

International Conference
«Protection of Rights and Constitutional Supervision»

26 June 2024, Saint Petersburg

**Session II «Protection of Rights and Freedoms as the Result of
Constitutional Review»**

Mr Daniel YUSMIC, Justice of the Constitutional Court of the Republic of Indonesia

Your Excellency, the Chairman of the Constitutional Court of the Russian Federation and the Justices of the Constitutional Court of the Russian Federation;

Dear Secretary General of the Constitutional Court of the Russian Federation and the entire staff;

Distinguished international conference participants;

On behalf of the Permanent Secretariat of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC) for Planning and Coordination, I congratulate you on holding this international conference. We also express our gratitude for the invitation the Constitutional Court of the Russian Federation extended to the Indonesian Constitutional Court for this event. The Constitutional Court of the Russian Federation is a member of the AACC, which is active in every international activity organized by AACC member countries. We hope that the good relations between the Constitutional Court of the Russian Federation and the Constitutional Court of Indonesia will continue to benefit both countries and all AACC members.

I would like to convey several things related to the Constitutional Court of the Republic of Indonesia in response to the key speaker at today's international conference. **First**, based on Article 24C paragraphs (1) and (2) of the 1945 Constitution, the Constitutional Court has the authority to adjudicate at the first and final instance whose decisions are final for reviewing laws against the

Constitution, deciding disputes over the authority of state institutions whose powers are granted by the Constitution; deciding the dissolution of political parties, deciding disputes over the results of general elections, and are obliged to provide a decision on the DPR's opinion regarding alleged violations by the President and/or Vice President according to the Constitution (impeachment). Apart from that, through interpreting the Constitution in several decisions, the Constitutional Court also stated that it has the authority to review government regulations in lieu of law (*Perppu*) against the Constitution and adjudicate disputes over the results of regional head elections.

Second, in the context of judicial review, applications can be submitted by individual Indonesian citizens, customary law community units, public or private legal entities, and state institutions. Based on the decisions of the Constitutional Court, the applicant must explain 5 (five) conditions/criteria for loss of constitutional rights as a basis for being granted legal standing, namely the existence of constitutional rights and/or authority granted by the 1945 Constitution, the constitutional rights and/or authority are considered by the applicant to be aggrieved by the enactment of the law requested for review; The constitutional loss must be specific (specific) and actual or at least potential which according to reasonable reasoning can be guaranteed to occur; the existence of a causal relationship between the loss in question and the enactment of the law requested for review; and there is a possibility that with the granting of the petition, the constitutional impairment as argued will not or will no longer occur. Opening access to Indonesian citizens to submit requests for judicial review has positively impacted the protection of human rights and the constitutional rights of citizens so that someone who feels that the enactment of law has violated their constitutional rights can request a judicial review to the Constitutional Court.

Third, the Constitutional Court's decision is final and binding and must be obeyed by everyone without exception (*erga omnes*). Based on Article 47 of the Constitutional Court Act, decisions rendered in a public plenary session have permanent legal effect. No other legal remedies can be taken against the decision

of the Constitutional Court. Therefore, any action contrary to the decision of the Constitutional Court can be categorized as an act against constitutional law or constitutional disobedience.

Fourth, statistically, the Constitutional Court has decided 1,801 cases of constitutional review, 29 cases of disputes over the authority of state institutions, 975 cases of disputes over general election results, and 1,136 cases of disputes over the results of regional head elections. Meanwhile, there has never been a case of political party dissolution or impeachment decided by the Constitutional Court since it was established in 2003 until now. There are several landmark decisions of the Constitutional Court, including:

1. Decision Number 11/PUU-III/2005, dated October 19th, 2005, regarding the education budget allocation in the State Revenue and Expenditure Budget of at least 20%;

2. Decision Number 47-81/PHPU.A-VIII/2009, dated June 9th, 2009, regarding the legitimacy of the "noken" system or the method of voting through acclamation by residents in Papua in elections and regional elections;

3. Decision Number 35/PUU-X/2012, dated May 16th, 2013, regarding the protection of customary land rights of customary law communities so that customary forests are not state forests;

4. Decision Number 97/PUU-XIV/2016, dated November 7th, 2017, regarding the status of believers in KTP. To eliminate discriminatory treatment, the Constitutional Court ordered that the religion column in the identity card must be interpreted as including believers;

5. Decision Number 20/PUU-XVII/2019, dated March 28th, 2019, regarding exercising the right to vote with a certificate recording an electronic identity card (*Suket KTP-el*). Previously, Decision Number 102/PUU-VII/2009 opened access for citizens who were not registered in the Permanent Voter List to exercise their right to vote in general elections using their KTP or Passport;

6. Since the president and vice president were directly elected in the 2004 elections until 2024, the Constitutional Court has decided the results of the

presidential elections five times. Even though they were only given 14 days to decide on disputes over the presidential election results, the Constitutional Court resolved all cases properly and carefully. In addition, in both regional and legislative election disputes, the Constitutional Court has ordered re-voting, recounting of ballot papers, or disqualification of election participants to ensure the purity of voters' votes and to maintain the principles of direct, public, free, secret, honest, and fair elections based on the 1945 Constitution.

Fifth, based on the authority of the Constitutional Court and the landmark decisions described above, the function of the Constitutional Court is not limited to securing the Constitution's continuation (the guardian of the Constitution). The Constitutional Court is also the final interpreter of the Constitution, the guardian of democracy, the protector of human rights, the protector of the citizen's constitutional rights, and the guardian of state ideology (Pancasila ideology). Thus, entering its 21st anniversary this year, the Constitutional Court is increasingly strengthening its role in guaranteeing the supremacy of the Constitution and democracy and implementing the rule of law in Indonesia.

Finally, I would like to end this presentation by congratulating the committee on organizing this conference well. Hopefully, the conference will be useful for all of us.

Thank you.