 3520 177
Email: majalahkonstitusi@mkri.id
Website: www.mkri.id

Editorial Greetings

Trials at the Constitutional Court of the Republic of Indonesia (*Mahkamah Konstitusi Republik Indonesia* or "MK RI") continue to be conducted by implementing health protocols related to Covid-19. The enthusiasm of the litigants remains high. Likewise, the Constitutional Court Justices remain active and enthusiastic in leading the trials. Many new cases are presented, while the old cases are in the revision trials until it is time for the hearing by experts as well as the publication of statements from state institutions.

Towards the end of June 2020, the Constitutional Court has also held oral sentence pronouncements for judicial reviews, such as for the Fiduciary Guarantee Law (*UU Jaminan Fidusia*), Traffic and Transportation Law (*UU Lalu Lintas dan Angkutan Jalan* or "UU LLAJ"), Position of Notary Law (*UU Jabatan Notaris*) and others. Meanwhile, the cases that are still on trial until mid-July 2020 and has not yet been decided are the Corruption Eradication Commission Law (*UU Komisi Pemberantasan Korupsi* or "UU KPK"), the Electronic Information and Transactions Law (*UU Informasi dan T ransaksi Elektronik* or "UU ITE", the Criminal Code Procedures (*Kitab Undang-undang Hukum Acara Pidana* or "KUHAP"), and so on.

As for the non-trial activities, the collaborations between the Constitutional Court and a number of campuses as well as institutions continue to exist virtually and often display interesting topics presented by the Constitutional Court Justices. Among them are: "Discussion on the Relationship between State and Religion" and "Political Economy Law during a Pandemic". In addition, there is also other news, for instance, "The Court Holds a Pre-Simulation for the Preparation of Election Dispute" and "The Court Holds IT-Based Simulation of Constitutional Court Regulation on Regional Election Dispute". This is a positive thing not only for the Constitutional Court but also for law and justice observers amidst Covid-19 pandemic.

The July 2020 edition of the KONSTITUSI Magazine as usual presents a variety of distinctive and informative rubrics, starting from the Editorial, Main Report, Courtroom, Action, Talks, and many other rubrics. Hopefully, this will be useful for loyal readers of the KONSTITUSI Magazine. This is it for the editorial note. At last, enjoy reading this magazine. Stay healthy for all of us. Hopefully, Covid-19 pandemic will soon disappear and the situation in our country will improve again.


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DAFTAR ISI

DEPUTY MINISTERIAL POSITION QUESTIONED (AGAIN)

Several public positions within the institutional structure of the state continue to exist even though they are not explicitly mentioned in the 1945 Constitution (*Undang-Undang Dasar* or "UUD 1945"), for example Coordinating Minister, Attorney General, Chairman of the KPK, Deputy Governor, Deputy Regent, and Deputy Mayor. The question is: are these positions automatically unconstitutional or contrary to the Constitution? That also happens with the position of Deputy Minister, which was once questioned, that is now being questioned again in the Constitutional Court. Since it is not stated in Article 17 of the 1945 Constitution, back in 2011 the position of Deputy Minister was considered contrary to the 1945 Constitution by the Petitioner for judicial review of the State Ministry Law. Before finally, the Constitutional Court made its decision in Decree No. 79/PUU-IX/2011.

Prior to the discussion on Deputy Minister, a discourse on the position of the Coordinating Minister had been put forward. Harjono, a former member of the *Ad Hoc* Committee I of the People's Consultative Assembly of the Republic of Indonesia (*Panitia Ad Hoc I Majelis Permusyawaratan Rakyat* or "PAH I MPR") who also served as a Constitutional Justice, once said that the position of Coordinating Ministers was problematic and its position was not clearly regulated in the 1945 Constitution. In the 1945 Constitution, the Minister of Defense (*Menteri Pertahanan*), Minister of Home Affairs (Menteri Dalam Negeri), and Minister of Foreign Affairs (Menteri Luar Neger) have a higher position than other ministers. But in practice, the three of them are under the Coordinating Minister. Harjono asked then, with the fact that there are Coordinating Ministers, do they want to be led by their subordinate ministers? This is unthinkable. Harjono argued, to prevent hierarchical problems, the coordinating ministerial positions should be held by the three fundamental ministers. For example, the Coordinating Minister for Political, Legal, and Security Affairs (*Menteri Koordinator Bidang Politik, Hukum, dan Keamanan* or "Menkopolhukam") is held by the Minister of Defense. Harjono's opinion, regardless of whether he agrees or not, is interesting to study.

A similar but different discourse arises regarding the position of Deputy Regional Heads. Because it is not included in the 1945 Constitution, the position of Deputy Regional Heads is considered unconstitutional and should not exist in the constitutional system. Moreover, in recent years, the phenomenon of 'breaking up of partnerships' between regional heads and deputy regional heads has had implications for public services and political stability in the regions. An opinion has emerged, even if it is deemed constitutional that a Deputy Regional Head is needed, it is proposed that the Deputy Governor not be directly elected but instead appointed by the Regional Head. The official does not come from politicians but comes from the bureaucracy. For example, the Deputy Governor is positioned at the echelon IB level, and Deputy Regent or Deputy Mayor at the echelon IIA. This departs from the initial design of the Deputy Regional Head as a companion to the Regional Head, so that he is elected by the elected Regional Head, not directly elected in pairs by the people. This has also become an interesting discourse.

From the aforementioned discourse regarding the position of the Coordinating Ministers and Deputy Regional Heads, it is known that there are interesting issues that become discourses and of course require answers, both constitutionally and practically. This also seems to be the case with the position of Deputy Minister, even though, the discourse on constitutionality and practicality of the position of Deputy Minister should have ended after the Constitutional Court decided on Decree No. 79/ PUU-IX/2011 dated June 5, 2012.

The Constitutional Court's decree provides a clear constitutional mandate that, as regulated in Article 10 of the State Ministry Law, the existence of a deputy minister in a certain ministry does not contradict the 1945 Constitution and does not contain issues of constitutionality. According to the legal considerations of the decree, whether it is mentioned or not mentioned in the law, the appointment of deputy ministers is actually part of the president's authority. Thus, from a substantial point of view, there is no constitutionality problem. This also means that if something is not explicitly stated in the 1945 Constitution, but is regulated in the Law, it does not conflict with the 1945 Constitution.

Apart from that, what is declared contrary to the 1945 Constitution is the explanation of Article 10 of the State Ministry Law. The explanation of Article 10 of the State Ministry Law, which stipulates that a deputy minister is a career official and not a member of the cabinet, is out of sync with Article 9 paragraph (1) of the State Ministry Law. If the deputy minister is a career official, he or she there will have no position in the organizational structure of the ministry. So, this creates legal uncertainty that is contrary to Article 28D paragraph (1) of the 1945 Constitution.

However, it turns out that the Constitutional Court decision is not considered as a reference. That means it has not answered the question regarding the position of Deputy Ministers. In fact, currently, the constitutionality of the position of the Deputy Minister is questioned again in the Constitutional Court using a slightly different issue. The President's action to have appointed twelve Deputy Ministers seems to make Article 10 of the State Ministry Law be re-examined under case No. 80/PUU-XVII/2019. Let us then look forward to the end of the case and hope that it will provide adequate and complete answers. And, it is possible that in the future the question of the positions of the Coordinating Minister and Deputy Regional Head also require a constitutional confirmation, just like the position of the Deputy Ministers. Greetings from the Constitution!

CONSTITUTIONALITY OF DEPUTY MINISTERS QUESTIONED

President Joko Widodo's decision to appoint 12 deputy ministers results in the re-reviewing of the constitutionality of provisions regarding deputy ministers in the Constitutional Court.

Twelve deputy ministers are inaugurated at the State Palace, Jakarta, on Friday, October 25, 2019. Photo: setneg.go.id

It is not the first time that the constitutionality of the deputy ministerial position is reviewed in the Constitutional Court. In 2011, the National Movement for Corruption Eradication (*Gerakan Nasional Pemberantasan Tindak Pidana Korupsi* or "GN-PK") chaired by Adi Warman submitted a request for a judicial review of Article 10 of Law Number 39 of 2008 concerning the State Ministries (State Ministry Law). Article 10 of the State Ministry Law states, "If there is a workload that requires special handling, the President can appoint a Deputy Minister in a particular Ministry".

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At that time, the Petitioner for case No. 79/PUU-IX/2011 argued that the requirement for deputy ministers to be appointed only from career officials was detrimental to the constitutional rights of GN-PK cadres. In the petition registered on October 25, 2011, the Petitioner also argued that the existence of 20 deputy ministers appointed by President Susilo Bambang Yudhoyono was increasingly burdening the 2011 State Budget, causing a deficit of Rp1.8 trillion. Regarding the request, on April 19, 2012, the Court decided in its legal consideration that Article 10 of the State Ministry Law explained that, from the point of view of the President's authority, to appoint deputy ministers was not a matter of norm constitutionality. This, according to the Court, was because the President's authority to appoint a deputy minister in the context of handling an increasingly heavier workload did not contradict the constitution if it was viewed from the point of prioritizing the goals to be achieved (*doelmatigheid*) or the value of benefits to meet the growing hopes and needs of society.

The Court considered that the legal uncertainty has emerged precisely as a result of the Explanation of Article 10 of the State Ministry Law which was also reviewed by the GN-PK. This article states, "What is meant by a "Deputy Minister" is a career official and is not a member of the cabinet."

Legality Issues

In this decision, the Court stated that there were six legality issues in regulating the position of Deputy Ministers as stated in the Explanation of Article 10 of the State Ministry Law. The six legality problems were; ***first,*** there was an excess in the appointment of deputy ministers so that they seemed inconsistent with the background and philosophy of the formation of the State Ministry Law. The decision read by the Chief Justice of the Constitutional Court for the period 2008 – 2013, Mahfud M. D., explained that the formation of deputy ministers what was based on legal facts at that time, namely a formation without job analysis and job specifications, which clearly gave a strong impression that the deputy minister position was only formed as a political camouflage and political prize.

Second, when appointing a deputy minister, the President did not specify the workload for each deputy minister. This, then, inevitably gave a strong impression that the action was more political than appointing civil servants professionally in public offices. ***Third***, according to the Explanation of Article 10 of the State Ministry Law, the position of deputy ministers is the career of a civil servant. However, in their appointment, it was unclear whether the position was structural or functional. ***Fourth,*** deputy ministers should have been selected through a selection process, however, the facts at the trial revealed that the direct election and inauguration were carried out by the president himself.

Fifth, there were changes to the presidential regulation twice related to the inauguration of deputy ministers in October 2011. This has led to the perception of some people who considered the changes as an effort to justify candidates who did not meet the requirements to

be appointed as deputy ministers. ***Sixth,*** there were complications in the deputy minister's office term. As a bureaucratic official in a career position, the deputy minister's office term should end with the retirement period, not with the ministerial term.

Finally, the Court stated that the Explanation of Article 10 of the State Ministry Law was contrary to the 1945 Constitution and had no binding legal force. "This partially granted the Petitioners' petition. The Explanation of Article 10 of Law Number 39 of 2008 concerning State Ministries contradicts the 1945 Constitution of the Republic of Indonesia," said Mahfud MD reading the Decision No. 79/PUU-IX/2011.

This decision shows that the position of deputy minister remains constitutional because it is a part of the prerogative authority of the president.

Again Questioned

On October 25, 2019, President Joko Widodo appointed 12 deputy ministers to assist several ministers in the Indonesia Onward Cabinet (*Kabinet Indonesia Maju*). This inauguration is based on the Decree of the President of the Republic of Indonesia No. 72/M of 2019 concerning the Appointment of Deputy State Ministers of the Indonesia Onward Cabinet for the Period of 2019-2024. However, the inauguration of 12 deputy ministers has drawn criticism among the public.

Additionally, the existence of the deputy minister was questioned, especially on the constitutionality of the matter. Bayu Segara who is the Chairman of the Forum of Law and Constitutional Studies (*Forum Kajian Hukum dan Konstitusi* or "FKHK") and Novan Lailathul Rizky who is a Sahid University student reviewed the constitutionality of the deputy minister's position. In the petition submitted on December 23, 2019, the Petitioners argued that Article 10 of the State Ministry Law violated its constitutional rights. The Petitioner argued that the deputy minister did not have clear functions and duties as stipulated in Article 9 of the State Ministry Law. Article 9 of the State Ministry Law states that the assistant for the minister is the secretariat general or the secretariat of the ministry.

"In Article 9 paragraphs (1), (2), (3), (4) here (ref. State Ministry Law), it is clear that the organizational structure is arranged, namely the leaders are the ministers. The assistant to the leaders is the general secretary. The main tasks executors are the directorate general.

HUMAS MK/GANIE

Viktor Santoso Tandiasa as the attorney conveys the revision points of the petition for reviewing the State Ministry Law, Monday (13/1) in the Plenary Meeting Room of the Constitutional Court Building. Photo: Public Relations/Gani.

INFOGRAPHIC PHOTO OF DEPUTY MINISTERS OF THE INDONESIA ONWARD CABINET

BUDI GUNADI SADIKIN
Wakil Menteri BUMN

WAHYU SAKTI TRENGGONO
Wakil Menteri Pertahanan

ZAINUT TAUHID
Wakil Menteri Agama

MAHENDRA SIREGAR
Wakil Menteri Luar Negeri

JERRY SAMBUAGA
Wakil Menteri Perdagangan

SUAHASIL NAZARA
Wakil Menteri Keuangan

JOHN WEMPI WETIPO
Wakil Menteri PUPR

BUDI ARIE SETIADI
Wakil Menteri PDTT

ALUE DOHONG
Wakil Menteri LKH

SURYA TJANDRA
Wakil Menteri Agraria dan TR

KARTIKA WIRJOATMODJO
Wakil Menteri BUMN

ANGELA TANOESOEDIBYO
Wamen Pariwisata & Eko Kreatif

The supervisors are the inspectorate general. The supporters are agencies and/or centers, and the executors of main tasks in the regions and/or representatives abroad are following statutory regulations. Based on the systematic description of the deputy minister's position as stipulated in Article 10 of the State Ministry Law, the deputy ministers do not have a clear functional assignment position," explained Viktor Santoso Tandiasa as the Petitioner's attorney for case No. 80/PUU-XVII/2019.

In the preliminary trial which took place on December 10, 2019, Viktor also explained that in the formation of the 1945 Constitution there was absolutely no discussion regarding the deputy minister. According to him, this shows that legislators do not see the urgency of a deputy ministerial position to assist ministerial duties in carrying out government affairs.

"... because the minister has been assisted by the assistant to the leaders, namely the secretary-general and the executor of the main task that is the directorate general with the subordinates who are supervised by the inspectorate general," said Viktor in front of the Panel of Judges led by Chief Justice of the Constitutional Court Anwar Usman.

The Prerogative of the President

Regarding the petition, Ardiansyah, Director of Legislative Law Litigation of the Ministry of Law and Human Rights, gave a statement representing the Government on February 10, 2020. In his statement, the Government stated that the appointment of a deputy minister was the prerogative of the president as the head of government as stipulated in Article 4 paragraph (1) of the 1945 Constitution.

"The provisions of Article 10 of the *a quo* law which principally states the president can appoint or not appoint a deputy minister, also do not contradict Article 17 paragraph

Zainal Arifin Mochtar menjadi Ahli Pemerintah dalam sidang yang digelar pada 12 Maret 2020.

Suasana sidang pengujian ketentuan wakil menteri.

(1) of the 1945 Constitution," said Ardiansyah.

Based on these norms, Ardiansyah continued, constitutionally, the president in implementing Article 17 of the 1945 Constitution was given the technical authority to regulate with the required law. "So, the purpose of having a deputy minister is to ease the heavy burden of the ministries. Thus, if necessary, the deputy minister can be appointed. However, if the ministry's burden is not too heavy, there is no need for a deputy minister," he explained.

Related to the Petitioner's argument that the deputy minister did not have a clear function and task, Ardiansyah said that since the deputy minister's position was formed, the organizational structure of the state ministries has automatically increased. He continued that the addition of the organizational structure of the state ministries implied there was an organizational structure of the state ministries as a whole.

"Looking at the duties, functions, and authorities, the position of deputy ministers is a position in the organizational structure of the state ministry that is one level below the minister and also one level above the secretary-general, inspectorate general and directorate-general. Be the ministers, deputy ministers, and structural positions in the ministerial organization, be the secretary-general, the inspector general and the directorate general; they actually have their respective duties and functions that are clearly different," he explained.

This, continued Ardiansyah, was regulated in the State Ministry Law, Presidential Decree No. 60 of 2012 concerning Deputy Ministers, and Presidential Decree No. 68 of 2019 concerning State Ministry Organization.

Meanwhile, regarding the Petitioners' legal position, the Government did not find a causal relationship between the losses suffered by the Petitioners and the *a quo* article being reviewed which was specific or actual in nature.

Must be Dynamic

The government also presented

HUMAS MK/IFA

Eko Prasojo as an expert from the government after giving his testimony at the judicial review of Article 10 of Law No. 39 of 2008 concerning State Ministries, Thursday (2/7) in the Court Room of the Constitutional Court. Photo: Public Relations/Ifa.

Zainal Arifin Mochtar as an expert in the trial to hear the Expert's testimony on March 12, 2020. The Constitutional Law Expert from Universitas Gajah Mada explained that the function of government and its apparatus must also be dynamic. So, the president in his authority can respond to the dynamics of the government, one of which is by choosing a deputy minister.

"The President as the highest person in charge in the presidential system must have the authority to respond to the possible needs of a dynamic government. And that is actually the origin of when, in my opinion, the constitutional concept gave birth to the position of deputy ministers," said Zainal.

In addition, Zainal said that legally the position of deputy ministers could be interpreted as a new functional position: to help the president and be a part of the leadership structure with a special workload. This means that a deputy minister must fulfill a certain capacity with a certain level of competence. In essence, the public official must adhere to the fulfillment of integrity, accessibility, and capability.

"Thus, although a deputy minister means an assistant in the State Ministry Law, its nature cannot be interpreted singularly and must even be interpreted broadly. That is the nature of helping to formulate and implement ministerial policies," explained Zainal.

To occupy the deputy position with such a special workload, continued Zainal, there must be conditions in the provisions of special needs. Besides, there must be constitutional ethical standards that are universally binding. Regarding the existence of the deputy ministers with this special workload, Zainal saw that he could be an option.

This must be done if there is a special workload needed to assist the president in optimizing the government.

Not Prohibited

In his statement, Zainal emphasized that the position of deputy minister was not explained in the law, but it was not something that could not be made in the government structure. As understood, in the presidential government system, Zainal explained that a president was the head of government. In this case, the president acts as the party who instructs the affairs of the government and its territory for the welfare of the people. This means that this function is carried out by the president in his authority to fill ministerial positions to support his performance.

"So, the president can form a non-ministerial institution, including the appointment of a deputy minister. Because, in the absence of the regulation, it does not mean the argument that the appointment of a deputy minister is prohibited," added Zainal.

Zainal argued that as the holder of power, a president could determine the number of ministers, the composition of the cabinet, and the appointments of other staff. That is why there are no provisions in the State Ministry Law that strictly restrict the president in requiring deputy ministers. "Thus, the position of deputy minister finds its constitutional reasons," said Zainal.

Discretionary Authority

In the last trial which took place on July 2, 2020, the Government also presented Eko Prasojo as an Expert in State Administrative Law. According to him, the appointment of the deputy minister was the prerogative of the president as regulated in Article 4 of the 1945 Constitution.

"This is possible for the president to do because of the dynamics and globalization that are developing in the state. So, in essence, the President is given the authority to design the structure of the government. And it needs to be understood that the constitution does not regulate all the technicalities of government as needed by the president in the implementation of his government," explained Eko, who also served as the Deputy Minister of the Ministry of Administration and Bureaucracy Reform (*Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi* or "PAN-RB) for the 2011-2014 period.

Eko emphasized that even though the position of deputy ministers was not mentioned in the 1945 Constitution, the president could still organize as a form of responding to the workload of the government through discretionary powers. This must be based on the needs and strategic considerations as well as the challenges that would be faced in the implementation of tasks in the ministry. "So, the number of deputy ministers in the government structure must be based on the complexity and priority programs of national development in a particular government," said Eko.

Political Position

In the trial, Eko also did not deny that the position of deputy ministers was political because it was based on the appointment made by the president. However, he added that there was a goal of appointing a deputy minister, namely to carry out certain tasks. So, a deputy minister must have sufficient expertise. Also, the important thing that needs to be present in a deputy minister was the office was expected to originate from the professional community so that they could build legitimacy to assist the minister in tasks that could not be completed by bureaucratic officials.

Eko said that the deputy minister could also act as a bridge in connecting high-ranking state officials who were very bureaucratic in their relationship. Thus, the existence of a deputy minister can also function as a daily task implementer in the ministry to coordinate and ensure synergy between institutions so that the relationship can be well established.

The present case that was just in its last trial is only waiting for the verdict from the Court. Let's wait; whether the position of deputy ministers is against the 1945 Constitution or it is still constitutional. ■

LULU ANJARSARI

THE COURT DECIDES TO REVIEW THE EXISTENCE OF THE REGIONAL INDONESIAN CHILD PROTECTION COMMISSION (KOMISI PERLINDUNGAN ANAK INDONESIA DAERAH OR "KPAID") OF THE CHILD PROTECTION LAW.

THE Constitutional Court rejected the petition for judicial review of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. This application was submitted by the Indonesian Child Protection Commission (*Komisi Perlindungan Anak Indonesia* or "KPAI"), the Aceh Child Supervision and Protection Commission (*Komisi Pengawasan dan Perlindungan Anak Aceh* or "KPPAA") and the Regional Child Supervision and Protection Commission of West Kalimantan Province (*Komisi Pengawasan dan Perlindingan Anak Daerah* or "KPPAD"). Chief Justice of the Constitutional Court Anwar Usman read the decision on Tuesday (19/05/2020) in the Plenary Court Room.

"The judicial verdict, judges and states, first, Petitioner X's petition cannot be accepted. Second, the Court rejects the Petitioners' petition for anything and the rest," said Anwar reading out the verdict of Decree No. 85/PUU-XVII/2019.

The Petitioners argued that the absence of the phrase "including the Regional Child Protection Commission" in the norms of Article 74 paragraph (1) of the Child Protection Law and the absence of the word "obligatory" for regions to form the Regional Indonesian Child Protection Commission as an independent institution under Article 74 paragraph (2) of the Child Protection Law would have an impact on reducing child protection in the regions because KPAI could not reach out and supervise the administration of children's rights in all corners of the Republic of Indonesia. So, it was contrary to Article 28B paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (4) of the 1945 Constitution.

The concern from the Petitioners, who thought that there had been no supervision upon the implementation of children's rights in remote areas of the Republic of Indonesia because there was no longer any socialization task in line with the supervisory function, was determined not fundamental. This was because, principally, Article 76 of the Child Protection Law determined that child protection institutions were institutions that were given the role to conduct socialization. In this context, the supervisory function of KPAI could be synergized with the socialization function. Moreover, the nomenclature used by the law was a child protection institution (in lower case) so that KPAI (including KPAID) could conduct socialization.

Based on the aforementioned considerations, the Court believed that the Petitioners' argument relating to the issue of the unconstitutionality of Article 76A of the Child Protection Law was without sufficient reason and basis in law. (Utami Argawati).

PETITION FOR REGIONAL ELECTION LAW REVIEW NOT ACCEPTED

PETITION for a judicial review of Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors to become the Regional Election Law (*Undang-undang Pemilihan Kepala Daerah* or "UU Pilkada") could not be accepted. The oral pronouncement hearing of Decree No. 13/PUU-XVIII/2020, submitted by Hendra Otekan Indersyah, was held by the Constitutional Court, Tuesday (19/05/2020), led by the Chief Justice of the Constitutional Court Anwar Usman.

Previously, Hendra, who is an entrepreneur, said that he had the constitutional right to become a Deputy Governor of the Special Capital Region of Jakarta (*Daerah Khusus Ibukota Jakarta* or "DKI Jakarta") for the Remaining Office Term (*Sisa Masa Bakti* or "SMB") of 2017-2022. He felt that his constitutional rights have been harmed by the enactment of Article 176 paragraph (2) of the Regional Election Law, that was the Petitioner did not have sufficient opportunities to be nominated or run for himself, starting from the selection of prospective candidates then undergoing a fit and proper test, and so on, in the Deputy Governor Election of DKI Jakarta for the 2017-2022 term.

In the legal considerations read out by Constitutional Justice Suhartoyo, the Court believed that the Petitioners

could not explain the actual or potential constitutional losses suffered by the Petitioners with the enactment of Article 176 paragraph (2) of the Election Law. Even if the Petitioners' description in their petition was considered to be a description of constitutional impairment, the Petitioners would be deemed not to have suffered losses, either directly or indirectly, with the enactment of the *a quo* norm. Moreover, there was also no cause-and-effect relationship between the Petitioners' perceived impairment of his specific constitutional right and the enactment of the *a quo* norm.

Thus, according to the Court, the Petitioner did not have the legal position to act as a Petitioner in the submitted petition. Therefore, the subject of the petition was not considered. (Utami Argawati)

A NUMBER OF ADVOCATES REVIEW HEALTH QUARANTINE LAW

THE Constitutional Court held a trial for the review of Law No. 6 of 2018 concerning Health Quarantine (Health Quarantine Law) on Thursday (11/6/2020). The Petitioners, consisting of Runik Erwanto (Petitioner I) and Singgih Tomi Gumilang (Petitioner II), argued that Article 55 paragraph (1) of the Health Quarantine Law contradicted Article 28D Paragraph (1) and Article 34 Paragraph (1) of the 1945 Constitution.

The Petitioners, who were Advocates, felt aggrieved because the Petitioners could not fly to accompany their clients in the trial due to the implementation of a large-scale social restriction (*Pembatasan Sosial Berskala Besar* or "PSBB") in Jakarta. This was due to the prohibition of flying passenger aircraft imposed by the Ministry of Transportation based on the Minister of Transportation Regulation No. 25 of 2020 concerning Transportation Control during the Eid Al-Fitr 1441 Hijriah Period in the Context of Preventing the Spread of Corona Virus Disease (Covid-19). Meanwhile, the Panel of Judges who handled the Petitioners' case wanted to continue the trial even though the experts and the Petitioners as legal counsel could not attend the trial. This was detrimental to the Defendant and the Petitioners.

According to the Petitioners, the implementation of PSBB had nothing to do with the prohibition of people from entering and leaving Jakarta because PSBB did not prohibit government offices from closing. The prohibition of air transportation due to PSBB and the Eid period were very detrimental to the Petitioners. The government should have imposed a regional quarantine, so that all activities would stop, including the postponement of trials. But the government was worried that if a regional quarantine was imposed, the central government would have to cover all the basic needs of the people in Jakarta. (Sri Pujianti)

AGAIN, THE PROVISION FOR RESIGNATION BEFORE ADVANCING AS REGIONAL ELECTION CANDIDATES REVIEWED

THE requirement to resign as a member of the House of Representatives of the Republic of Indonesia (*Dewan Perwakilan Rakyat Republik Indonesia* or "DPR RI"), a member of the House of Regional Representatives (*Dewan Perwakilan Daerah* or "DPD"), and a member of the Legislative Council (*Dewan Perwakilan Rakyat Daerah* or "DPRD") once being appointed as a candidate pair for the Regional Election is again tested at the Constitutional Court. The inaugural trial to review Law No. 10 of 2016 concerning the Second Amendment to Law No. 1 of 2015 on the Government Regulations in Lieu of Law No. 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Regional Election Law (*UU Pilkada*) was held by the Constitutional Court on Monday (15/6/2020).

Petitioner I for Case No. 22/PUU-XVIII/2020 was Anwar Hafid, a member of the DPR RI and Petitioner II was Arkadius Dt. Intan Baso, a member of the DPRD of West Sumatra. Both of them examined Article 7 paragraph (2) letter s of the Regional Election Law. Salman Darwis as the Petitioners' attorney explained that the provisions of Article 7 paragraph (2) letter s of the Regional Election Law were contrary to the 1945 Constitution, especially Article 7 Paragraph (1), Article 28D Paragraph (3), and Article 28H Paragraph (2). The Petitioner considered that conceptually members of the DPR, DPD, DPRD, and regional head positions were derived from the same positions, namely "political positions". Thus, legislative members who wished or received a mandate from the people to run for the position of regional heads should have not needed to resign from their position.

"In the context of fairness in the nomination of regional heads, the position of legislative members should be equated with incumbent candidates, who are only required to take leave outside the state's responsibility during the campaign," said Salman.

Furthermore, Salman said, to ensure that the nomination of legislative members in regional head positions did not hamper the performance of legislative institutions, the requirement for "resigning" could be applied only to the position of "apparatus of the council" without the need to leave the position of a legislative member. Therefore, in their *petitum*, the petitioners asked the Constitutional Court to state that Article 7 paragraph (2) letter f of the Pilkada Law contradicted the 1945 Constitution and had no binding legal force. (Utami Argawati)

HUSBAND BECOMES TREASON SUSPECT, WIFE SUES CRIMINAL LAW REGULATIONS

THE Constitutional Court held the first trial for the judicial review of Law No.1 of 1946 concerning Criminal Law Regulations (Law 1/1946), on Tuesday (9/6/2020) in the Courtroom. The application registered with No. 33/PUU-XVIII/2020 was filed by Nelly Rosa Yulhiana, the wife of Yudi Syamhudi Suyuti who was named a suspect by the Public Prosecutor for the crime of treason.

The Petitioner felt that her constitutional rights have been impaired by the enactment of Article 14 and Article 15 of Law 1/1946. In their petition, the Petitioner described a concrete case experienced by her husband. The Petitioner's husband has been named a suspect by the Public Prosecutor based on Article 14 and Article 15 of Law 1/1946. This detention resulted in the Petitioner's husband being detained with a demand for a maximum prison sentence of three years and a maximum prison sentence of two years as stated in Article 14 and Article 15 of Law 1/1946. Whereas it should have referred to Article 14 paragraph (1) of Law 1/1946 which stated that the public prosecutor could carry out detention during the examination at the level of investigation, prosecution and court until the final verdict.

"The petitioner thinks that Article 14 paragraph (1) can only submit applications during the examination at the level of investigation, prosecution and court until the final verdict," said Tonin Tachta Singarimbun as the attorney. (Utami Argawati)

LACK OF PPE FOR HEALTH WORKERS, MKHI SUES THE INFECTIOUS DISEASE OUTBREAK LAW

THE inaugural trial of Law No. 4 of 1984 concerning Infectious Disease Outbreaks and Law No. 6 of 2018 concerning Health Quarantine was held by the Constitutional Court on Wednesday (17/6/2020) in the Plenary Court Room. The Indonesian Health Law Society (*Masyarakat Hukum Kesehatan Indonesia* or "MKHI"), represented by Mahesa Paranadipa Maykel as the general chairman, became the Petitioner for Case No. 36/PUU-XVIII/2020.

In this petition, the Petitioner examined Article 9 paragraph (1) of the Infectious Disease Outbreak Law which was considered detrimental to his constitutional rights. Aisyah Sharifa, one of the Petitioners' attorneys said that MKHI intended to collect, foster, and advance the health law in Indonesia through studies, research, training, mediation, advocacy, and discussions in the field of health law for the benefit of humanity and human rights.

"Reviewing the *a quo* case is closely related to the management and regulation of Covid-19, in terms of regulation of equipment resources, human resources, as well as procedures and administration. MKHI has its objectives stipulated in the statutes and bylaws of MKHI and the majority of their members are health workers fighting against Covid-19. It becomes a fact that MKHI has the legal standing to apply for *a quo* petition," explained Aisyah to the Panel of Judges of the Constitutional Court, led by Constitutional Justice Enny Nurbaningsih.

The Petitioner emphasized that it was the government's obligation to provide Personal Protective Equipment (PPE) for health workers who were tasked with fighting Covid-19 as fair legal protection and state responsibility for proper health facilities. The high rate of Covid-19 transmission that is currently occurring, requires the fulfillment of health facilities for health workers, especially PPE, which is the main thing that health workers must obtain in dealing with patients during the Covid-19 pandemic.

"The absence of the government in regulating the provision of PPE has made many health workers work without using PPE that meets standards. In addition, health care facilities that wish to provide PPE independently must face the price of PPE that has risen sharply and has become scarce in the market. This has resulted in the rising number of health workers who have contracted Covid-19 in the last two months, and the main factor that causes medical personnel to be infected is that the PPE available is still lacking and not up to standard," said Aisyah.

As a result, said the Petitioner, much medical personnel became infected and even died. The number and percentage of health workers' conditions were concerning or even terrible. Whereas Article 6 of the Health Quarantine Law states that the government, both central and regional governments are responsible for the availability of resources needed in the administration of health quarantine. Considering that PPE is the main thing needed in the implementation of health services related to Covid-19, the availability of PPE and other needed health resources is the responsibility of the central government and local governments. However, according to the Petitioner, the explanation of what was referred to as the resources required in the implementation of Health Quarantine was not in the article *a quo*.

To that end, in his petition, the Petitioner requested that the Judiciary stated the phrase "can" in Article 9 paragraph (1) of the Infectious Disease Outbreak Law contrary to the 1945 Constitution and had no binding legal force. (Nano Tresna Arfana).

HUMAS MK/GANIE

Chief Justice of the Constitutional Court Anwar Usman attends a virtual celebration of International Day against Drug Abuse, on Friday (26/6) from the 15th floor of the Constitutional Court Building. Photo: Public Relations

CEREMONY IN THE MIDDLE OF PANDEMIC

Even though Indonesia and many countries in the world are struggling to overcome health problems due to Covid-19 pandemic, life must continue. Including the activities of government agencies in carrying out various ceremonies to commemorate national and international important days. From June to mid-July, the Constitutional Court takes part by making adjustments to keep up with the solemn ceremony amid the pandemic.

International Day against Drug Abuse Commemoration

Chief Justice of the Constitutional Court, Anwar Usman, was present virtually at the commemoration of International Day against Drug Abuse 2020 from the 15th floor of the Constitutional Court Building on Friday (26/6/2020). This event was organized by the National Narcotics Agency (*Badan Narkotika Nasional* or "BNN").

The commemoration of International Day against Drug Abuse 2020 was held differently from previous years due to the Corona Virus Disease 2019 (Covid-19) pandemic that hit Indonesia and the rest of the world. This year, the event was held using virtual technology, but it did not diminish the solemnity and noble goal of eradicating drugs in Indonesia. This event was attended virtually by Vice President Ma'ruf Amin. Also appearing to be virtually present were officials from ministries such as the Ministry of Administration and Bureaucracy Reform, higher state institutions including the Supreme Court as well as public figures and members of the society.

This year's International Day against Drug Abuse was broadcasted live by electronic media and through live streaming of social media owned by BNN and other social media. All BNN employees and communities throughout Indonesia participated and spurred this event by carrying out positive activities in the framework of a drug-free Indonesia. ■

NANO TRESNA ARFANA

HUMAS MK/GANIE

74TH BHAYANGKARA DAY CEREMONY

Chief Justice of the Constitutional Court Anwar Usman attends Bhayangkara's 74th Anniversary 2020 from the 11th floor of the Constitutional Court Building, Wednesday (1/7). Photo: Public Relations/Gani.

Chief Justice of the Constitutional Court, Anwar Usman, was present virtually at Bhayangkara's 74th Anniversary 2020 from the 11th floor of the Constitutional Court Building on Wednesday (1/7/2020) morning. President Joko Widodo (Jokowi) led the anniversary ceremony at the State Palace, Jakarta.

In the ceremony of Bhayangkara's 74th anniversary, the National Police carried the theme "A Conducive Public Security and Order for a More Productive Community". The ceremony was broadcasted using technology virtually on the YouTube account of the Presidential Secretariat. Also, the Bhayangkara's anniversary ceremony ran unpretentiously because of the Corona Virus Disease 2019 (Covid-19) pandemic that has hit Indonesia.

The Chief Justice who attended the ceremony appeared to be wearing a white shirt suit. Besides, he also wore a mask following the coronavirus prevention health protocol. The Chief Justice of the Constitutional Court congratulated the anniversary of Bhayangkara. "I wish you a happy 74th Bhayangkara Day to the extended family of the Indonesian National Police," said Anwar.

During the ceremony, Vice President Ma'ruf Amin, National Police Chief General Idham Azis, Defense Minister Prabowo Subianto, and Coordinating Minister for Political, Legal, and Security Affairs Mahfud MD were present. The event was also attended via teleconference by all levels of Regional Police throughout Indonesia. ■

BAYU WICAKSONO

HUMAS MK/IFA

DISCUSSION THROUGH THE USE OF TECHNOLOGY

Constitutional Justice Suhartoyo gives a keynote speech in a collaboration webinar between the Constitutional Court and the Faculty of Law, Islamic University of Indonesia, Tuesday (30/6) at the Constitutional Court Building. Photo: Public Relations/Ifa.

During the pandemic, the Constitutional Court continues to hold various discussions and web seminars with various agencies by utilizing long-distance communication technology. Constitutional Justices are present virtually as speakers to share experiences in the field of law and government.

Independence of Judicial Powers

The Constitutional Court in collaboration with the Faculty of Law, Department of Constitutional Law, Islamic University of Indonesia (*Universitas Islam Indonesia* or "UII") organized a web seminar (webinar) entitled "Two Decades of Development and Dynamics of Judicial Power" on Tuesday (30/6/2020). In the seminar and discussion held via Zoom, Constitutional Justice Suhartoyo was present as a keynote speaker with several other speakers, such as Lecturer in Constitutional Law, Faculty of Law, UII Idul Rishan and Sri Hastuti Puspitasari, as well as the Head of Public Relations and Domestic Cooperation of the Constitutional Court Fajar Laksono Soeroso.

Starting his presentation, Suhartoyo said that after the amendment of the 1945 Constitution, the state development structure was regulated to create state practices that were consistent and balanced and provided guarantees for the realization of democratic values and a state of law. In the 1945 Indonesian Constitution, the division of authority for the holders of judicial power has been explicitly separated. This is because this field holds a key position in state administration, especially in resolving disputes between individuals and individuals, individuals and countries, and institutions with the state.

According to Suhartoyo, the independence of judicial power, especially for justices, both supreme justices and constitutional justices must have accountability and responsibility in the judiciary. This is intended so that with independence, corruption in the judicial power can be minimized. This has been proven by the Constitutional

Court through its independence and impartiality in its decisions. Although these justices are representatives of three lines of power holders in Indonesia, they have ended their ties to the supporting institutions. So, according to Suhartoyo, constitutional justices in making decisions do not represent the institution that submitted them, but are guided by justice based on the constitution. In addition, another important thing to create the independence of judicial power is through transparency to eliminate the abuse of court power, including in the Constitutional Court. For this reason, the Court wholeheartedly carries out its duties by striving to provide information services that are affordable, easy to understand, and fully and well accepted by the public. "It is hoped that through public trust, the Constitutional Court can also produce a modern court that is fast and measurable and based on IT. So that court contact is oriented toward fulfilling the public's need for the law to be created because of the strength of court work in the eyes of the public," explained Suhartoyo.

On the same occasion, the Head of Public Relations and Domestic Cooperation of the Constitutional Court, Fajar Laksono Soeroso, in his presentation entitled "The Relationship between the Constitutional Court and Lawmakers," stated that there are two forms of relationship between the two institutions, namely confrontational and cooperative. These two models have been carried out as a comparative study in five countries such as Estonia, Hungary, Poland, Ukraine, and Romania. In Estonia, Hungary, Poland, the relationship model tends to be cooperative. Two institutions, namely the Constitutional Court and the Lawmakers collectively take the role of protecting the basic rights of the people and achieving the goals of the state.

"Actually, this is an ideal model, but on the other hand, there is the fact that in Ukraine and Romania, these two institutions conflict with each other. They even use the guise of legality and attack each other outside the lines of the constitution and weaken each other's authority," mentioned Fajar in the webinar moderated by Allan FG Wardhana, a lecturer at Department of Constitutional Law, UII.

From these models, Fajar adapted them to the Indonesian state administration, especially how the judicial power, more specifically the Constitutional Court, in relation to the DPR and the President, was rooted in constitutional enforcement. According to Fajar, there are two ways that the relationship between these institutions is enforced. First, the DPR and the President through constitutional legislation. This means that the authority of this institution is attached to the authority to interpret the constitution as outlined in a product called law. Second, the Constitutional Court is an interpreter of the constitution who acts passively when making decisions. Thus, in this case, the constitution is equally enforced by legislation and adjudication.

Meanwhile, Lecturer at UII Idul Rishan, in a paper entitled "State Intervention and Judicial Power," observed that in the past 20 years, judicial independence should not be intervened by anyone. However, according to him, state intervention is sometimes also needed, especially during political transitions. For him, what needs to be watched out for from this intervention is whether it will later harm the performance of the judicial authorities. "So, the politics of law on judicial power is a form of state intervention which has a positive meaning and is necessary," said Idul. In fact, Idul saw that the threat to the independence of judicial power could also come from within the judiciary itself, such as the performance of an organization that had minimal supervision or the threat of the judicial budget. Thus, the personnel in the judiciary, including the justices could maintain their independence.

Furthermore, UII lecturer Sri Hastuti Puspitasari in a presentation entitled "Reform and the Role of the DPR in Recruitment of Justices" stated that basically, reforms directed the state towards creating a democratic political system through steps of democratic consolidation. There is a close relationship between reform, consolidation, and the ultimate goal of democracy. One of the concrete steps is structuring representative institutions, political parties, elections. This includes the involvement of the DPR in the election for the positions of supreme justices and constitutional justices. In the judiciary, this is part of the consolidation. According to her, this consideration is made for several reasons, including that the DPR is an institution that carries out a representative function because it represents the people who elect its members. Furthermore, the DPR is a manifestation of people's sovereignty, the existence of DPR is nothing but a function of checks and balances amongst state institutions, and the DPR's existence is in the context of limiting the power of the president. ■

SRI PUJIANTI

HUMAS MK/IFA

MASSIVE ONLINE TRIALS

Constitutional Justice Saldi Isra becomes a keynote speaker for the 20 Years Hukumonline.com webinar, on Tuesday (14/7) at the Constitutional Court Building. Photo: Public Relations/Ifa.

The Constitutional Court will enter a massive trial agenda when handling disputes over regional head election results. Therefore, the Constitutional Court must immediately design a parallel space for various parties to participate in the online trial. That was the explanation of Constitutional Justice Saldi Isra in a web seminar of 20 Years Hukumonline.com entitled "The Future of Law in Facing the New Normal Era."

"Previously, the Constitutional Court has built an online court system, but now it must be done massively because of this pandemic. It is impossible for all parties in a case to come directly to the courtroom because there are strict health protocols that must be obeyed. So, conducting trials via online facilities will fulfill the needs to hold trials at the Constitutional Court," Saldi explained in the webinar which was also attended by speakers, such as Supreme Court Justice Sofyan Sitompul and a lecturer from Indonesia Jentera School of Law (*Sekolah Tinggi Hukum Indonesia* or "STHI") Bivitri Susanti.

Saldi admitted that the impact of Covid-19 pandemic has been felt by many parties, including the judiciary who then had to adapt various things to carry out their duties and authorities. In fact, the Constitutional Court itself is a judicial institution that has carried out justice long ago by utilizing information and communication technology. So, even during this pandemic, it is not a complicated matter for the Constitutional Court to continue to hold the trial agenda. The Constitutional Court only requires limited adjustments.

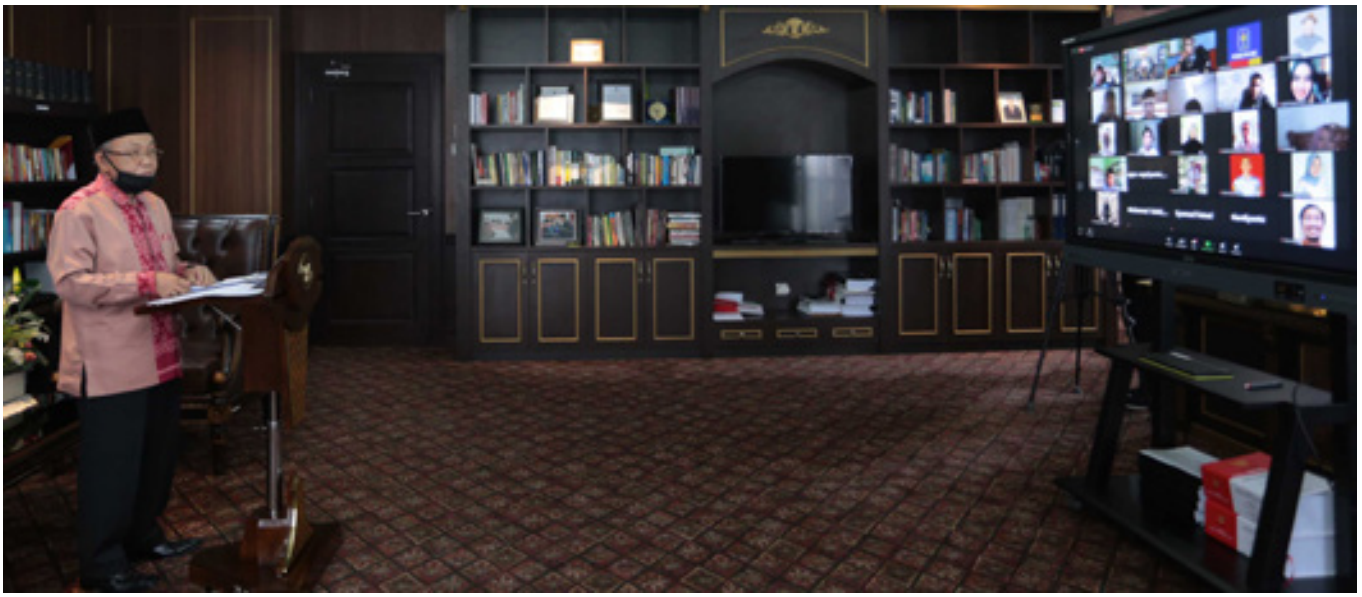
"What is complicated is when the situation forces all parties who have to come to the Constitutional Court to actually conduct online trial activities. Then, how would the Constitutional Court carry out its duty in guaranteeing the right to constitutional justice, especially concerning information security?" said Saldi during the event held on Tuesday (14/7/2020).

Meanwhile, Supreme Court Justice Sofyan Sitompul in his presentation stated that since February 2020, various regulations have been launched by the government in response to the handling of Covid-19 which has hit many countries in the world including Indonesia. Then, currently, the government is also trying to continue to adapt to this pandemic.

The spread of the pandemic, explained Sofyan, forced the e-court system that had been implemented since 2010 in the Supreme Court to adapt to a new normal order for the institution's work system. By maximizing technology and minimizing direct meetings, it was hoped that trials, especially for criminal cases that must be handled by the Supreme Court, could be held by forming a working group to prepare for the intended e-court throughout Indonesia.

Then, a lecturer from STHI Jentera, Bivitri Susanti, found that there were so many changes facing the legal world, not only in court cases but also in legal education amidst Covid-19 pandemic that has hit the world. All fields were forced to adapt to the use of technology. However, Bivitri admitted that she disagreed with the new normal concept. According to Bivitri, in a legal context, there was no need for the term new normal because the basic framework was the rights of citizens. So, Bivitri hoped this pandemic situation to be used as a momentum to evaluate the legal world, starting from the legal framework, fulfillment of rights, and institutions. ■

SRI PUJIANTI



HUMAS MK/IFA

HARMONISASI NEGARA DAN AGAMA

Constitutional Justice Wahiduddin Adams gives a keynote lecture at a webinar in collaboration with Law Faculty of the Islamic University of Indonesia, Friday (17/7) at the Constitutional Court Building. Photo: Public Relations/Ifa.

The Constitutional Court in collaboration with Faculty of Law, Department of Constitutional Law of the Islamic University of Indonesia (*Universitas Islam Indonesia,* or "UII") held a webinar entitled "Building Harmonious Relationships between State and Religion in Civil Society" on Friday (17/7/2020).

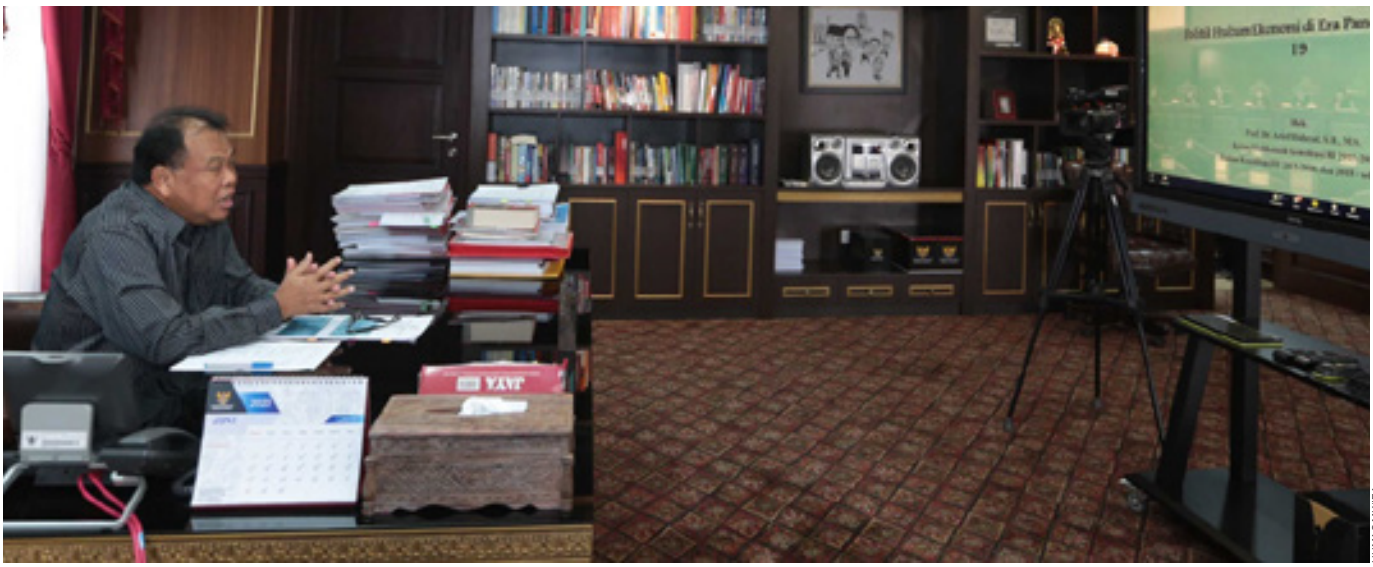
In the seminar and discussion held via Zoom, Constitutional Justice Wahiduddin Adams was present as a keynote speaker with several other speakers, such as a lecturer in Constitutional Law from the Faculty of Law Agus Triyanta, and a lecturer from the Faculty of Law UIN Raden Intan Lampung Yasin Al Arif, and Researcher Bisariyadi from the Constitutional Court.

In his presentation, Wahiduddin Adams said that there were several types of separation between religion and state. Some were not friendly to religion as done in Turkey, and some were friendly like Indonesia. There was also a union of religion and state, called a theocratic state. According to him, Indonesia is a religious national state, every religious adherent was to carry out their religious teachings.

Then, Wahiduddin explained that the articles in the 1945 Constitution provided guaranteed protection for all citizens to adhere to and implement their respective religious teachings. Meanwhile, Constitutional Court Researcher Bisariyadi delivered material on relationship formats between state and religion.

Wahiduddin said that in the past the union of religion and state was very strong because whoever was the leader of the state was also a religious leader. According to him, secularism emerged from the movement of legal people because the law was made into a science, as well as in other social sciences. Meanwhile, the relationship between the state and the Constitutional Court, continued Bisar, was due to the emergence of a social contract stated in the constitution. The establishment of a constitutional court has limited scope for judicial review of the Constitution. According to Bisar, the Constitutional Court has had intersections with religion in several judicial trials against the Constitutional Court. ■

UTAMI



HUMAS MK/IFA

POLITIK HUKUM EKONOMI SAAT PANDEMI

Hakim Konstitusi Arief Hidayat menjadi pembicara dalam acara Webbinar yang digelar oleh Magister Hukum Universitas Sebelas Maret, Sabtu (18/7) di Gedung MK.

Hakim Konstitusi Arief Hidayat menjadi pembicara dalam Seminar Nasional "Politik Hukum untuk Pembangunan Ekonomi Menuju New Normal" pada Sabtu (18/7/2020) pagi. Kegiatan seminar ini diselenggarakan oleh Magister Hukum Universitas Sebelas Maret (UNS) melalui webinar yang diikuti sekitar 200 peserta di antaranya Rektor UNS Jamal Wiwoho, Dekan FH UNS I Gusti Ayu Ketut Rachmi Handayani, para peneliti, pejabat instansi pemerintah maupun para dosen dan mahasiswa dari berbagai perguruan tinggi negeri dan swasta seluruh Indonesia. Dosen Fakultas Hukum UNS Andina Elok Puri Maharani menjadi moderator.

Arief Hidayat menyampaikan, pada 2020 seluruh dunia termasuk Indonesia mengalami situasi yang luar biasa dengan adanya pandemi Covid-19 yang mengubah pola perilaku manusia. "Musuh kita adalah musuh yang tidak kelihatan, secara terselubung mengancam umat manusia. Acuan yang kita lihat, bangsa Indonesia berdasarkan dasar negara Pancasila yang mengandung nilai-nilai dasar bagaimana kita bernegara baik dalam keadaan normal maupun tidak normal seperti yang terjadi sekarang," kata Arief dengan materi "Politik Hukum Ekonomi di Era Pandemi Covid-19". Dikatakan Arief, dengan mengacu nilai-nilai dasar Pancasila, maka semua warga negara harus dilindungi, tidak saja negara yang bertugas melindungi warga negara tapi seluruh stakeholder bangsa Indonesia harus melindungi diri sendiri, keluarganya, masyarakat, hingga semua warga negara dan penduduk Indonesia. Bicara politik hukum dasar, ujar Arief, dapat dilihat dalam Pasal 28A Ayat (1) UUD 1945 mengandung nilai dasar bahwa negara harus melindungi hak hidup sekaligus hak untuk memperoleh kehidupan yang sehat bagi bangsa Indonesia. Kemudian dalam Pasal 34 UUD 1945 menyebutkan dalam rangka melindungi hak hidup bangsa Indonesia, semua harus dipenuhi kebutuhan ekonominya baik dari negara maupun semua stakeholder bangsa secara gotong-royong agar tetap survive. Selanjutnya dalam Pasal 33 Ayat (4) UUD 1945 secara jelas menyebutkan pemenuhan kebutuhan ekonomi dilakukan secara bersama-sama.

"Politik hukum pembangunan ekonomi, kita bisa lihat pembangunan ekonomi harus mengutamakan pertumbuhan yang tinggi dibarengi politik hukum pemerataan, apalagi di masa pandemi seperti sekarang. Kalau tidak dengan upaya-upaya yang luar biasa, maka pertumbuhan ekonomi tidak bisa dilakukan," tegas Arief.

Arief mencermati, secara proporsional antara politik pembangunan ekonomi yang mengutamakan tingkat pertumbuhan yang tinggi diikuti pemerataan, agak diganggu oleh kondisi yang tidak normal sehingga kita mau tak mau harus menjaga hak hidup masyarakat, melindungi masyarakat agar tidak terpapar apalagi sampai meninggal akibat Covid-19. Kalau masyarakat sudah terpapar Covid-19, biaya yang dibutuhkan akan luar biasa menyerap anggaran, tidak saja anggaran negara dan pemerintah, tapi juga anggaraan keluarga, masing-masing individu. Menurut Arief, politik hukum yang dianut adalah politik hukum yang mengandalkan keadilan proporsional. ■

NANO TRESNA ARFANA

HUMAS MK/GANIE

BERSIAP UNTUK PENANGANAN SENGKETA HASIL PHP KADA

Prasimulasi dihadiri Wakil Ketua MK Aswanto, Hakim, Hakim Konstitusi Suhartoyo, Hakim Konstitusi Saldi Isra dan didampingi Panitera MK Muhidin, Kepala Pusat Teknologi Informasi dan Komunikasi MK Budi Achmad Djohari, Senin (6/7) di Aula Lt. Dasar Gedung MK.

Pemilihan Kepala Daerah Serentak 2020 akan segera digelar pada 9 Desember 2020 mendatang. Sebagai lembaga yang diberikan kewenangan untuk menangani permasalahan perselisihan hasil Pemilihan Kepala Daerah Serentak 2020, MK mulai bersiap menyatukan satu pemahaman yang sama berdasarkan hukum acara yang telah disepakati.

Prasimulasi PHP Kada: Satukan Pemahaman

Dalam rangka persiapan penanganan sengketa hasil Pemilihan Kepala Daerah Serentak 2020, Mahkamah Konstitusi (MK) menggelar pra simulasi penerimaan permohonan perkara. Pra Simulasi digelar di Aula Gedung MK, pada Senin (6/7/2020).

Prasimulasi tersebut dipantau oleh Wakil Ketua MK Aswanto, Hakim Konstitusi Saldi Isra, Hakim Konstitusi Suhartoyo dengan didampingi oleh Panitera MK Muhidin, Kepala Pusat Teknologi Informasi dan Komunikasi MK Budi Achmad Djohari, serta Panitera Muda I, II dan III. Di sela-sela memantau pra simulasi, Aswanto menyatakan pra simulasi diadakan untuk menyatukan satu pemahaman yang sama berdasarkan hukum acara yang telah disepakati "Jadi kita harus punya satu pemahaman yang sama mulai dari NUP dan penerimaan permohonan," ujarnya.

Untuk diketahui, Penyelenggaraan Pilkada serentak pada 9 Desember 2020 telah dituangkan dalam Perppu Nomor 2 Tahun 2020 sebagai penundaan Pilkada akibat Covid-19. Rapat hari ini menegaskan keputusan yang sudah diambil oleh pemerintah dan DPR sebelumnya. Selain itu, penyelenggaraan Pilkada serentak ini sudah mendapatkan saran, usulan dan dukungan Gugus Tugas Percepatan Penanganan Covid-19 melalui surat B-196/KA GUGUS/PD.01.02/05/2020 tanggal 27 Mei 2020. ■

UTAMI/LA

SIMULASI BERBASIS IT

Wakil Ketua MK Aswanto berikan pengarahan dalam simulasi dan sinkronisasi Peraturan Mahkamah Konstitusi (PMK) tentang Perselisihan Hasil Pemilihan Kepala Daerah (PHPKada) Berbasis IT digelar Mahkamah Konstitusi (MK) pada Jumat (17/7/2020) pagi.

Simulasi dan sinkronisasi Peraturan Mahkamah Konstitusi (PMK) tentang Perselisihan Hasil Pemilihan Kepala Daerah (PHPKada) Berbasis IT digelar Mahkamah Konstitusi (MK) pada Jumat (17/7/2020) pagi. Ketua MK Anwar Usman bersama para Hakim Konstitusi MK maupun para pejabat dan pegawai MK hadir dalam acara itu. Ketua MK Anwar Usman berharap pelaksanaan sidang PHPKada mendatang akan berjalan dengan baik. "Insya Allah kami dapat menuntaskan tahap yang penting sebagai persiapan menjelang sidang PHPKada. PMK tentang PHPKada yang sudah ditandatangani ketua tim, akan segera diserahkan ke lembaga negara terkait," kata Anwar.

Sementara Wakil Ketua MK Aswanto menjelaskan simulasi dan sinkronisasi PMK PHPKada 2020 sudah dilakukan minggu lalu, membahas batang tubuh dan tahapan-tahapan dalam PMK PHPKada. Namun menurut Aswanto, pada Jumat 17 Juli 2020 kembali dibahas karena perlunya dukungan sistem teknologi informasi, (information technology, IT) MK. "Tim IT MK siap mem-back up melalui sistem yang sesuai dengan norma-norma yang kita masukkan dalam batang tubuh dan tahapan-tahapan PMK PHPKada," tandas Aswanto.

Kepala Pusat Teknologi Informasi dan Komunikasi (PTIK) MK Budi Achmad Djohari memaparkan presentasi terkait PMK PHPKada Berbasis IT. Disampaikan Budi, ada dua jenis permohonan untuk PHPKada yakni secara offline dan online. Pemohon offline adalah pemohon atau kuasanya yang datang langsung ke MK, membawa berkas permohonan dan langsung diterima petugas penerima permohonan. Setelah itu mendapat nomor urut pengajuan permohonan.

"Selain itu dicatat waktu saat pemohon mengajukan permohonan dan dilakukan verifikasi berkas. Berikutnya, permohonan diinput oleh pegawai MK hingga menjadi akte pengajuan permohonan pemohon atau disebut AP3," kata Budi.

Sedangkan pemohon online, ungkap Budi, bisa melalui aplikasi Sistem Informasi Penanganan Perkara Elektronik (SIMPEL) yang telah dibuat MK atau diarahkan ke pojok digital yang sudah dsiapkan MK. "Pemohon melakukan entry data permohonan, baik di rumah atau di pojok digital. Setelah mendapat tanda terima permohonan, dicatat waktu saat mengajukan permohonan, dilakukan verifikasi, hasilnya berupa AP3," jelas Budi.

Baik permohonan secara offline dan online, lanjut Budi, berkasnya diterima oleh petugas penerima berkas permohonan dan diperiksa kelengkapan berkas permohonan. Selanjutnya ada kemungkinan terjadi perbaikan maupun penambahan berkas permohonan dan kemudian diregistrasi oleh bagian penerimaan permohonan di MK. Setelah itu dicatat dalam Buku Registrasi Perkara Konstitusi (BRPK) dan Akta Registrasi Perkara Konstitusi (ARPK). ■

NANO TRESNA ARFANA NRA

HUMAS MK/IFA

MEMBUKA RUANG KERJA SAMA INSTANSI

Ketua MK Anwar Usman bersama Sekjen MK M. Guntur Hamzah menerima audiensi dari Dewan Pimpinan Pusat Kongres Advokat Indonesia, Selasa (30/6) di Gedung MK.

Sebagai lembaga yang bertugas memberikan pemahaman konstitusi bagi setiap warga negara dan lembaga, Mahkamah Konstitusi terus berupaya menjalin dan membuka ruang kesempatan kerja sama dengan berbagai pihak. Hal ini dilakukan guna semakin menggaungkan peran MK dalam meningkatkan kesadaran berkonstitusi setiap elemen masyarakat di Indonesia.

Audiensi DPP KAI

Ketua Mahkamah Konstitusi (MK) Anwar Usman didampingi Sekjen MK M. Guntur Hamzah, Plt. Kepala Biro Hukum dan Kepaniteraan MK Tatang Garjito, Kepala Biro Humas dan Protokol MK Heru Setiawan menerima audiensi Dewan Pimpinan Pusat Kongres Advokat Indonesia (DPP KAI) di ruang kerjanya, lantai 15 Gedung MK pada Selasa (30/6/2020) siang.

Di awal pertemuan, Presiden KAI Siti Jamaliah Lubis menerangkan sejarah terbentuknya KAI pada 2008 di Jakarta, dihadiri sekitar 5.000 advokat se-Indonesia. Saat itu terpilih Indra Sahnun Lubis sebagai Ketua KAI yang pertama. Selanjutnya pada 2014 diadakan kongres advokat se-Indonesia kedua di Palembang. Kemudian pada 2019 diadakan kongres advokat se-Indonesia ketiga di Malang dan Siti Jamaliah Lubis terpilih sebagai Presiden KAI.

"Saat ini KAI memiliki 34 DPD KAI yang tersebar di seluruh provinsi Indonesia dan DPC KAI di setiap kabupaten. Jumlah anggota KAI saat ini mencapai 30.000 orang. Kami mengucapkan terima kasih kepada MK bahwa anggota kami sudah beberapa kali mengikuti bimtek yang diselenggarakan MK untuk menghadapi pilkada, pemilu maupun pilpres," ungkap Siti yang hadir bersama Wakil Presiden KAI Bidang Organisasi Tommy Sihotang, Wakil Presiden KAI Irman Putrasidin Bidang Antarlembaga serta Ketua Bidang Antarlembaga KAI Budi Rahman.

Siti menuturkan, KAI sudah menyelenggarakan pendidikan advokat, sehingga KAI berharap ada narasumber dari MK untuk mengisi materi pendidikan advokat yang anggotanya tersebar di seluruh Indonesia. "Kerjasama kami dengan MK sangat kami harapkan untuk sekarang dan ke depan," ucap Siti.

"Kedatangan kami ke MK tidak ada tujuan khusus. Kedatangan kami adalah bagian dari Bapak-Bapak juga sebagai orang-orang yang akan menerapkan hukum nantinya. Kami berharap agar para anggota kami diberikan kesempatan lagi mengikuti Bimtek MK menghadapi pilkada serentak mendatang," tambah Tommy Sihotang dari KAI.

Terhadap hal-hal yang disampaikan delegasi KAI ini, Anwar Usman menyatakan rasa terima kasih dan apresiasi yang besar. Bahwa MK menyambut positif terkait penyelenggaraan bimtek bagi para advokat yang tergabung dalam KAI dan penyelenggaran pendidikan advokat oleh KAI. Dikatakan Anwar, MK akan terus melakukan sosialisasi konstitusi secara menyeluruh ke berbagai daerah agar tidak terjadi gagal paham mengenai pengertian konstitusi maupun berbagai hal terkait di dalamnya. ■

NANO TRESNA ARFANA

MK Prioritaskan Program Penanganan Perkara Konstitusi

PROGRAM Penanganan Perkara Konstitusi merupakan program Mahkamah Konstitusi yang langsung bersentuhan dengan pelaksanaan tugas dan kewenangan konstitusional MK sebagai lembaga peradilan konstitusi. Hal tersebut dikemukakan Sekretaris Jenderal MK M. Guntur Hamzah dalam Rapat Dengar Pendapat (RDP) dengan Komisi III Dewan Perwakilan Rakyat Republik Indonesia (DPR RI) pada Rabu (24/6/2020) di Jakarta.

Dalam Laporan Kerja dan Anggaran MK Tahun 2021, dituliskan bahwa pada tahun mendatang MK akan berhadapan dengan beberapa penanganan perkara, di antaranya Pengujian Undang-Undang (PUU), Sengketa Kewenangan Lembaga Negara (SKLN), dan Perkara Lainnya, Perselisihan Hasil Pemilihan Kepala Daerah/Wakil Kepala Daerah tahun 2020, dan Peningkatan Pemahaman Hak Konstitusional Warga Negara.

Sebagai ilustrasi dituliskan, pada 2021 nanti MK diperkirakan akan menangani perkara PUU sebanyak 156 perkara. Jumlah perkara tersebut didasarkan pada analisis dan tren rata-rata penanganan perkara PUU. Di samping itu, hal ini juga merujuk pada rata-rata kenaikan penanganan perkara PUU pada tahun-tahun sebelumnya serta apabila mengaitkan dengan tema dan isu tertentu. Hingga 22 Juni 2020, MK telah menangani 75 perkara. Sementara itu, untuk perkara SKLN, MK belum menerima perkara SKLN, namun dapat diperkirakan pada TA 2021, MK dapat saja menangani perkara SKLN.

Pada 2021, MK juga berfokus pada peningkatan kualitas SDM yang diarahkan untuk meningkatkan pelayanan teknis administrasi peradilan dan administrasi umum. Untuk dukungan teknis administrasi peradilan, peningkatan kualitas SDM dilakukan melalui upaya peningkatan pemahaman dan pengetahuan para pegawai MK yang langsung bertugas mengawal kelancaran pelaksanaan persidangan dan penanganan perkara konstitusi. Sehingga berdampak luas pada peningkatan kualitas putusan MK. (Sri Pujianti)

Sekjen MK: Kebijakan Pangan Harus Berbasis Konstitusi

SEKRETARIS Jenderal Mahkamah Konstitusi (MK) M. Guntur Hamzah menjadi pembicara dalam acara Diskusi Publik Hari Krida Pertanian yang bertema "Kesiapan Ketahanan Pangan Indonesia" pada Kamis (25/6/2020). Acara yang diselenggarakan oleh Raja Grafindo Perkasa ini dilaksanakan secara virtual melalui aplikasi Zoom.

Dalam acara tersebut, Guntur membahas isu yang menyangkut ketahanan, kedaulatan, dan kemandirian pangan. Terkait aspek kedaulatan pangan, Indonesia sejatinya telah memiliki kedaulatan pangan yang kuat. Hanya saja, masih lemah pada aspek kemandirian pangan dan ketahanan pangan. "Jadi, kedaulatan pangan sudah relatif kuat tetapi masih lemah terkait kemandirian dan ketahanan pangan," kata Guntur melalui aplikasi Zoom dari lt. 11 Gedung MK.

Menurut Guntur, kemandirian dan ketahanan pangan lemah karena kebijakan pangan belum dilakukan secara optimal dalam rangka pemenuhan hak konstitusional warga negara sebagaimana dijamin konstitusi. Oleh karena itu, diperlukan ikhtiar yang kuat untuk memenuhi hak konstitusional warga negara melalui kebijakan pangan yang berbasis pada sistem negara demokrasi konstitusional. Sementara terkait kebijakan pangan, dalam pelaksanaannya wajib memperhatikan prinsip-prinsip konstitusi dan tata niaga pertanian yang baik. (Utami).

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