Kapita Selekta HUKUM TATA NEGARA

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Sangat apresiasi dan bangga kepada Dr. Sulistyowati, SH, MH ditengah kesibukan sebagai dosen dan sebagai advokat terkenal mampu melahirkan gagasan baru tentang ketatanegaraan. Terlihat antara lain dari tulisan terkait hukum acara yang berlaku di Mahkamah Konstitusi ataupun pembatasan lingkup *legal standing* dalam Peradilan Tata Usaha Negara. Tentu ide–ide cerdas ini diharapkan memberi masukan dalam Hukum Tata Negara yang konstruktif. Penulis yang beriman, cerdas, jujur, dan pandai telah melahirkan gagasan–gagasan cerdas di bidang pembaharuan Hukum Tata Negara berbasis nilai keadilan. Selamat dan terus berbuat kebaikan untuk mewujudkan Indonesia yang adil makmur dan diridhal Allah Swt.

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Rektor Universitas Ekasakti Padang (2018–2022)

Selalu saja buku yang dibuat praktisi sekaligus akademisi berbeda dengan karya yang dibuat praktisi saja atau akademisi saja. Doktor Sulistyowati yang saya kenal adalah praktisi sekaligus akademisi hukum. Buku yang dibuatnya pun tidak hanya berisi cerminan gagasan, ide–ide dan hasil penggalian beliau dalam dua peran berbeda yang diemban tersebut sehingga menjadi lengkap, baik secara teoritis maupun praktis. *Kapita Selekta Hukum Tata Negara* sangat penting karena dinamika dalam ketatanegaraan begitu dinamis sehingga ide–ide segar tatanan kehidupan berbangsa dan bernegara menjadi hal yang sangat dinantikan Dengan demikian, asas kepastian hukum, keadilan dan kemanfaatan terwujud mewarnai upaya yang dilakukan pemegang kekuasaan, baik pada eksekutif, legislatif maupun yudikatif, untuk mewujudkan kesejahteraan rakyat.

.Dr. Endang Samsul Arifin, S.H.I. M.Ag.
Ketua Umum DPP FORSILADI /Forum Silaturahmi Doktor Indonesia

Buku ini ditulis oleh Dr. Sulistyowati, SH, MH, seorang akademisi sekaligus praktisi yang mumpuni pada bidang hukum. Itulah sesungguhnya yang menjadi salah satu keunggulan yang dimiliki buku ini. Bukan hanya memiliki basis teori keilmuan hukum yang bersifat akademis namun juga diperkaya dengan basis pengalaman langsung sang penulis sebagai advokat yang seringkali menangani berbagai perkara, tidak terbatas perkara–perkara di Mahkamah Konstitusi melainkan perkara–perkara lainnya dengan segala kelebihannya. Buku seperti ini sangat langka sehingga sangat layak dimiliki oleh para peminat kajian hukum dengan berbagai dimensinya

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Isi Buku

Kata Pengantar

Alhamdulillah, puji syukur ke hadirat Allah SWT yang sudah memberikan anugrah nikmat sehat sehingga bisa menyelesaikan buku ini. Buku ini merupakan kumpulan dari sembilan artikel yang pernah saya tulis, baik sendiri maupun bersama-sama membahas berbagai aspek regulasi dalam bidang Hukum Tata Negara (HTN). Artikel-artikel ini telah dipublikasikan dalam jurnal internasional terindeks scopus maupun jurnal terakreditasi secara nasional. Beberapa di antaranya juga berasal dari artikel yang sudah dipresentasikan dalam konferensi internasional.

Regulasi dalam bidang HTN adalah salah satu topik yang penting dan relevan dalam konteks Indonesia saat ini. Indonesia memiliki tantangan dan peluang dalam mengatur hubungan antara negara dan masyarakat, antara pusat dan daerah, antara lembaga-lembaga negara, serta antara hak dan kewajiban warga negara untuk kemakmuran bersama. Artikel-artikel dalam buku ini mencoba untuk memberikan analisis, kritik, dan saran terhadap regulasi-regulasi yang ada dan atau yang perlu dibuat dalam bidang HTN.

Semoga bermanfaat bagi para pembaca, khususnya para mahasiswa, dosen, peneliti, praktisi, dan pihak-pihak yang berkepentingan dengan regulasi dalam bidang hukum tata negara.

Terakhir, saya menyadari bahwa buku ini tentu saja tidak sempurna. Kritik dan saran saya harapkan agar buku ini lebih baik di masa yang akan datang.

Jakarta, 11 Mei 2024

Penulis

Dr. SULISTYOWATI, SH, MH

The Problem of Legal Protection for Human Rights Activists

Introduction

After the amendment of the 1945 Constitution of the Republic of Indonesia in 1999-2002, Indonesia has further established itself as a constitutional democracy that recognizes and respects human rights. Furthermore, the affirmation of Indonesia as a constitutional democracy coincided with the broader and comprehensive rules regarding human rights from Articles 27 to 31 of the 1945 Constitution of the Republic of Indonesia. Therefore, in this article, everything about human rights gets guaranteed. This aspect is not only about civil and political rights but even regarding the right to public welfare, for example, rights in the economic, social, and cultural fields.

The existence and recognition at the constitutional stage are limited to the rules that provide that human rights exist and are recognized and protected but implemented. On the other hand, in terms of implementation, it also depends on equipment regarding institutions and the mechanisms and commitments of state organizers. In Umar's terms, if it is interpreted broadly, the objectives of the Indonesian state, as mentioned above, have consequences, including giving a mandate to the state to ensure

the protection of human rights. The protection of this human right can be in the form of normalization in laws and regulations, and no less important is its implementation in the practice of state and social life (Ma'ruf, 2019).

According to the Partnership, the number of human rights activists who have been victimized to quell the turmoil of resistance is always soaring. The facts conveyed by Wahana Lingkungan Hidup Indonesia, during 2018, 163 human rights activists were legally processed. In addition, the number of victims was 283 from 86 cases of violence against Human Rights Activists, 7 of whom were killed in 2019. The number of cases that occurred in 2020 was 2,814. The National Commission recorded the 2015-2021 period on Violence against Women; 87 female activists were victims. Nineteen complaints entered the Human rights commission in 2020, in suppression, legal proceedings, arrests, and even deaths. The 2019-2020 range of the Asian Forum also noted that there were 1,073 human rights violations in more than 20 countries in Asia, including Indonesia. As a result, 3,046 human rights activists, including families and institutions, were hit by digital or physical attacks. The development of the situation and conditions for human rights activists in Indonesia has not shown guaranteed protection by the state. In 2003 based on the data of the Impartial agency, there were about 30 cases of violence against human rights activists. A year later, in 2004, there were 152 cases.

The human rights commission 2020 received nine complaints about human rights activists, and Amnesty International revealed that there were 99 cases of attacks on human rights activists in 2021. Human rights concerns can have a wide variety

of consequences. These consequences can threaten national integration and make the Indonesian people and nation suffer greatly. Then how do we respond to cases of human rights violations in Indonesia? The community, in this case, must play an active role. In addition to the public's response to these human rights violations, it can also be dynamic behavior. Dynamic behavior is finding solutions to human rights enforcement problems, which adjusts capacity and uses procedures following applicable law. According to the preamble, independence is required to lead a free life. This is stated in the "Declaration of Human Rights Defenders" dated December 9, 1998, by the United Nations General Assembly.

This study aims to describe and examine the concept of the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution, which mandates the state to protect human rights activists. Specifically, the elaboration of the objectives to be achieved in this study includes: first, answering how the conception of recognition of respect, protection, and guarantee of human rights in the state of law. Second, it describes the existence of human rights Activists in national and international law. This article uses normative research methods with a qualitative analysis approach. This research can also be called doctrinal research, which focuses on qualitative analysis. Norms, in this case, are about the principles, rules of laws and regulations, court decisions, agreements, and doctrines. It is said to be normative because the law is judged as something autonomous in nature. Its applicability is then determined by the law rather than by factors outside it. Based on that statement, the law has been judged to be perfect and final, so it is worth implementing.

Method

The research method of this paper is normative. A normative research method is a process of research and studying law, as a rule, legal principles, norms, legal doctrines, legal theories, legal principles, and other literature to answer the legal problems under study. The data analysis method used is qualitative analysis. This qualitative analysis can be interpreted using research methods that produce descriptive analytical data. Its data sources include secondary data. This data consists of primary, secondary, and tertiary legal materials whose results can be obtained through library research but do not use field studies (field research).

Result and Discussion

Indonesia is a country of law that prioritizes the welfare of its people because the essence of the Indonesian state is that its legal state can be identified by the submission of the people and rulers to the existing and applicable laws (Lestari & Arifin, 2019). The applicable law has an obligation. The state should protect and serve citizens. Relations between citizens give rise to obligations that the state must fulfill. It arises based on the consequences of relations between the state and citizens that are extensive and quite diverse. One of them has legal obligations born of human rights (Wajdi dan Imran, 2021). The obligations referred to here do not escape the regulation of human rights. Human rights are fundamental because part of each individual is inseparable. With human rights enforcement, the country has met the country's requirements of law (Afifah & Ilham, 2019).

The essence of every human being is to have the same rights, namely human rights. This right arises from the moment the human being is born. The right to life, the right to a sense of security, and the right to freedom in all forms of enforcement are included in the fundamental right. This right must be respected by all and applied universally (Takariawan & Putri, 2018). In the context of guarantees of protection and respect for human rights, it is expressly stated in Article 28 I paragraph (4) of the 1945 Constitution of the Republic of Indonesia namely the responsibility of the state is to provide respect, protection, and guarantees to human rights, especially the government. In the enforcement of human rights, it is commonly known that individuals or community groups participate in fighting for human rights by often terming them human rights activists or what is now called the 'Human Right Defenders'. Defender of human rights was used after the Declaration of Defenders of Human Rights in the united nations General Assembly Resolution 53/144 of 1998. The existence of human rights activists is recognized in the products of international law.

Let us look at the definition of human rights activists. It can also be seen in the European Union Guidelines on Human Rights Defenders, a person, several people, and part of the community who promote and protect human rights and fundamental freedoms that are universally recognized. Human rights activists make efforts to safeguard civil-political rights, publicity, economic, social, and cultural rights. Activists also carry out propaganda about protecting the rights of members of a commune, such as the unity of tradition and culture. However, this

does not include both individuals and groups who carry out propaganda against violence.

Human rights activists today are known as human rights defenders. Meanwhile, according to Standard Norms and Regulations Number 6 concerning Human Rights Defenders as stipulated in the Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Norms and Regulations Standards on Human Rights Defenders. According to this rule, human rights defenders are individuals, groups, and community organizations promoting and protecting universally recognized human rights and fundamental freedoms. In addition, it is included in the sense that anyone is a survivor who carries out human rights defense either on oneself, family, or group, supported or not supported by the human rights defenders organization, but does not give up on the situation and then transforms to carry out human rights defense work or related to the promotion and enforcement of human rights.

Indonesia has not yet made regulations specifically regulating the protection of human rights activists. Law Number 39 of 1999 concerning Human Rights (Human Rights Law), regarding the protection of human rights activists, is not explicitly and explicitly stated. However, articles 100-103 of Chapter VIII on Community Participation in the Human Rights Law provide opportunities for everyone, groups, political organizations, community organizations, and other community institutions to take an active role in protecting, enforcing, and promoting human rights.

After the amendments in 1999-2002, the torso text of the 1945 Constitution of the Republic of Indonesia contained

articles relating to human rights much more complete than before. In turn, efforts to uphold human rights, including protecting human rights activists, are a constitutional mandate. Therefore, it needs to be realized so that the constitution can live in a society (the living of law) instead of just as a text on paper. Moreover, it is also a means of state commitment to the international agreement of the Universal Declaration of Human Rights in 1948, in which Indonesia was incorporated.

Arief Hidayat said that 5 (five) characteristics distinguish the state of Pancasila law from other legal states. One of which he elaborated that, in essence, he said Indonesia is a family country that recognizes the right of individuals to know human rights by prioritizing national interests over the interests of individuals. In the legal state of Pancasila, an effort to create a balance between national and individual interests is to give the state the possibility to intervene if it is deemed necessary to achieve the goals of the national and state life system with the principles of Pancasila (Rahmatullah, 2020). The widespread guarantee of human rights with the emergence of several articles in the 1945 Constitution of the Republic of Indonesia is a step forward in building a state legal foundation to strengthen the contract between the people and the ruler.

The implementation of protection has not been as expected. Many policies and regulations made by the rulers are not following the concept of human rights. However, all of that is not implicated and only applies on paper. The most important factor for law enforcement that is adequately implemented is law enforcement actors, both in judicial and non-judicial processes (Aprita & Hasyim, 2020). In reality, states are often

unable to fully carry out their obligations to respect, protect and guarantee human rights, thus encouraging many parties, both individually and in groups, further to enhance the protection and promotion of human rights. Usually, they are known as human rights activists or Human Rights Defenders. This word was used after the 'Declaration of Human Rights Defenders' in the United Nations General Assembly Resolution No. 53/144 of 1998.

The implementation of the rules is hindered if several factors affect it, at least if the residents do not dare to make defenses, even for themselves and the surrounding residents. This problem also occurs in the circle of officials on duty and even involves citizens, so it is still human rights activists who are victims. Attacking human rights activists in various ways, committing unlawful killings, and acts of persecution and murder of minority groups. This then reflects the weak protection and fulfillment of human rights defenders who pay attention to the sense of justice in society. Human rights activists are the subject of pressure, intimidation, and other acts of violence over their activities in spreading the weaknesses of the government system. Then came the statement that when the rights of human rights defenders are violated, it means that the rights of citizens, in general, are also threatened. As the Secretary-General of the United Nations said at the Conference of NonGovernmental Organizations on September 14, 1998, the bottom line is that the declaration's basic premise is that when human rights activists' rights are violated, then our rights are in danger, and we are less secure.

Human rights activists are a part of society that can spur the state in terms of fulfilling obligations in the international sphere, namely guaranteeing and respecting human rights. Indonesia has some general rules regarding human rights. Some of these regulations can be used as a basis for the rights and responsibilities of individuals and groups as part of efforts to protect and promote human rights, including Law Number 39 of 1999 concerning human rights (Articles 100-103), Law Number 26 of 2000 concerning Human Rights Courts (Article 34), and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

In the above regulations, if we look closely, there is not a single article that clearly and in detail mentions the rights of human rights activists. Furthermore, as well as in some of these regulations it does not expressly provide for the protection of all activities carried out by human rights Activists as mandated in the 'Declaration of Human Rights Defenders.' Legal loopholes like this can lead to human rights violations against human rights activists. Therefore, regarding all activities carried out by Human Rights Activists, this is very vulnerable to experiencing human rights violations, whether in the form of obstacles, threats, or violence.

The specific regulation on human rights activists is based on the effectiveness of regular and continuous work carried out by human rights activists. The effectiveness of a human rights activist's work can be seen from their number and high activity in defending human rights. This includes criticizing the government for the promotion of human rights. This activity is regular

and continuous, so his role as a human rights activist shows efficient, effective, and consistent work. Regarding the special protection of human rights defenders, the National Commission on Human Rights has issued National Commission on Human Rights Regulation No. 5 of 2015 concerning procedures for the protection of human rights defenders (National Commission on Human Rights Regulation No. 5/15) and Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Standard Norms and Regulations on Human Rights Defenders which contains Standard Norms and Regulations Number 6 concerning Human Rights Defenders.m In Article 9 of the National Commission on Human Rights Regulation Number 5/15, in essence, the protection provided to Human Rights Activists is only 'limited to referrals' both to request protection from the Witness and Victim Protection Agency and other institutions such as the Indonesian National Police, ministries or other institutions. If only a reference can be given, what is the fate of the Human Rights Activists? Meanwhile, in the Regulation of the National Commission on Human Rights Number 4/21, standard norms and regulations on Human Rights Defenders (Standard norms) are determined.

Standard norms identify threats to Human Rights defenders that can be in the form of harassment and/or attack: a. resulting in physical, psychic, sexual, verbal, and death disturbances; b. to property, whether private property or organizations used in Human Rights defense activities; c. digital against individuals or organizations that carry out Human Rights defense activities; d. by discriminating against personal Human Rights Defenders;

e. with arbitrary use of the law; and f. with the deprivation of economic, social, and cultural rights/

If there is a threat/attack on a human rights defender as above or even such threat/attack has manifested itself in action. Paragraph 161 of the standard norm states that the state is obliged that human rights defenders must obtain complete protection from the state. The violations committed against them will be immediately and thoroughly investigated and restored, and if necessary, awarded indemnity or appropriate compensation. Meanwhile, paragraph 168 Of the Standard norm mandates that the Witness and Victim Protection Agency have a significant task in protecting witnesses and victims. In Article 27, paragraph (1) of the Constitution of the Republic of Indonesia 1945, it has been explained that all of the country's citizens have the same position in the eyes of the law. Then continued with Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads that everyone has the right to fair legal certainty, not only that everyone is entitled to recognition, guarantees, and legal protection. From these two articles alone, the position of Human Rights Activists should be fought from the legal side because they are the frontline in defending Human Rights.

The National Commission on Human Rights began demonstrating its defense and protection for Human Rights Activists. Regarding the case of Human Rights Activists, throughout 2021, Komnas Hak Asasi Manusia, in this case, received 17 complaints of cases (6 criminalization and one application for the prosecution of Munir's case, then 10 cases regarding threats and intimidation). The causes of the cases experienced by Human Rights

Activists are state legal obligations that have not been implemented optimally, and there is no recognition of human rights activists and guarantees of protection for Human Rights activists. Finally, the government's and the public's understanding of the presence of Human Rights activists have not been maximized, and there is no understanding and capacity building of police officers, prosecutors, and judges about the protection of Human Rights defenders. Although it may be that what this National Commission on Human Rights is doing as a follow-up to the standard norms it has created as outlined above, the compressive power is certainly not vital.

Under the constitution, the Declaration of Human Rights Defenders also emphasizes that the state is the party most responsible for protecting Human Rights Activists. Unfortunately, the situation of Human Rights Activists is getting worse. The National Commission on Human Rights has also been only treated if it is only as a firefighter. It should be the state's responsibility, while the National Commission on Human Rights is positioned as a catalyst and facilitator. The National Commission on Human Rights seeks to encourage the protection of Human Rights Defenders in three aspects. First, prevention is carried out by establishing the National Standards for The Regulation of Human Rights Defenders by the National Commission on Human Rights, improving the ability of employees to provide complete services, training for police officers, dissemination of information for the community, paralegal training by non-governmental organizations, and other cooperation.

The government's responsibility as the state operator, as stated in Article 28J paragraph (4) of the 1945 Constitution of

the Republic of Indonesia, is the protection, promotion, enforcement, and fulfillment of Human Rights. However, if we look at the number of Human Rights Activists treated with no humanity at all. Then what is the responsibility of the state towards them? International law can be proven by the existence of international human rights instruments that regulate human rights and fundamental freedoms, namely the Universal Declaration of Human Rights 1948, the International Covenant on Civil on Political Rights in 1966, and the Declaration of Human Rights Defender. Protecting humanitarian activists can also be upheld through state responsibility, the United Nations, and its bodies (Elias et al., 2021).

The principle of the state of the law is used to protect Human Rights. This is done so that an instrument arises with the task of supervising and prosecuting in case of human rights violations. Regarding human rights, this also puts the people as determinants in state life (Bustamam & Badri, 2018). Indonesia, a nation that has experienced colonization, made the nation's founders aware of the meaning of Human Rights in-state activities. These fundamental principles and rights are placed in the 1945 Constitution of the Republic of Indonesia. This spirit appeared first in the Universal Declaration of Human Rights. In addition, human rights that are recognized, respected, and protected have been pioneered by the pioneers of Indonesian independence, which is found in a legal state that has democratic thinking (Aswandi & Roisah, 2019). In the rule of law and law enforcement, there must also be regulation and enforcement of Human Rights. Applying the principle of law enforcement to achieve justice will require law enforcement officials, if it is

interpreted broadly, not to forget the support of effective and efficient administrative law (Agustina, 2018).

The state bears the most significant responsibility regarding human rights, both in the context of law enforcement and its violations. This responsibility is absolute and cannot be curtailed or revoked for political, economic, or cultural reasons (Setiyani & Setiyono, 2020). In essence, in respecting, protecting, and guaranteeing Human Rights, the constitution has recognized every individual who fights for his rights, in this case, human rights activists, to get protection from the state, in this case, the government. Especially in Article 28 C paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it has been stated that "Everyone has the right to advance himself in fighting for his right collectively to build his society, nation, and state." This regulation indicates the presence of guarantees from the state. The guarantee provides opportunities for each person to fight for their rights, including guaranteeing the protection and promotion of human rights. This includes protecting Human Rights Activists. Moreover, that obligation is coupled with the international obligation of each country to respect, protect and guarantee Human Rights. Regarding this matter, it is based not only on an obligation to obey regulations but also on morality that upholds human dignity and dignity. In essence, this is an obligation for everyone. Because of this, efforts to uphold Indonesia's constitutionalism are part of a complete unity to uphold Human Rights, including protecting Human Rights Activists.

Conclusion

Respect, protection, and guarantee of Human Rights are characteristics of a legal state. This has begun to be seen from the preamble to the 1945 Constitution of the Republic of Indonesia, the torso of the 1945 Constitution of the Republic of Indonesia, especially after the amendment. Enforcement of Human Rights in terms of protecting Human Rights Activists when carrying out their roles when viewed from the norms in Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims has not yet appeared. Meanwhile, when viewed the regulations issued by the National Commission on Human Rights, namely the Regulation of the National Commission on Human Rights Number 5 of 2015 concerning procedures for protecting Human Rights defenders and the Regulation of the National Commission on Human Rights Number 4 of 2021 concerning Ratification of Standard Norms and Regulations on Human Rights Defenders which contains Standard Norms and Regulations Number 6 concerning Human Rights Defenders, it has been regulated by the existence of legal protection for Human Rights Defenders.

Because the legal protection of Human Rights Defenders is only in the Regulations of the National Commission on Human Rights, not in an Act or at least a Government Regulation, according to the author, it is still weak. Therefore, it has not been able to fulfill the rights and protect Human Rights Activists as mandated in Article 27 paragraph (1), Article 28 paragraph (1), Article 28I paragraph (1), Article 28J paragraph (1), and Article

28J paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Even if this is seen in the international sphere, it has been regulated in the Declaration of Human Rights Defenders. In fact, in Indonesia, there are still many cases of torture of Human Rights Activists.

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The Urgency of Limiting the Presidential term by the Constitution in the Discourse of Extending the Term of the President of Indonesia

Introduction

The controversy over the extension of the term of the President of Indonesia or the possibility of delaying the General Election, along with the potential additional term in 2022, has sparked prolonged debates and triggered mass responses. Although the idea is supported with economic reasons and the aspirations of the public, on the other hand, it has also faced opposition on the grounds of constitutional violations and public aspirations. This discussion involves various parties, including government officials, party leaders, academics, legal experts, political observers, and even students. In essence, the discourse on the extension of the term of the President and Vice President has emerged towards the end of Joko Widodo's first term in office. Precisely in 2018, there was a discourse to extend the

term of the Vice President so that the Jokowi-Kalla pair could participate in the 2019 Presidential Election.[1] However, at that time, Yusuf Kalla rejected the idea, and therefore, the discourse on extending the term was not pursued.

The extension of the presidential term in certain circles is considered a preconditioning step to modify or amend the constitution, specifically Article 7 of the 1945 Constitution. This provision stipulates that the President and Vice President hold office for five years and can be re-elected for only one additional term. The issue of extending the presidential term in Indonesia is a serious concern, considering it is an integral part of the country's governance history, adopting a presidential system. From the period of independence to the New Order era, Indonesian Presidents have served for multiple terms, such as President Soekarno, who served for 22 years from 1945 to 1957. Subsequently, President Soeharto also served for several periods, totaling 31 years from 1967 to 1998. The duration of President Soeharto's term became a trigger for the Reform Movement, leading to one of its outcomes—the limitation of the presidential term to two periods through constitutional amendments. This limitation was also imposed to eliminate presidential continuism, which resulted in other high state institutions merely following the President's desires, within the Indonesian constitutional system.[2]

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[1]Qonita Dina Latansa. "Constitutionality of the Term Limits for the President and Vice President in Indonesia." The source is from "Jurisdiction" Volume 2, Number 2 (2019): 595-615.

[2]Moch Chafid. "Constitutional Implications of Presidential Term Limits according to Article 7 of the 1945 Constitution before the Amendment on

The amendment to the 1945 Constitution opened the door for fundamental changes in the governance structure of Indonesia, ushering in the era of Reformasi. The process of amending the 1945 Constitution by the People's Consultative Assembly consisted of four stages: October 14-21, 1999 (amending 9 articles and 16 clauses), August 18, 2000 (amending 27 articles), November 9, 2001 (amending 23 articles), and August 1-11, 2002. The early stages of the constitutional amendments focused on limiting the presidential term. In the first amendment, the previously unlimited presidential term was restricted to only two periods, as stipulated in Article 7 of the 1945 Constitution. This limitation has been viewed from various perspectives by several researchers. According to Padli,[3] The limitation on the presidential term is part of an effort to uphold the constitution by restricting the significant powers of the President in a presidential system of government. The purpose of this limitation is to prevent the abuse of power in the exercise of the presidential authority.

It is important to emphasize that the limitation on the presidential term is a characteristic of a presidential system of government. Historically, this limitation only emerged in the 1945 Constitution after undergoing amendments in 1999 and was not present in the original version of the 1945 Constitution, the RIS Constitution, or the Provisional Constitution of 1950.[4] On

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Presidential Continuism during the New Order Era." Dharmasisya 1, No. 3 (2021): 1321-1336.

[3]Padli Haris. "Regulation of the President's Term in an Effort to Uphold the Principles of Constitutionalism in Indonesia." Jurnal Kertha Semaya 9, No. 10 (2021): 1796-1808.

the other hand, the perspective from Pin et al.[5] asserts that discussions regarding the amendment to extend the presidential term, emerging since 2021, are contradictory to the spirit of the 1999 amendment aimed at limiting presidential power. They argue that the discourse on amending to extend the presidential term to three periods is considered unlikely to lead to authoritarianism, as was the case during the New Order era.

Therefore, discussions regarding the limitation of the presidential term have deep roots in Indonesia during the Reformasi period, becoming an issue that generates differing views among researchers. Through the enactment of the amended 1945 Constitution, the presidential term is now restricted to only two periods. However, there is discourse to loosen this limitation again, especially during the administration of Joko Widodo. This discourse has triggered various responses, with supporters and opponents holding different perspectives. The objectives of this paper are first, to depict the controversy surrounding the extension of the presidential term that has emerged since 2021 to the present, both from the standpoint of supporters and opponents. Second, this paper aims to analyze the roots of such opposition and the role of the constitution in the context of the term extension issue. The significance of this paper lies in its effort to provide a more comprehensive understanding of the contro-

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[4]Qonita Dina Latansa. "Constitutionality of the Term Limits for the President and Vice President in Indonesia," 603.

[5]Pin Pin Jannus Timbo Halomoan Siahaan, Bertha Nellya, and Matius Bangun. "Indonesia's Presidents for Three Terms." Jurnal Darma Agung 29, No. 2 (2021): 267-272.

versy surrounding the extension of the presidential term and its impact on democracy in Indonesia, especially considering the limited scholarly studies addressing this controversial issue.

Method

This article specifically captures the efforts to extend the term of the President of Indonesia from 2021 to 2022 within the framework of a presidential system that demands limitations on the presidential term. These efforts illustrate the constitutional dynamics leading to changes, particularly in Article 7 of the 1945 Constitution. The purpose of this article is to uncover the dynamics of the efforts to extend the presidential term and its responses, analyzing them based on ethics within the framework of a presidential system. The article is based on literature research and media reports on the phenomenon of attempting to extend or add to the presidential term. This research falls under the category of literature and media research with a legal approach and qualitative methodology. The normative approach involves examining the reality dimension from a normative perspective. The qualitative method involves data collection and qualitative analysis to identify patterns, root issues, and fundamental reasons underlying a particular event. Qualitative analysis results in descriptive analytical data. Descriptive analytical data is obtained from research sources, primarily documents, and news from online media.[6]

[6]Muhaimin. Legal Research Methodology. (NTB: Mataram University Press, 2020), 48.

The data sources for this article come from primary, secondary, and tertiary sources obtained through literature review (library research), not field studies.[7] The sources are obtained from literary works, e-books, e-journals, and online mass media news. These sources are collected, then the manuscripts are selected based on the study's theme, and their content is mapped to address the issues intended to be answered through this article. The final process involves content analysis to examine how efforts to extend or add to the presidential term are viewed in terms of the presidential system's need for limitations on the presidential term. Data analysis is carried out through content analysis, discourse analysis, and interpretation analysis. This process can be described as a method of restating key ideas within the data, providing an overview of patterns regarding the concepts generated by the data, and elucidating the meaning of the data to draw in-depth research conclusions.

Result and Discussion

Indonesia adheres to a presidential system of government (executive). This presidential system illustrates the significant executive power concentrated in the roles of both the head of state and the head of government. The separation between the executive and legislative branches is a characteristic of the separation of powers. Although the Indonesian Constitution does not explicitly adopt the concept of the separation of powers, the distribution of power is clearly influenced by the separation

[7]Bachtiar. Legal Research Methodology. (Tangerang Selatan: UNPAM Press, 2018), 60.

of powers, involving the legislative, executive, and judicial branches. In Indonesia, the allocation of power is not entirely distinct, as the president holds executive, legislative, and judicial authority. The extensive power of the president in the presidential system has certain consequences. The president is at the apex of power with full authority and can influence various branches of government, including influencing the People's Consultative Assembly (DPR), causing the DPR to tend to act merely as an approver of government policies.

Therefore, in a presidential system, limitations on the presidential term are introduced. These limitations were initially implemented by countries in Latin America in the 16th century and later adopted globally. The limitations on the presidential term serve several functions. Stone[8] Linking the limitation of the presidential term to democracy, Stone, citing the opinions of Petracca and Schwartzberg, underscores that the essence of limiting the presidential term is the regular rotation of power, thereby freeing the governance position from personal ownership. Limiting the presidential term also provides an opportunity for citizens to exercise and be obeyed. The rotation of power prevents corruption by elected officials, evaluates potentially tyrannical governments, ensures freedom, enhances political representation, and supports broad public service in governance.

The rotation of power in democracy is achieved through periodic elections. With regular elections, various dynamics of

[8]Peter Stone. "Theorizing Presidential Rotation." In Alexander Baturo and Robert Elgie (eds.). The Politics of Presidential Term Limits. (Oxford: Oxford University Press, 2019), 19-20.

aspirations can be accommodated by a political system that allows for the creation of a legitimate government. The connection between limiting the presidential term and democracy aims to avoid leaders with dictatorial tendencies. The limitation of the presidential term becomes crucial because in a dynamic society, there is always an interconnection between the president and the people, as voters continually have a relationship with their leaders. This ensures that the government acts in accordance with the will of the people. Elections also provide the opportunity to choose not to re-elect a president who has performed inadequately. Therefore, the limitation of the presidential term in a presidential system serves as a gateway to maintaining a healthy democracy and preventing dictatorship or tyranny. According to Chafid,[9] should not be limited solely to quantitative restrictions. This means that qualitatively, political elites running for president must have a commitment not to violate the spirit of limiting the presidential term, which is to prevent tyranny and power concentration. When examining the limitation of terms in South Korea, with the provision that a president can only be elected once, it actually fosters a healthy and stable democracy without social unrest. Therefore, according to Chafid[10] concludes that the limitation of the presidential term in the constitution is more valuable than accountability in democracy itself.

In fact, efforts to avoid limitations on the presidential term are often carried out by incumbents. Presidents demonstrate

[9]Moch Chafid. "Constitutional Implications of Presidential Term Limits according to Article 7 of the 1945 Constitution before the Amendment on Presidential Continuism during the New Order Era," 1321-1336.

[10]Ibid.

formal respect for the constitution and utilize constitutional rules or procedures to evade term limitations. A common strategy employed by incumbent presidents to circumvent term limitations is through constitutional amendments. According to the research by Versteeg et al.,[11] 66% of efforts to avoid term limitations are carried out through constitutional amendments. This occurs because the rule of the democratic game is the constitution. In Indonesia, the transition from the authoritarian New Order era to reform, seen as the antithesis of democracy, is marked by the constitutional amendments to the 1945 Constitution. Constitutional amendments in Indonesia brought about fundamental changes in the constitutional framework, including the limitation of the presidential term, direct presidential elections, the abolition of the highest state institution, and the strengthening of human rights aspects. The essence of the constitutional amendments that took place from 1999 to 2004 is the reinforcement of democracy, civil society, and human rights. Therefore, the amended 1945 Constitution serves as the cornerstone for the existence of the post-1998 reformation government.

In the theory of sovereignty, it is explained that the highest power of a state is in the hands of the state. Thus, the state regulates all sovereign authorities in accordance with the constitution or written rules that must be followed by every citizen, including state institutions. The forms of sovereignty vary, and

[11]Versteeg, Mila; Timothy Horley, Anne Meng, Mauricio Guim and Marilyn Guirguis. "The Law and Politics of Presidential Term Limit Evasion." Paper Series of University of Virginia School of Law, (2019). http://www.ssm.com/link/U-Virginia0PUB.html.

Indonesia conceptualizes sovereignty in the hands of the people, exercised fully through the constitution. Indonesia applies the distribution of power system advocated by Montesquieu, which includes the executive, legislative, and judicial branches.[12] With the division of powers, efforts to improve Indonesia must continue to be undertaken. In a constitutional system that always experiences significant dynamics, Indonesia is one of the countries that implements a presidential system of government. The implementation of the presidential system has various perspectives, indicating that the presidential system in Indonesia is only a development of the system. This is evident in the diminishing role of the president, while the People's Consultative Assembly (DPR) plays an increasingly significant role in governance.[13] In essence, the weakening role of the executive institution implies that, on one hand, the authority of the President will be limited, especially if the authority of the DPR becomes more dominant. In this case, the presidential system implemented by Indonesia needs a systemic overhaul by incorporating a system of checks and balances in line with the inherent nature of the theory of the separation of powers.[14]

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[12] Ahmad Yani, "Indonesian Governance System: Theoretical and Practical Approaches to the Constitution of the 1945 Constitution," Indonesian Legislative Journal 15, No. 2 (2018), 61.

[13]Ribkha Annisa Octovina, "Presidential System in Indonesia," Cosmogov: Journal of Political Science 4, No. 2 (2018), 250.

[14]Efriza, "Strengthening the Presidential System in the Simultaneous Elections of 2019," Political Research Journal 16, No. 1 (2019), 8.

[15] Ahda Bayhaqi, "Formappi Assess DPR 2019-2024 as a Rubber Stamp for the Government," last modified 2021, accessed April 9, 2022. https://

An exploration of the weakness of the president/executive institution in the presidential system becomes an intriguing subject for in-depth research, especially when the phenomenon seems to contradict established constitutional principles. Statements such as the one issued by Formappi, declaring that "The President is at the pinnacle of power with full authority, involved in all aspects of life, while the role of the People's Consultative Assembly is reduced to being a rubber stamp for the government," add an interesting dimension to the discussion.[15] Not without reason, Formappi evaluates in such a manner. Since 2020, five laws have been enacted, and four of them were proposed by the government. The Chairman of Formappi even perceives the weakness of the DPR to the extent that it prioritizes government draft laws over those proposed by the DPR itself. The rapid approval of the fifth law solidifies the skewed relationship between the DPR and the president. Bills that were supposed to be resolved were postponed, such as the Disaster Mitigation Bill and the Personal Data Protection Bill. This indicates legislative weakness, but what was done contradicts this by adding four new bills to the priority list in 2021, including the Criminal Code Bill, Penitentiary Bill, ITE (Information and Electronic Transactions) Bill, and the BPK (Supreme Audit Agency) Bill.[16]

The weakness of the DPR is further confirmed by the numerous demonstrations across all sectors. The DPR, consider-

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www.merdeka.com/peristiwa/formappi-nilai-dpr-2019-2024-jadi-tukang-stempel-pemerintah.html,

[16]*Ibid.*

ed as the receptacle of people's aspirations, is seen as failing to represent these aspirations. Demonstrations become a choice when political interests are not adequately addressed. As seen recently, several party chairmen, including Zulkifli Hasan of the National Mandate Party (PAN), Muhaimin Iskandar of the National Awakening Party (PKB), and Hartarto of the People's Conscience Party (Hanura), raised the issue of delaying elections and extending the presidential term. This is concerning as the parties have members in the DPR, but their silence is feared to lead to undesired actions, such as constitutional amendments.

The unrest is felt amid the challenging situation faced by the people, especially since the COVID-19 pandemic. There have been numerous job terminations, the controversial job creation law, soaring prices, uncontrolled increases in fuel prices, and even basic necessities becoming increasingly unaffordable, such as cooking oil. When cooking oil reappeared in the market, its price was very high, prompting the president to distribute cooking oil assistance, confirming that the government is at a disadvantage against certain influential groups.[17]

The welfare of the people is at a very low point, yet the elites are putting forward discussions about delaying elections and extending the presidential term. This is not only coming from political party politicians but also from ministers like Bahlil

[17]M. Julnis Firmansyah, "Jokowi Distributes Cooking Oil BLT, Observer: Evidence of the Government Losing to the Mafia," last modified April 3, 2022, accessed April 10, 2022, accessed April 10, 2022. https://nasional.tempo.co/read/1577850/jokowi-salurkan-blt-minyak-goreng-pengamat-bukti-pemerintah-kalah-dari-mafia.

and Luhut. Bahlil justifies extending the presidential term by stating that business actors wish for the 2024 elections to be postponed because the business world desires it, seeking to recover after collapsing due to the pandemic.[18] Meanwhile, Luhut claims there is big data indicating that 110 million people support the postponement of the 2024 elections. Confrontation arises within the society. The public, through petitions, demands the disclosure of the big data information, and it must be supported by valid evidence to avoid misinformation. If Luhut refuses to explain the big data, it would violate Article 1 number 2 of Law Number 14 of 2008 concerning Public Information Transparency.[19]

The pros and cons of delaying the elections and extending the presidential term continue to unfold. Opposition is being driven by students, and resistance is starting to occur everywhere. April 11, 2022, marked one of the moments of student resistance for the people. The most noticeable rejections came from Jakarta and various other regions, such as Makassar, Palembang, Cirebon, Jambi, Semarang, Riau, Jember, and West Nusa Tenggara

[18]Desca Lidya Natalia, "Moeldoko: Bahlil Has Reasons for Proposing Presidential Term Extension," last modified January 11, 2022, accessed April 10, 2022. https://www.antaranews.com/berita/2636645/moeldoko-bahlil-punya-alasan-usul-perpanjangan-masa-jabatan-presiden.

[19]Dewi Nurlita, "Petition Demands Luhut to Disclose Big Data Election Postponement Signed by Almost 12 Thousand People," last modified April 6, 2022, accessed April 10, 2022.. https://nasional.tempo.co/read/1579004/petisi-tagih-luhut-buka-big-data-penundaan-pemilu-diteken-hampir-12-ribu-orang

There are six people's demands related to this issue, namely:[20] First, urging and demanding President Jokowi to take a firm stance or reject and provide a statement regarding the postponement of the 2024 elections or a three-term presidency because it clearly betrays the country's constitution. Second, urging and demanding President Jokowi to postpone and reconsider the State Capital City Law (UU IKN), including problematic articles and the impacts it may have on environmental, legal, social, ecological, political, economic, and disaster aspects.

Third, urging and demanding President Jokowi to stabilize prices and ensure the availability of staple goods in the market and address other food security issues. Fourth, urging and demanding President Jokowi to thoroughly investigate the cooking oil mafia and evaluate the performance of related ministers. Fifth, urging and demanding President Jokowi to resolve agrarian conflicts in Indonesia. Sixth, urging and demanding President Jokowi and Vice President Maruf Amin to fully commit to fulfilling campaign promises during the remaining term. The demands of the students are legally justified. In Article 7 of the 1945 Constitution, it is stated that the President and Vice President hold office for five years and can be re-elected for the same position, but only for one term. This means that if one fiveyear term can only be re-elected for one additional five-year term, then the president can serve a maximum of 10 years.

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[20]Dany Garjito, "What Are the 6 Demands of BEM SI in the Continued Demonstration on April 11?," last modified April 9, 2022, accessed April 10, 2022. https://www.suara.com/news/2022/04/09/141835/apa-saja-6-tuntutan-bem-si-pada-aksi-demo-lanjutan-11-april-mendatang

Otherwise, it would be a violation of the constitution, or in other words, unconstitutional.

The anxiety of students, particularly university students, can be understood because the youth, especially students, are agents of change. In the midst of the COVID pandemic, students must continue their learning, which is often less than optimal due to the need for adjustments to online learning that may not always synchronize with the readiness of communication tools[21] , Students must not lose their spirit as agents of change. If we look at the history of student struggles, a long journey has been carved, even long before independence. In 1908, there was a student movement called Boedi Utomo, focusing on education, social issues, teaching, and culture. Additionally, in 1928, the Indonesian Youth Movement took an oath, emphasizing the unity of the Indonesian people, nation, and language. In 1966, there was a national uprising of the student movement, particularly HMI, against communist ideology in the Communist Party of Indonesia. In 1974, students criticized and protested against the planned fuel price hike, and this year also saw the Malari incident.

In 1990, the Yogyakarta Student Communication Forum emerged, demanding the revocation of the NKK/BKK to stem the massive student movement. In 1998, the reform movement demanded the elimination of corruption, collusion, and nepotism through the occupation of thousands of students. In 2007, students formed the Executive Board of Students throughout

[21]Yayat Hendayana, et al., "Higher Education Book in the Covid-19 Pandemic Era," (Jakarta: Directorate General of Higher Education, Ministry of Education and Culture of the Republic of Indonesia), 2020, 36.

Indonesia. In 2019, students protested against several laws, and in 2020, students protested against the omnibus law (Job Creation Law)[22] , And now, in 2022, students are once again taking action. Student resistance is occurring in many regions. Students demand change, and when there are efforts to perpetuate power, students once again show their identity. According to Rizal Ramli, the era of Jokowi is an era of "peng-peng" (rulers doubling as businessmen) running rampant, or in Dutch, "Opperkoopman".[23] Furthermore, Rizal stated that during Jokowi's era, it is the golden age of oligarchy. Oligarchs control parts of the government and can influence legislation to protect themselves from legal consequences.[24] According to KBBI, oligarchy is a form of government run by a few individuals who hold power within a specific social or economic group.

The actions taken by students in several regions, including Makassar, Palembang, Cirebon, Jambi, Semarang, and Jakarta, have raised collective awareness among the public. As mentioned

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[22]Eddy Hasby, "History of Student Movements in Indonesia, From 1908 to the Reform Era," last modified August 29, 2022, accessed April 10, 2022. // www.kompas.com/stori/read/2021/08/29/110000279/sejarah-gerakan-mahasiswa-di-indonesia-sejak-1908-hingga-reformasi

[23]Arief Gunawan, "Rizal Ramli: The Rampant Peng-Peng during the Golden Age of Jokowi's Oligarchy Era," last modified March 15, 2022, accessed April 10, 2022. https://publika.rmol.id/read/2022/03/15/526873/rizal-ramli-peng-peng-merajalela-di-masa-emas-oligarki-era-jokowi

[24]Mitha Paradilla Rayadi, "Rizal Ramli Speaks Frankly About the Flourishing Oligarchy Era of Jokowi: That's the Reason I Want to Add," last modified March 14, 2022, accessed April 10, 2022, https://www.pikiran-rakyat.com/nasional/pr-013974774/rizal-ramli-blak-blakan-sebut-era-jokowi-oligarki-tumbuh-subur-itu-alasan-pengen-nambah.

earlier, oligarchy can influence regulations. Therefore, even though Article 7 of the 1945 Constitution clearly states that the extension of the president's term is not possible, it could be forced through a structured, systematic, and massive approach to achieve its goals. The control over all aspects of life raises concerns among many parties, leading to resistance. If the extension of the president's term is forcibly pursued, it clearly violates the law, or in other words, is unconstitutional. Jokowi's response to discussions on this matter appears ambiguous, as seen from Jokowi's statements that are somewhat elusive and unclear. Many people perceive that Jokowi is enjoying the discourse on a third term.[25] Moreover, recently, his action of participating in appreciating and voicing support for the discourse on a third term has added to the political turmoil in Indonesia, which is increasingly concerning. It seems to be forgotten that the limitation on the president's term originated from the experiences during the old and new order governments, which should have been avoided so that presidential power has limitations in accordance with constitutional mandates.

Looking back at the impeachment procedure, where changes occurred to the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945), the President can be dismissed for political reasons, not legal ones, as it does not involve

[25]Fitra Chusna Farisa, "Deemed Not Firm, Does Jokowi Enjoy the Issue of a 3-Term Presidential Period?," last modified March 31, 2022, accessed April 10, 2022. https://nasional.kompas.com/read/2022/03/31/07345421/dinilai-tidak-tegas-jokowi-nikmati-isu-masa-jabatan-presiden-3-periode?page=all.

judicial institutions to assess it legally.[26] Regarding impeach-ment, both before and after the amendment have the same substance, which is returned to political institutions with the assistance of the Constitutional Court's authority to ensure the principles of constitutional law are preserved. In 2019, during the presidential campaign, anyone who voiced changing the president was considered seditious, even though 2019 was the time for the presidential election. Ali Mochtar Ngabalin's Movement for Change of President was deemed uncivilized. Prof. Hibnu Nugroho said that the term "makar" comes from the Arabic language, namely "makron," which means deceiving, misleading, persuading, betraying, deceiving.[27] According to the first meaning in the Kamus Besar Bahasa Indonesia, "makar" refers to wicked intentions or deceit, and the second meaning is the act (effort) of attacking (killing) someone, while the third is the act (effort) of bringing down. As known, in 2019, there were presidential and vicepresidential elections in Indonesia. At that time, Jokowi was also a presidential candidate. What was accused against the campaign teams as "makar" lost its object because "makar" should be directed at the president, not the presidential candi-date. In Indonesia, "makar" is regulated in Articles 104 to 108 of the Criminal Code (KUHP). The criminal act of "makar" consists of:

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[26]Muhamad Aksan Akbar, "Legal Politics of the Dismissal (Impeachment) of the President and/or Vice President in Indonesia in the Perspective of the Rule of Law and Democracy," SASI 26, No. 3 (2020), 327

[27]Andi Saputra, "What is Rebellion (Makar)? Let's Read Its History," last modified May 9, 2019, accessed April 10, 2022, https://news.detik.com/berita/d-4542290/apa-sih-itu-makar-yuk-baca-sejarahnya.

1. Criminal act of "makar" against the President and Vice President of the Republic of Indonesia;
2. Criminal act of "makar" against the Territory of Indonesia;
3. Criminal act of "makar" against the Government of Indonesia;
4. Expansion of the Meaning of the Criminal Act of "Makar"; 5. Criminal act of "makar" against Friendly States and the Head of State and its Vice.

The criminal act of election-related crimes or treason, as stipulated in the Criminal Code (KUHP), should be distinguished. This is important for addressing all constitutional issues as it should be.[28] From the description above, the interpretation of something appears to be adjusted to political interests. With so many issues affecting the people today, and even discussions of unconstitutional actions, is it possible to take action against Jokowi with impeachment? Under UUD 1945 Article 7B, it is possible, but the implementation is not simple. There are rights of interpellation, inquiry rights, and the right to express opinions addressed to the president because the president is considered to have violated the law. If, in a plenary session, it is declared that the president has committed treason against the state, corruption, bribery, other serious crimes, or dishonorable acts, or no longer meets the requirements as President and/or Vice

[28]Muzakkir, "Rebellion Between Freedom of Speech vs. Legal Implications. National Seminar with the theme organized by the Songo Syndicate Association in collaboration with the Faculty of Law, National University," (Jakarta, 2019), 16.

President, the DPR conveys the decision on the right to express opinions to the Constitutional Court. If granted, it is proposed to the MPR for dismissal.

The MPR's decision on the proposal for the dismissal of the President and/or Vice President must be made in a plenary session of the MPR attended by at least 3/4 (threequarters) of the total members and approved by at least 2/3 (two-thirds) of the members present, after the President and/or Vice President have been given the opportunity to provide explanations. The MPR's decision on whether to dismiss the President and/or Vice President is determined by a Decree of the MPR. Considering the complexity and length of the impeachment process, it can be said that the likelihood of it happening is very low, especially if the president is from the ruling party.

1. Emergence of the Extension Idea

In the second term of President Joko Widodo's administration, the discourse on extending the presidential term re-emerged. The idea of extending the presidential term was initially proposed by Immanuel Ebenezer, the Chairman of Jokowi Mania Volunteers (Joman), on September 2, 2021.[29] The main reason for this proposal was the ongoing impact of Covid-19, which had not fully subsided, necessitating economic recovery. To achieve this, an amendment to the 1945 Constitution was deemed necessary, including inserting a provision for the extension of the presidential term during a state of emergency

[29]NN, "Volunteers Propose Extending Jokowi's Term by 3 Years Through Amendment," last modified September 2, 2022, accessed April 11, 2021. https://www.cnnindonesia.com/nasional/20210902111627-32-688743/

into Article 7. Later, Ebenezer revised his statement, citing President Joko Widodo's rejection of the idea and constitutionally explaining that it was not possible for Jokowi to extend his term again.

The proposal was further supported by Bahlil Lahadalia, the Minister of Investment/Head of the Investment Coordinating Board, on January 9, 2022, during the release of the findings of the Indonesian Political Indicator Survey.[30] Bahlil claimed that the proposal emerged from the business community, expressing concerns about the impact of the upcoming general elections on the post-Covid-19 economic recovery process. He argued that the postponement of elections had occurred in Indonesia during both the Old Order (Orde Lama) and the New Order (Orde Baru). Moreover, based on the Indonesian Political Indicator Survey, 31% of the public agreed with the extension of the presidential term. This stance was supported by Muhaimin Iskandar on February 23, 2022, Airlangga Hartarto on February 24, 2022, and Zulkifli Hasan on February 25, 2022.[31] Muhaimin proposed an extension of the president's term for 1-2 years. He mentioned that the input came from authorities and economic

[30]Arnoldus Kristianu, "Bahlil: Business World Supports the Extension of Jokowi's Term until 2027," last modified January 9, 2022, accessed April 11, 2022, https://investor.id/national/277554/Bahlil: Dunia Usaha Dukung Perpanjangan Masa Jabatan Jokowi hingga 2027

[31]Delvira Hutabarat. "Political Parties Clash in Responding to the Discourse of Presidential Term Extension, Who Approves and Rejects?," last modified March 2, 2022, accessed April 14, 2022, https://www.liputan6.com/news/read/4900036/Adu Kuat Parpol Sikapi Wacana Perpanjangan Jabatan Presiden, Siapa yang Setuju dan Menolak ?

analyses concerned about the 2024 elections disrupting economic stability. However, an analysis for the years 2022-2023 indicated a momentum in the improvement of the national economic conditions. He supported the proposal by claiming that 60% of internet accounts supported the extension of the president's term and the postponement of the elections. Meanwhile, Airlangga Hartarto, as the Coordinating Minister for Economic Affairs and the Chairman of the Golkar Party on February 24, 2022, stated that the idea was the aspiration of oil palm farmers from Siak Pekanbaru. The farmers felt an improvement in the livelihood of oil palm farmers due to Joko Widodo's policies.

Zulkifli Hasan echoed the statements of Muhaimin and Airlangga, suggesting that the 2024 elections should be postponed for two years for five reasons. These reasons include the ongoing Covid-19 pandemic, the unrecovered Indonesian economy, the global political situation due to the Russia-Ukraine war, the budget for elections that could be used for the welfare of the people, and the high satisfaction of the public with the performance of the Joko Widodo government.[32] In conclusion, Luhut Binsar Panjaitan (Coordinating Minister for Maritime Affairs) stated on March 11, 2022, that he possessed big data on media conversations involving 110 million people from various platforms. The data indicated support for the postponement of elections and the extension of the president's term. He expressed

[32]NN, "PAN Chairman Zulkifli Hasan Supports Postponement of 2024 Elections," last mdified February 25, 2022, accessed April 15, 2022, https://www.jawapos.com/nasional/politik/25/02/2022/Giliran Ketum PAN Zulkifli Hasan Dukung Penundaan Pemilu 2024

regret over the allocation of 110 trillion rupiahs for the elections at a time when the economic conditions had not fully recovered.[33] Luhut was also revealed to be the communicator with political party leaders to advocate for the postponement of elections or the extension of the president's term. Luhut was also suspected of being the driving force behind the support from the Association of All Indonesian Village Governments (Apdesi) for "Jokowi Three Terms.".[34] The proposals for the postponement of elections, extension of the president's term, or the addition of a presidential term to three years are intertwined suggestions. These proposals originated from the circle of ministers, were supported by party leaders, and involved various elements of society. The reasons put forward align with the five points mentioned by Zulkifli Hasan above, namely related to the pandemic, economic conditions, the Russia-Ukraine conflict and its impact, the significant budget for elections, and the high level of public satisfaction with Joko Widodo's leadership.

2. Rejection Responses

The proposal for the extension of the President's term has sparked rejection responses from various quarters. These responses come from the leaders of political parties, academics,

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[33]Detikcom Team, "Luhut Claims to Have Big Data Containing the People's Voices Wanting to Postpone the Elections," last modified March 11, 2022, accessed April 14, 2022, https://news.detik.com/berita/d-5978918/Luhut Klaim Punya Big Data Berisi Suara Rakyat Ingin Pemilu Ditunda.

[34]Dewi Nurita, "Many Question Luhut's Claim about Big Data Delaying the 2024 Elections," last modified March 10, 2022, accessed April 14, 2022, https://nasional.tempo.co/read/1570393/

political observers, survey institutions, non-governmental organizations (NGOs), and even students. The leaders of political parties who explicitly rejected the idea of extending the president's term include PDIP, Nasdem, PPP, and Gerindra. The Indonesian Democratic Party of Struggle (PDIP) has hinted at rejecting the idea of extending the president's term since January 2022. Hasto, the Secretary-General of PDIP, emphasized that Megawati would adhere to the constitution.[35] Megawati's stance was reiterated by Hasto during a virtual press conference releasing a survey by LSI on March 3, 2022.

The rejection was also voiced by Amien Rais from the Ummah Party, which was responded to by several other leaders of political parties. Kamhar Lakuni and prominent figures from the Democratic Party, Hidayat Nur Wahid from the Prosperous Justice Party (PKS), Ahmad Basarah from PDIP, and Asrul Sani from the United Development Party (PPP). Lakuni based the rejection on the grounds that there is no urgency to amend the 1945 Constitution, and the two-term limit for the presidency is a constitutional mandate. Moreover, there are no outstanding achievements from Joko Widodo's leadership. Meanwhile, Hidayat Nur Wahid and Asrul Sani emphasized that there is no agenda for the People's Consultative Assembly (MPR) to amend the 1945 Constitution. Ahmad Basarah from PDIP viewed the addition of the President's term to three periods as not a current

[35]NN, "Megawati Rejects Extension of Presidential Term," last modified January 12, 2022, accessed April 15, 2022, https://mediaindonesia.com/politik-dan-hukum/463786/Megawati Tolak Perpanjangan Masa Jabatan Presiden.

need for the nation.[36]

Rejection responses to the proposal for an extension of the President's term have also emerged from constitutional law experts. The initial response was presented by Bivitri Susanti. She emphasized three dangers of changing the President's term to three periods: the potential for abuse of power, the lack of leadership regeneration, and the resulting hindrance to Indonesia's innovation.[37] In addition, Deny Indrayana considered the proposal for the postponement of the elections and the extension of the President's term as a form of constitutional abuse. Meanwhile, Jimly Asshiddiqie's opinion is that the above proposal is merely a statement without being based on studies by political parties.[38] On the other hand, Zainal Arifin Mochtar believes that the issue of postponing the elections and extending the President's term is very dangerous: it disrupts the principles of the presidential system and violates the principles of constitutionalism.

Survey institutions have also commented on the proposal for the extension of the President's term. Burhanuddin Muhtadi,

[36]Aryo Putranto Saptohutomo. "Puluhan Akademisi Tolak Wacana Perpanjangan Masa Jabatan Presiden", last modified March 16, 2021, accessed April 14, 2022, https://nasional.tempo.co/read/1442553/.

[37]Budiarti Utami Putri, "Bivitri Susanti Mentions 3 Dangers of a 3-Term Presidential Period," last modified June 21, 2021, accessed April 14, 2022, NasionalTempo.co/read/1474991 Bivitri Susanti Sebut 3 Bahaya Masa Jabatan Presiden 3 Periode

[38]Arrijal Rachman, "Lineup of Constitutional Law Experts Rejects Postponement of the 2024 Elections," last modified February 28, 2022, accessed April 15, 2022, https://nasional.tempo.co/read/1565519/Deretan Pakar Hukum Tata Negara Menolak Penundaan Pemilu 2024

the executive director of the Indonesian Survey Institute (LSI), stated that both supporters of President Jokowi and Prabowo Subianto in the 2019 Presidential Election rejected the postponement of the elections. The aspiration for the elections to proceed as per the constitution came from various sectors or multipartisan.[39] Regarding Luhut's big data claim, Adi Prayitno, the Executive Director of the Indonesian Political Parameter (PPI), revealed that according to the PPI survey in June 2021, 69% of respondents rejected the extension of the President's term.[40] The survey data is supported by the analysis of online media conversations by Ismail Fahmi, the founder of Drone Emprit. He stated that public discussions about the issue of extending the President's term only involved 8,442 tweets, and the emerging clusters were expressions of rejection.[41]

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[39]NN, "Constitutional Experts: 3-Term President Issue is Dangerous, a Gateway to Authoritarianism," last modified March 5, 2021, accessed April 14, 2022, https://kumparan.com/kumparannews/Ahli Tata Negara: Isu Presiden 3 Periode Berbahaya, Pintu Masuk Otoriter

[40]Muhammad Farhan, "Luhut Claims Big Data, Survey Institutions: 69% of the Public Rejects Extension of the President's Term," last modified March 14, 2021, accessed April 10, 2022, https://nasional.sindonews.com/read/712081/12/luhut-klaim-big-data-lembaga-survei-69-publik-tolak-perpanjangan-masa-jabatan-presiden-1647234231

[41]NN, "Experts Uncover Pros and Cons of Extending the President's Term on Social Media." https://www.cnnindonesia.com/teknologi. last modified March 02, 2022, accessed April 14, 2022, https://www.cnnindonesia.com/teknologi.Ahli Bongkar Pro Kontra Perpanjangan Masa Jabatan Presiden di Medsos

[42]Aryo Putranto Saptohutomo, "Dozens of Academics Reject the Discourse of Extending the President's Term," last modified March 16, 2021,

The rejection also comes from various other elements. The Academic Alliance, initiated by Ubedillah Badrun, expressed its rejection of attempts to revise the presidential term limit for non-democratic purposes and the use of law as a political tool.[42] Iwan Sumule, the Chairman of the Democracy Pro-Activist Network (ProDEM), considered the discourse of postponing the elections a violation and constitutional crime. The same rejection was expressed by Sasmito Madrim from the Independent Journalists Alliance (AJI). The wide spectrum of rejection indicates the lack of support for the discourse of extending the president's term and efforts to loosen the presidential term limits stated in the constitution. The various rejections from societal elements towards the discourse of extending the president's term indicate social dynamics that desire a rotation of national leadership.

As for the aspirations to maintain the presidential term limits, they are rooted in three things: First, national leadership in Indonesia has been marked by the strong position of the President, enabling them to retain power for several decades. During the period 1945–1998, practically only two people held the position of President in Indonesia. This condition paved the way for the growth of national leadership that tended to be authoritarian, as seen in the Old Order era and the New Order era. During the Old Order era, President Soekarno was declared the lifelong president by the People's Consultative Assembly (MPR), whose members were appointed by the President. Meanwhile, during the New Order era, President Soeharto held leadership for almost 32 years and was able to co-opt various political forces nationally. Memories of the somewhat autho-

ritarian leadership still linger in the minds of some Indonesian people and are part of the history of Reformasi. One of the agendas of Reformasi at the end of the New Order was 'succession' (change of national leadership). 'Succession' prompted the Reform Movement to overthrow the New Order and build a new order through an amendment to the Constitution that limits the president's term.

Second, political participation in society ahead of the 2024 elections is very high. This is evidenced by the formation of support networks for presidential candidates. Although no one has explicitly declared themselves as a presidential candidate, various supporter communities have emerged. There are various volunteer groups supporting Anies Baswedan, Ganjar Pranowo, Puan Maharani, Airlangga Hartarto, Erick Thohir, and Muhaimin Iskandar

The emergence of volunteers is seen as a shift from political value and oligarchy reduction to participatory. Since 2021, volunteer supporters of presidential candidates have begun to emerge, indicating the active involvement of private political machinery in anticipating the 2022 democratic party. *Third,* Indonesia is currently experiencing a decline in democracy, as seen from the decrease in the freedom of speech index from 66.17 in 2018 to 64.29 in 2019. The decline in democracy in Indonesia is caused by a decrease in freedom of expression and speech. This condition indicates a shift from electoral democracy to flawed demo-

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accessed April 14, 2022, https://nasional.kompas.com/read/2022/03/16/16494431/puluhan-akademisi-tolak-wacana-perpanjangan-masa-jabatan-presiden?page=all.

cracy. The decline in quality, according to Jati,[43] dipengaruhi pula tiga hal, yaitu: penguatan peran aktif militer dalam peran sipil pada era Presiden Joko Widodo, menguatnya polarisasi kubu nasionalis-pluralis dengan kubu konservatif, dan berkembangnya tendensi dinasti politik. Sebagai akibatnya adlah munculnya oposisi keras dari kalangan konservatif dan harapan lebih besar terhadap terjadinya rotasi kepemimpinan nasional.

Fourth, the increase in the prices of cooking oil, fuel, and the rise in taxes amid the difficult situation experienced by the people, especially since the COVID-19 pandemic, becomes a factor that worsens the quality of democracy. The economic downturn caused by the pandemic since 2020 has led to job losses and a decrease in people's income. This situation coincides with the development of the discourse on extending the president's term, amidst public questioning of why the government is losing to the mafia.[44] The issue of the mafia colors the era of Joko Widodo's leadership, which according to Rizal Ramli, is an era of oligarchy and the golden age of oligarchy. Oligarchy controls power and can manipulate laws to protect itself from legal consequences.[45]

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[43]Wasisto Raharjo Jati, "The Phenomenon of Democratic Decline in Indonesia 2021," The Insights No. 27, June 9, 2021.www.habiebiecenter.or.id

[44]M. Julnis Firmansyah, "Jokowi Distributes Cooking Oil BLT, Observer: Evidence of the Government Losing to the Mafia."

[45]Mitha Paradilla Rayadi, "Rizal Ramli Speaks Frankly About the Flourishing Oligarchy Era of Jokowi: That's the Reason I Want to Add."

3. The Constitution as the Last Bastion

The amendment of the 1945 Constitution has successfully embodied the spirit of Reformasi. One aspect of this spirit is the introduction of term limits for the President, allowing only two terms, with each term lasting five years. The significance of this limitation can be seen in the historical experience of Indonesia, which had Presidents with long terms. In 1963, the People's Consultative Assembly (MPR) appointed Sukarno as President for life. Subsequently, in 1977, Suharto was inaugurated as the President of Indonesia for the seventh time, triggering student demonstrations.[46] The amendment to the 1945 Constitution not only limits the President's term but also strengthens the President's position to prevent easy removal. Before the amendment, the President could be dismissed for political reasons without involving judicial processes through the legal system.[47] After the amendment, the President of Indonesia is no longer appointed or dismissed by the MPR but ends their term due to its expiration, except in certain circumstances that force the MPR to revoke the presidential mandate. However, this is not easily achieved, especially with the strong support of the People's Consultative Assembly (DPR) for the current President, Joko Widodo.

Therefore, the discourse of extending the president's term

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[46]Qonita Dina Latansa, "Constitutionality of the Term Limits for the President and Vice President in Indonesia," pages 599 and 602.

[47]Muhamad Aksan Akbar, "Legal Politics of the Dismissal (Impeachment) of the President and/or Vice President in Indonesia in the Perspective of the Rule of Law and Democracy," page 327.

involving ministers has sparked strong reactions, with the effort being considered treason, terror, and a violation of the constitution. Deni Indrayana views the attempt to extend the president's term as unconstitutional, violating Article 7 and Article 22E of the 1945 Constitution, which states that general elections must be conducted directly, publicly, freely, and secretly. The importance of elections is as a forum to choose the President and Vice President, Members of the People's Consultative Assembly (DPR), Members of the Regional Representative Council (DPD), and Members of the Regional People's Representative Council (DPRD). If the election is delayed, it will also result in an extension of the terms of Members of the DPR and DPD. This firm stance is also influenced by the government's decisive actions against the opposition that campaigned for a change in leadership before the 2019 Presidential Election, seen as an attempted coup.[48] Interestingly, despite this, the government apparently seeks to amend the 1945 Constitution to extend the president's term.

The rejection of the discourse of extending the president's term is an effort to uphold the values of reform, which are considered increasingly eroded due to the influence of political oligarchy and the weakening oversight of the government because the DPR cannot accommodate the aspirations of the people. Article 22E of the 1945 Constitution serves as a fortress to ensure the democratic process, the rotation of national leadership, the accommodation of opposition voices, and the resolution

[48]Wishnugroho Akbar, "Ngabalin Calls the Movement for Changing the President Rebellion and Uncivilized."

of legal issues. With these hopes, democracy activists, opposition figures, and the public who already have presidential candidates for the 2024 elections are countering the discourse of extending the president's term. People are concerned that the discourse of postponing elections could be used as an excuse by the government to push the DPR and MPR to amend the 1945 Constitution.[49]

The suspicion of various elements of society is not unrelated to the weakness of the DPR, which should act as a counterbalance and overseer of the government but often merely follows the government's wishes. Since 2020, five laws have been enacted, and four of them were government proposals. The DPR is perceived as weak because it prioritizes government draft laws over its own and promptly approves these five laws. If the government pushes for an amendment to the 1945 Constitution regarding the president, there are concerns that the DPR will approve it because the proposal benefits DPR members.

At this stage, the constitution becomes the last line of defense for democracy, limiting the terms of the president and vice president, as well as regulating elections. The rule limiting the president's term in the 1945 Constitution reflects constitutional democracy itself. In the 20th century, constitutional democracy was upheld by democratic governments based on the rule of law. The realization of the rule of law includes constitutional protection of individual rights and clear procedures, an independent and impartial judiciary, free elections, and freedom of

[49]Bram Setiawan, "5 Things About the Postponement of the 2024 Elections, Why Does it Spark Controversy?"

expression.

Therefore, limiting the president's term to two periods, each lasting five years, is a form of protection for the sustainability of constitutional democracy. Based on studies in various countries, if a president holds power for an extended period, negative deviations and impacts can occur, as seen in the former Soviet Union. Limiting the president's term in a situation of high political participation, democratic decline, and concerns about oligarchic interference is a guarantee for change and refreshment in governance. It ensures a healthier and more stable government.

Conclusion

The political dynamics in Indonesia in recent years have been characterized by tension resulting from the Presidential Elections in 2014 and 2019. In this context, discussions about extending the president's term, delaying elections, and adding presidential terms have become highly sensitive topics. Proposals from the government and its supporting parties have faced strong reactions. The proposals for extending the president's term mainly come from the government, particularly from ministers. This plan is then echoed by the leaders of supporting political parties, based on the aspiration of the public to support economic growth and political stability. Although these proposals are backed by claims of public support and survey results indicating high satisfaction with the government's performance, they have faced criticism from various quarters. Political party leaders express adherence to the constitution and consider amendments to the

1945 Constitution unnecessary. Legal experts and academics view these proposals as attempts to abuse power and violations of the constitution. Survey institutions show that the level of support for extending the president's term is relatively low. Students reject the extension of the president's term, considering it unconstitutional, and demand economic improvements. This rejection stems from Indonesia's long-standing political experience. During the Old Order era, the MPR decision to appoint a president for life emerged. During the New Order era, Soeharto served for seven terms. Additionally, Indonesia is currently experiencing a decline in democracy and facing economic challenges due to government policies. Therefore, the discourse on extending the president's term is considered counterproductive to the efforts of consolidating democracy in Indonesia and national development. The constitution is seen as a fortress to uphold the spirit of Reformasi, ensuring the rotation of national leadership and hoping for national political change.

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Application of General Principles of Good Governance in Tourism Policy: Case Study of Borobudur Temple Tariff Increase

Introduction

Essentially, the entire earth, water, natural wealth, and its contents on Indonesian land belong to the peoplemanaged through the state. Therefore, management through the state is expected to provide equitable welfare for the people through economic improvement.

The form of management carried out by the state can be divided into various sectors, for example, the oil and gas industry, the mining sector, the fisheries sector, and other industries such as tourism. The tourist industry is governed by Tourism Law No. 10 of 2019. (Tourism Law). Article 1, Section 4 of the Tourism Law Tourism encompasses all tourism-related activities. It is multifaceted and interdisciplinary as an expression of everyone's and the country's requirements, as well as interactions between visitors and local communities, other tourists, governments, local governments, and enterprises.

There are various tourism destinations in Indonesia that may be explored, ranging from Sabang to Merauke. Indonesia is also recognized for its magnificent natural resources, as well as historical treasures that are typically designed for study and pleasure as part of tourism. Borobudur Temple is one of these treasures. Borobudur Temple is a component of Indonesia's religious history. This temple is located in Magelang Regency, one of the most popular tourist locations in Central Java Province, and serves as a historical educational resource for both local and foreign visitors. The splendor of the reliefs and the construction of Borobudur Temple are distinctive tourist attractions.

The grandeur of Borobudur Temple, of course, necessitates a contribution from tourists for maintenance in the form of admission ticket money. Initially, the admission ticket was charged at Rp. 50,000–50,000. (fifty thousand rupiah). If we already have this ticket, we may undertake leisure activities at Borobudur Temple, such as riding. Domestic visitors who wished to ride the Borobudur Temple were charged Rp. 750,000-(seven hundred and fifty thousand rupiahs), despite having paid the admission fee to the Borobudur Temple area for Rp. 50,000,- at the start (fifty thousand). The community, predictably, reacted negatively to this. However, the policy involving ticket increases was eventually abandoned. This occurrence demonstrates that the government failed to apply general principles of good governance, such as expediency, accuracy, and public interest. Many factors must be considered by the government when developing a policy so that it may be implemented in the community..

Method

This study will employ normative legal techniques. To implement the normative juridical method, a literature review is used, which examines primarily secondary data in the form of case studies based on laws and regulations, court decisions, agreements, contracts, or other legal documents, as well as research and assessment results and other references.[1] The descriptive-analytic research approach was applied. A descriptive research that offers as much detail as possible about people or other symptoms in order to strengthen hypotheses or develop new ones.[2] The topic from which data can be acquired is referred to as the data source.[3] Primary data is information gathered directly from sources such as interviews. Secondary data has been produced in the form of documents and obtained from the literature results by undertaking document, archive, and literature investigations.[4]

Result and Discussion

The Indonesian nation has many places that can be used as destinations for tourism.Tourism is an extraordinary potential that Indonesia has. The country has potential resources consisting of 17,100 islands, the cultural diversity of the nation, such as

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[1]Badriyah Khaleed, Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundangundangan, Medpress Digital, Yogyakarta, 2010.

[2]Ahmad Tanzeh, Metodologi Penelitian Praktis, Teras, Yogyakarta, 2011.

[3]Suharsimi Arikunto, Prosedur Penelitian Suatu Pendekatan Praktik, Jakarta, Rineka Cipta, 2006.

[4]Sumadi Suryabrata, Metode Penelitian, Jakarta, Rajawali Press, 1992.

300 Tribes and Ethnicities, and more than 700 types of regional languages. All models of tourist attractions exist and can be developed, ranging from tourism that relies on beauty and natural wealth to socio-cultural diversity.[5] Tourism is one of themeans for holiday tourism and educational tourism. A holiday tour is a tourist trip organized and followed by its members to take a vacation, have fun and entertain themselves. On the other hand, upbringing and knowledge tourism is a tourist trip whose primary purpose is to obtain knowledge or research on a field of science or a comparative study of the study or work he is engaged in. For example, a tourist visits a traditional village to investigate the socio-cultural life of the community, and a tourist visits to see ancient temples to find out the history and reliefs of the temple building.[6]

Nature tourism, cultural tourism, and special interest tourism are all popular tourist destinations in Indonesia. Borobudur Temple, inMagelang Regency, is a popular tourist attraction in Indonesia. Borobudur Temple is likewise being promoted as a High Priority Tourism Site. The government's development consists of three aspects: accessibility (all types of transportation facilities and infrastructure that support tourist movement from the tourist's home area to tourism destinations as well as movement within the tourism destination area in terms of the moti-

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[5]Torang Nasution, Kebijakanpariwisata Indonesia Pada Era Pandemi Covid-19 Indonesian Tourism Policy In The Era Of The Covid-19 Pandemic, Jurnal Analis Kebijakan, Vol. 5 No. 2, 2021.

[6] I Putu Gelgel, Hukum Kepariwisataan dan Kearifan Lokal, UNHI Press, 2021.

vation of tourist visits), amenity (facilities), and attractions. Furthermore, the Borobudur Temple region is designated as a National Tourism Strategic Area in the National Tourism Development Master Plan 2010–2025.

TheMinistry of State-Owned Enterprises alsoworks with communities in the Borobudur region to create a Village Economic Center in order to boost tourism in the area through Community Based Tourism. Tourism growth has been shown to benefit the local community.

Growing tourism regions providemore job opportunities, decreased unemployment, and improved community welfare.[7] Borobudur Temple, often known by its alternate name, is a Mahayana Buddhist temple located on the Indonesian island of Java near the city of Muntilan. This temple was built under the SyailendraDynasty.Borobudur Temple is remains theworld's biggest Buddhist temple. Borobudur Temple was utilized by Javanese Buddhists for pilgrimages and other ceremonies until the 14th and 15th centuries, when it was abandoned. The Dutch and Javanese conducted considerable study and archaeological investigations after discovering the Borobudur Temple in 1814. Borobudurwas named a World Heritage Site by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 1991, after it had already been rebuilt under the supervision of President Soeharto and UNESCO. This landmark temple has had a significant impact on the aesthetics, architecture, and cultural identity of Indonesia. Borobudur Temple is

[7]Sunaryo B, Kebijakan Pembangunan Destinasi Pariwisata Konsep dan Aplikasinya di Indonesia, Yogyakarta, Gava Media, 2013.

the most visited tourist attraction in Indonesia.[8]

Borobudur Temple is said to have been progressively built by volunteer laborers who worked together for the benefit of religious teaching services during the rule of the Syailendra Dynasty between 750 and 842 AD. As a result, this temple serves as historical documentation of the evolution of Buddhism in Indonesia. According to this viewpoint, Borobudur Temple represents the pinnacle of Buddhist development in this region. This is seen in the relief sculptures, statue arrangement, and represented Buddha figures. They all demonstrate that Buddhism has progressed to a complicated degree as an outstanding vehicle (Mahayana) that many people of society have accepted. Meanwhile, some other specialists attempt to understand the existence of tantric aspects in the flow.[9]

Borobudur Temple is a well-known tourist attraction. Of course, precautions have been taken to assure its safety. From September 17 to 26, 1985, the World Tourism Organization's sixth session in Sofia, Bulgaria, adopted the Tourism Bill of Rights and the Tourist Code, which are the worldwide core principles governing tourism. The session produced the Tourism Bill of Rights and the Tourist Code, an international treaty. The preamble of the agreement mentions some of the criteria considered in drafting the Tourism Bill of Rights and Tourist Code.

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[8]James Blake Wiener, diterjemahkan oleh Sabrina Go, Candi Borobudur, https://www.worldhistory.org/trans/id/1-14364/candi-borobudur/.

[9]Sistem Registrasi Nasional Cagar Budaya, http://cagarbudaya.kemdikbud.go.id/cagarbudaya/detail/PO2015070700008/borobudur.

Everyone has the right to rest and vacation, according to Article 24 of the Universal Declaration of Human Rights, which includes acceptable working hours and periodic vacations while still earning a living. The resolutions and recommendations adopted by the United Nations Conference on International Travel and Tourism in Rome, Italy, in 1963, especially those relating to some of the goals of increasing tourism development in various countries and simplifying international travel provisions, formed the basis for considering the creation of this convention. Tourism is mentioned in the preamble of the Tourism Bill of Rights and Tourist Code as a means of improving the quality of life for all humans, as well as a key factor for world peace and mutual understanding.

The preamble to this convention requires governments to submit recommendations for inclusion in the Tourism Bill of Rights and Tourist Code, and to implement these ideas in their respective countries in accordance with the laws and regulations in place. The Tourism Bill of Rights and Tourist Code are split into two sections: the Tourism Bill of Rights (articles 1–9) and the Tourist Code (articles 10–13). (articles 10–23). Article 1 of

the treaty affirms everyone's right to rest, vacation, and to limit working hours of leave or periodic vacation by collecting money, as well as free movement within the limits of universally recognized regulation. It also recommends that governments establish and implement plans to coordinate domestic and international tourism development and vacation activities. It is meant to be derived from all preceding parts.[10]

[10]Tourism Bill of Rights and Tourist Code.

Another international rule of law that covers tourist concerns is the Hague Declaration on Tourists. A meeting was held in the Netherlands from April 10 to 14, 1989, to establish this declaration. In the preamble, it was resolved that the Hague Declaration on Tourist would be a way of worldwide collaboration (an instrument of international cooperation), mutual understanding between people, and a factor of tourism growth, either individually or collectively. It also encourages parliaments, governments, public or private organizations, organisations and institutions in charge of tourism operations, tourism professionals, and tourists to uphold The Hague Declaration on Tourism's values.

In addition, principle I of this declaration underlines that tourism has become a widespread occurrence. As a result, governments should prioritize tourism and encourage it to flourish alongside basic requirements and other civic activities. As a result, because this is a vital problem for tourism growth, every country must fight to maintain national, regional, and global security and peace.[11]

Another worldwide legal framework that covers tourism aims and concerns is the Global Code of Ethics for Tourism. On October 1, 1999, the Global Code was adopted in Santiago, Chile. The backdrop for its formation is the current increase in foreign visitors and the expectation of future continuous rise in international tourists. On the one hand, this is a good (encouraging) indicator since tourist visits or flows contribute to the country's foreign exchange or economic growth. An rise in the

[11]The Hague Declaration on Tourism.

number of tourists, on the other hand, is sometimes regarded to be detrimental to a country's tourism business.

Concerns have been expressed concerning the potential destruction or extinction of the earth's ecological and cultural heritage. Of course, in order to understand this, it is important to pay close attention to how it is implemented in each country and tourism in terms of what is in the Global Code, particularly foreign exchange donations.

In general, Indonesian regulations have incorporated international ideas, such as those governing tourism, which are governed by LawNumber 10 of 2019. (Legal Framework for Tourism) Tourism, according to Article 3 of theTourismLaw, serves to fulfill the physical, spiritual, and intellectual demands of each tourist via leisure and travel, as well as to raise state income to achieve people's welfare. However, execution seldom meets expectations. Policies are established when they are desired, rather than after long and comprehensive academic research or study in all areas of the topic. Meanwhile, tourism has numerous direct links, including economic, socio-cultural, and health-related interactions, and it may inspire collaboration across areas and even other nations. Then, in order to get the best results, this tourist issue should be given careful consideration.

Tourism's purpose is to promote culture, boost the nation's image, foster a sense of love for the country, build identity and national unity, and then strengthen international friendship.

In terms of economics, the local community may boost family income by selling souvenirs such as miniatures of tourist destinations, tourism-themed clothes, keychains, headgear, or

anything else linked to souvenirs. Furthermore, cafés or food booths may help to revitalize the local economy. Not to mention the rest stops, which vary from expensive hotels to accommodation in locals' homes. Other employment that contribute to economic growth include qualified and uncertified tour guides.

It should be noted that in the implementation of tourism, theremust also be principles that must not be violated, as follows:

1. Upholds religious norms and cultural values as expressions of the concept of living ina state of balance between man's connection with God Almighty, man's relationship with his fellow humans, and man's relationship with the environment;
2. Defending human rights, cultural diversity, and indigenous knowledge;
3. Promoting people's welfare, justice, equality, and proportionality; and
4. Protecting nature and the environment.
5. Strengthening local communities;
6. Establishing integration between sectors, regions, and the center, which is a systemic whole within the framework of regional autonomy, as well as integration among stakeholders;
7. Adhering to the world's tourist code of ethics and international tourism agreements; and
8. Strengthening the Unitary State of the Republic of Indonesia's integrity.

From all of the above, it can be seen that economic improvement is significant through income from tourism.

Because of this, the government must make appropriate policies without giving up the general principles of good governance.

The anticipated cost increase that happens for domestic visitors who want to ride Borobudur Temple is charged a price of Rp. 750,000- (seven hundred and fifty thousand rupiahs), even if he initially paid Rp. 50,000,- for the admission ticket to the Borobudur Temple region (fifty thousand). The public, of course, rejected this, but in the end, it canceled the ticket fee. The approach followed for the policy of increasing admission charges up Borobudur Temple does not adhere to broad principles of good government.

A few days after this discourse came to the fore, Central Java Governor Ganjar Pranowo met Minister Luhut and presented a proposal for the exorbitant tariff policy to be postponed first because of many public protests. Ganjar even said Minister Luhut agreed to his proposal to postpone the Rp 750,000 tariff plan to go up to Borobudur Temple.

Finally, Luhut stated that the IDR 750,000 fee increase for Borobudur Temple had been postponed.[12] The regular entry charge for domestic tourists remains Rp. 50,000, according to Edy Setijono, President Director of Borobudur Temple Tourism Park, Prambanan, and Ratu Boko (Persero). The main difference is that the ticket is only valid till the temple grounds.[13]

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[12]HerdiAlif Al Hikam, https://finance.detik.com/berita-ekonomi-bisnis/d-6126730/perjalananwacana-tiket-naik-candi-borobudur-rp-750-ribu-yang-kini-dibatalkan, "Perjalanan Wacana Tiket Naik Candi Borobudur Rp 750 Ribu yang Kini Dibatalkan".

[13] Devira Prastiwi, "6 Fakta Tiket Masuk Candi Borobudur Naik Jadi Rp

What is depicted in the mass media shows a pattern of communication between the local government and the central government that is not communicative so that new aspirations are conveyed precisely when there have been protests from the public over the increase in tariffs. Shouldn't there be good and substantive communication structurally involving local governments in making decisions even though the authority over them is the central government's right? Many questions then arose about how then Minister Luhut conveyed the increase.

The fundamental principles of good governance (also known as the broad foundations of good governance) come through state administration and government practice, and are thus not formal creations of a state institution such as legislation. The broad principles of good governance may be defined as general ideas that serve as the foundation and regulations for proper government management. As a consequence, government administration becomes good, pleasant, fair, and honest, free of tyranny, rule breaches, abuse of power, and arbitrary acts.[14] Article 10 paragraph (1) of Law No. 30 of 2014 on

Government Administration (Government Administration Law) mentions the following important elements of effective governance:

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750 Ribu", https://www.liputan6.com/news/read/4979677/6-fakta-tiket-masuk-candi-borobudurnaik-jadi-rp-750-ribu.

[14]Solechan Solechan, Asas-Asas Umum Pemerintahan yang Baik dalam Pelayanan Publik, Adminitrative Law & Governance Journal. Volume 2 Issue 3, August 2019.

1. legal certainty;
2. expediency;
3. impartiality;
4. scrupulousness;
5. not abusing authority;
6. openness;
7. public interest;
8. good service.

When the government raises tariffs, it disregards factors such as expediency, accuracy, and public interest, according to Article 10, paragraph (1) of the Government Administration Law.

The following is the definition of emancipation, accuracy, and public interest as stated in the Government Administration Act:

1. Convenience, benefits that must be balanced between (1) one individual's interests and the interests of another individual, and (2) the individual's interests with society.
2. Accuracy is a concept that stipulates that a Decision and/or Action must be founded on comprehensive information and documents to support the legitimacy of the decision and/or action, and that the Decision and/or Action is thoroughly prepared before it is made and/or carried out.
3. The notion of the public interest is one that prioritizes the general welfare and benefits in an aspirational,

accommodating, selective, and non-discriminatory manner.

4. This means if it is associated with the increase in Borobudur temple tariffs, it becomes counterproductive to forming the policy itself in tourism.

Conclusion

Tourism is one of the industries that can help Indonesia's economy. Borobudur Temple is one of the tourist spots that both local and foreign visitors are interested in. In terms of deciding the policy of increasing the admission price into Borobudur Temple, each tourist site has a separate policy, including Borobudur Temple. The license is then cancelled, suggesting that the government violated broad norms of good governance, including expediency, truth, and public interest, resulting in community indignation.

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Disfungsional Proses Dismissal pada Peradilan Tata Usaha Negara: Studi Kasus Putusan Nomor 41/G/ LH/2018/PTUN.PBR

Pendahuluan

Indonesia sebagaimana kitapahami merupakan negara hukum, tentu saja menganut suatu sistem hukum. Sistem hukum yang dianut di Indonesia adalah *civillaw*. Para praktisi hukum *civillaw* mempunyai suatu pemikiran dalam ruang lingkup peraturan-peraturan yang ditegakkan saatitu, yang mana hal tersebut telah dikodifikasi atau berdasarkan undang-undang dapat diaplikasikan terhadappermasalahan yang terjadi. Metode pemikiran seperti ini lebih memiliki kecenderungan untuk merencanakan, mensistematiskan dan bisa mengatur persoalan sehari-hari dengan sekomprehensif mungkin.[1] Jika kita melihat mengenai administrasi negara, suatu sistem pemerintahan dijalankan oleh badan atau pejabat tata usaha negara.

[1]Peter deCruz,*Perbandingan SistemHukum:Civil law,Common law dan Socialistlaw*(PenerbitNusaMedia,2010),h.53

Peradilan Tata Usaha Negara sesuai dengan lingkupnya menangani sengketa yang berkaitan dengan keputusan yang dibuat oleh pejabat tata usaha negara. Dalam Peradilan Tata Usaha Negara ada yang dinamakan pemeriksaan biasa dan pemeriksaan pendahuluan. Dalam pemeriksaan pendahuluan akan dilalui tiga tahap yaitu, pemeriksaan administrasi, pemeriksaan dismissal danpemeriksaan persiapan.Untuk pemeriksaan persidangan hukum acara biasa, dimulai dari gugatan, eksepsi, replik, duplik, putusan sela, pembuktian, kesimpulan, putusan akhir.

Adanya proses pemeriksaan pendahuluan ini hanya diterapkan pada hukum acara Peradilan tata usaha negara, pada badan peradilan umum lainnya tidak dikenal istilah pemeriksaan pendahuluan. Pemeriksaan pendahuluan dilakukan untuk memastikan proses administratif (secara formil) yang dilalui sebelum mengajukan gugatan ke Peradilan sudah benar. Serta pemeriksaan pendahuluan juga dalam rangka upaya membantu penggugat (perorangan/badan yang dirugikan) agar posisinya sejajar dengan tergugat (pejabat tata usaha negara).

Namun seringkali dalam menerapakan pemeriksaan pendahuluan seperti halnya proses dismissal tidak berjalan sebagaimana mestinya, seperti halnya dalamputusan 41/G/LH/2018/PTUN. PBR. Dalam putusan tersebut jika dicermati secara mendetail terjadi kesalahan dalam gugatan tanpa obyek sengketa. Hal ini membuat gugatan menja di *Error inobjecto* (tidak ada obyeknya). Seharusnya pada proses dismissal kelengkapan administratif diperiksa secara mendetail, namun ketiadaan objek gugatan ini seharusnya dibatalkan atau sekurang—kurangnya tidak dapat diterima karena ketiadaan objek yang dimaksud. Namun, pada

kenyataannya dalam kasus di atas tidak demikian. Disfungsional daripada proses dismissal terjadi disini, membuatnya hanya terkesan sebagai formalitas saja. Itu sebabnya, menarik untuk mengetahui bagaimana gambaran umum mengenai peradilan tata usaha negara dan mengapa bisa terjadi proses peradilan tata usaha negara tanpa obyek sengketa sampai pada putusan akhir.h).

Peradilan Tata Usaha Negara

Bidang hukumtata negara dan tata usaha negara yang dilakukan oleh pemerintahan memiliki kegiatan yang mana salah satunya merupakan kegiatan penyelenggaraan administrasi pemerintahan negara.[2] Adapun kegiatan penyelenggaraan tersebut sebagai cara menjalankan fungsi pemerintahan yang mana dikeluarkan dengan suatu kebijakan dalam bentuk keputusan yang dikeluarkan oleh pejabat pemerintahan.

Adapun kegiatan-kegiatan implikasi dari hal tersebut adalah bahwa pemerintah harus siap diuji kebijakannya melalui pembentukan lembaga-lembaga peradilan (administrasi) dilakukan salah satunya danyang utama adalahdengan pembentukan Peradilan Tata Usaha Negara.[3] Karena keputusan inilah yang menjadi dasar atau obyek gugatan pada peradilan tata usaha negara.

Dasar hukum peradilan tata usaha negara adalah Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha

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[2]Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara. Cet-11* (Grafindo Persada, 2019), hlm. 260.

[3]Muhammad Adiguna Bimasakti, "Pembaruan Undang-Undang Peradilan Tata Usaha Negara Pasca-Reformasi di Era Peradilan Elektronik," *Jurnal Hukum Peratun*3, No. 2 (2020), hlm. 111.

Negara, Undang-Undang Nomor 9 Tahun 2004 tentang Perubahan Pertama dari Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara dan Undang-Undang Nomor 51 Tahun 2009 tentang PerubahanKedua dari Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara (Undang-Undang Peradilan Tata Usaha Negara

Menurut konsiderandari Undang-undangNomor5 tahun 1986 tentangPeradilan Tata Usaha Negara didirikan adalah dengan pertimbangan, antara lain :

1. Memiliki tujuanuntuk mewujudkan tata kehidupan negara danbangsa yang sejahtera, aman, tenteram, serta tertib, *equality before the law*,danadanya hubungan seimbang antara pejabat tata usaha negara dengan masyarakat.
2. Mengisi kemerdekaan melalui pembangunan nasional secara bertahap, mengusahakan pembinaan, penyempurnaan dan melahirkan pejabat tata usaha negara yang bisa menjadi lebih efisien, efektif, bersih serta berwibawa dalam mnejalankan seluruh rangkaian tugasnya atas dasar pengabdian terhadap masyarakat.
3. Kemungkinan timbulnya sengketa antara badan atau pejabat tata usaha negara dengan masyarakat bisa berdampak merugikan atau menghambat jalannya pembangunan nasional yang dilakukan oleh pemerintah. Untuk menyelesaikan mengenai perihal sengketa tersebut diperlukan adanya peradilan tata usaha.

Pada dasarnya peradilantata usaha negara adalah tempat untuk diajukannya mengadili sengketa terhadap suatu keputusan yang dikeluarkan pejabattata usahanegara. Keputusan Tata Usa-

ha Negara sebagaimana merujuk dalam Pasal 1 angka 9 Undang-Undang Peradilan Tata Usaha Negara yaitu, "Penetapan tertulis yang dikeluarkan oleh Badanatau PejabatTata Usaha Negara yang berisi tindakan hukum Tata Usaha Negara yang berdasarkan peraturan perundang-undangan yang berlaku, yang bersifat konkret, individual dan final yang menimbulkan akibat hukum bagi seseorang atau badan hukum perdata."

Konkret, dapat diartikan mengatur suatu hal yang tidak abstrak atau bisa dikatakan sudah jelas. Individual berarti dalam hal ini keputusan tersebut dibuat guna ditujukan kepada seseorang tertentu. Final, mengartikan bahwa keputusan tersebut sudah definitif. Kemudian juga telah dilaksanakan yang mana karena hal tersebut pada akhirnya menimbulkan suatu akibat hukum.[4]

Tidak jarang dalam sistem peradilan, terjadi perkara yang berakhir sebelum adanya putusan akhir. Seperti dalam peradilan tata usaha negara, banyak sekali hal tersebut terjadi. Perkara selesai saat masih dalam proses dismissal. Menurut Chudry Sitompul mengatakan masih banyaknya perkara yang berakhir ketika proses dismissal karena masih banyak yang hanya mencoba saja. Hal ini bisa dilihat dari banyak faktor, antara lain kompetensi absolut, peradilan yang tidak tepat. Harusnya tidak di bawa ke tata usaha negara tetapi dibawa ke peradilan tata usaha negara, padahal harusnya ke pengadilan pajak.[5]

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[4]Tetti Samosir, "Efektifikasi Peradilan TataUsahaNegara dalam Menyelesaikan Sengketa Tata Usaha Negara," *ADIL: Jurnal Hukum*6, No. 2(n.d.), hlm. 190-191.

[5]Ali, *Masih Banyak Perkara TUN yang Kandas di Dismissal Process*, 2010,

Dilakukannya penyelesaian sengketa di peradilan tata usaha negara memiliki guna menuju pemerintah yang bersih serta juga berwibawa. Meskipun perihal tersebut belum dapat dilaksa nakan secara optimal disebabkan beberapa halseperti berikut:[6]

1. *Selfrespect* dari badan atau pejabattata usaha negara yang masih kurang guna mematuhi suatu putusan peradilan tata usaha negara sebagai sebuah batasan pelaksanaan kebijakan yang harus dipatuhi secara utuh.
2. Munculnya suatu kesenjangan atau ketidaksamaan antara putusan peradilan tata usaha negara yang menggunakan dasar pertimbangan terkait dengan keabsahan keputusan peradilan tata usaha negara berdasarkan hukum. Kemudian di sisi lain dengan pertimbangan kebijakan pemerintah yang mana didasari pada perubahan peraturan yang berlaku. Sehingga ini berakibat tidak adanya keseimbangan dan tidak adanya sinkronisasi di antara kedua hal ini, menyebabkan putusan tersebut tidak berjalan sebagaimana mestinya.
3. Prinsip *Utra Petita*dalam putusan peradilan tata usaha negara tidak digunakan. Dalam proses beracara dalam peradilan tata usaha negara cukup berbedadengan peradilan lainnya, antara lain dikenal adanya proses *dis-*

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diakses melalui: https://hukumonline.com/berita/baca/lt4c53bbd698713/masih-banyak-perkara-tun-kandas-di-dismissal-process. Diunduh 3 Desember 2021.

[6]Anak Agung Tias SandyaDianti, Anak Agung Laksmi Dewi, dan I Nyoman Sugiarta,"Upaya Perlawanan sebagai Akibat Pernyataan Dismissal olehKetua Pengadilan Tata Usaha Negara: Studi Kasus di Pengadilan Tata Usaha Negara Denpasar"*, Jurnal Konstruksi Hukum*, No. 2 (2020), hlm. 263.

missal tersebut. Adapun di dalam Pasal 62 Undang-Undang tentang Peradilan Tata Usaha Negara disebutkan mengenai substansi prosses *dismissal* meski tidak disebutkan istilah tersebut. Menurut Titik Triwulan, dapat disimpulkan bahwa secara substantif hukum tata usaha negara memiliki karakter yang berbeda dengan hukum positif lainnya, baik muatan maupun hukum acaranya."[7] Hukum ini memiliki fungsi untuk melindungi hak daripada asasi manusia yang berkenaan dengan penggunaan kekuasaan memerintah serta juga mengenai perilaku aparat dalam melaksanakan pelayanan kepada masyarakat.[8]

Dalam kasus *aquo*, ketua peradilan berwenang untuk mengambil suatu keputusan dengan menggunakan penetapan yang dilengkapi dengan pertimbangan-pertimbangan bahwa gugatan yang diajukan itu dinyatakan tidak diterima maupun tidak berdasar, dalam hal adapun penjabarannya adalah sebagai berikut:

1. Gugatan bukan termasuk dalam wewenang peradilan tata usaha negara
2. Penggugat dalam hal telah diberi tahu dan diperingatkan, tetapi tetap dalam syarat gugatan dalam Pasal 56 Undang-Undang Peradilan Tata Usaha Negara tidak dipenuhi.

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[7]Titik Triwulan Tutik, *Hukum Tata Usaha Negara dan Hukum Acara Peradilan Tata Usaha Negara Indonesia* (Jakarta: Kencana Prenada Media Group, 2011).

[8]*Ibid.*, hlm. 266.

3. Gugatan tidak memiliki alasan yang layak.
4. Tuntutan yang diajukan dalam gugatan sudah terpenuhi dalam Keputusan Tata Usaha Negara yang digugat.
5. Mengajukan gugatan sebelum waktunya atau sudah dinyatakan daluwarsa.

Istilah *dismissal* tidak kita kenal di Undang-Undang Peradilan Tata Usaha Negara. Pada Peradilan Tata Usaha Negara hanya dikenal istilah upaya hukum administratif. Terkait dengan istilah *dismissal* terdapat pada Surat Edaran Mahkamah Agung Nomor 2 Tahun 1991 tentang Petunjuk Pelaksanaan Beberapa Ketentuan Dalam Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan TataUsaha Negara. Halini dilakukan agar muncul keseragaman interpretasi terhadap beberapa ketentuan dalam Undang-Undang Peradilan TataUsaha Negara khususnya mengenai hukum acara.

Proses Peradilan Tata Usaha Negara Tanpa Obyek Sengketa Sampai pada Putusan Akhir

Prosedur dismissal merupakan suatu proses yang penting dalam peradilan tata usaha negara. Lalu kemudian apa yang terjadi jika proses ini dijalankan tetapi tidak berfungsi sebagaimana seharusnya atau disfungsional. Seperti halnya dalam perkara Putusan Nomor 41/G/LH/2018/PTUN.PBR. Dalam perkaraini berawal Penggugat sebagai sebuah Lembaga Swadaya Masyarakat Lingkungan Hidup yang mengajukan Keputusan Tata Usaha Negara untuk menjadi objek sengketa Adapun obyek sengketanya yaitu berupa Surat Keputusan Kepala Badan Penanaman Modal dan Pelayanan Terpadu Satu

Pintu Daerah Kabupaten Indragiri Hilir Nomor: 503/BP2MPD-IL/IX/2014/4 tanggal 24 September 2014 tentang Pemberian Izin Lokasi Kepada X Untuk Pembangunan Pabrik Kelapa Sawit (PKS) di Kelurahan Selensen Kecamatan Kemuning, Kabupaten Indragiri Hilir dan juga Surat Keputusan Kepala Badan Lingkungan Hidup Kabupaten Indragiri Hilir Nomor: KPTS. 21/BLH-UPL/VI/2015 tanggal 26 Juni 2015 tentang Izin Lingkungan Atas Kegiatan Pabrik Kelapa Sawit oleh X di Kelurahan Selensen Kecamatan Kemuning Kabupaten Indragiri Hilir, Provinsi Riau.

TergugatI merupakan Kepala Dinas Penanaman Modal, Dan Pelayanan Terpadu Satu Pintu Kabupaten Indragiri Hilir, berkedudukan di Jalan Hangtuah No. 04 Tembilahan, Provinsi Riau. Tergugat II adalah Kepala Dinas Lingkungan Hidup Dan Kebersihan Kabupaten Indragiri Hilir, berkedudukan di Jalan Veteran No. 11 Tembilahan, Kabupaten Indragiri Hilir, Provinsi Riau. Dalam proses persidangan tersebut masuk permohonan sebagai pihak intervensi. Kemudian terhadap permohonan tersebut, Majelis Hakim telah menjatuhkan Putusan Sela Nomor: 41/G/LH/2018/PTUN.PBR tertanggal 18 Oktober 2018 yang pada pokoknya mengabulkan permohonan intervensi dari X sebagai pihak Tergugat II Intervensi dalam Perkara Nomor: 41/G/LH/2018/PTUN.PBR. Pada persidangan Tergugat I dan Terguga t2 membuat eksepsi dan jawaban mengenai pokok perkara. Tergugat II Intervensi juga mengajukan eksepsi, salah satunya, yaitu mengenai *Error inobjecto*. Dalam eksepsi Tergugat II Intervensi mengatakan bahwa objek sengketa tata usaha negara di dalam gugatan Penggugat adalah Surat Keputusan Kepala Badan Lingkungan Hidup Indragiri Hilir Nomor: Kpts.21/

BLH/UPL-VI/2015 tanggal 26 Juni 2015 tentang Izin Lingkungan Ataskegiatan Pabrik Kelapa Sawit oleh X di Kelurahan Selensen Kecamatan Kemuning Kabupaten Indragiri Hilir Provinsi Riau, surat ini tidak pernah diterima. Adapun Izin lingkungan yang ada adalah Surat Keputusan Kepala Badan Lingkungan Hidup Indragiri Hilir Nomor: Kpts.21/BLH/UKL-UPL/VI/2015 tanggal 26 Juni 2015 tentang Izin Lingkungan Atas Kegiatan Pabrik Kelapa Sawit oleh X di Kelurahan Selensen Kecamatan Kemuning Kabupaten Indragiri Hilir Provinsi Riau.

Seperti yang sudah dijelaskan sebelumnyabahwa Pasal 62 Undang-Undang Peradilan Tata Usaha Negara berbicara mengenai prosedur dismissal, jika dikaitkan dengan perkara di atas adalah sebagai berikut:

a. Pokok gugatan tersebut nyata-nyata tidak termasuk dalam wewenang Peradilan; Kompetensi absolut merupakan bagian wewenang dari suatu badan peradilan dalam memeriksa suatu jenis perkara tertentu yang mana secara mutlak tidak bisa diperiksa oleh badan peradilan lain. Kompetensi absolut biasanya bergantung pada isi gugatan atau isi permohonan.[9] Kompetensi relatif merupakan wewenang dari wilayah pengadilan mana perkara tersebut diperiksa. Mengenai kompetensi absolut dalam perkara *aquo* yang menjadi obyek gugatan adalah mengenai keputusan tata usaha negara berupa izin lingkungan yang dikeluarkan oleh Kepala Badan Lingkungan Hidup Indragiri Hilir, maka sudah

[9]Antonius Sidik Maryono, "Dualisme Kompetensi Permohonan Pengangkatan Anak bagi yang Beragama Islam," *Adhaper***a**, No. 2 (2018), hlm. 65.

benarjika pengajuan gugatan perkara *aquo* melalui pengadilan tata usaha negara. Terkait dengan kompetensi relatif karena surat dikeluarkan oleh Badan Lingkungan Hidup Indragiri Hilir yang merupakan wilayah pengadilan tata usaha negara Pekanbaru.

b. Syarat-syarat gugatan sebagaimana dimaksud dalam Pasal 56 Undang-Undang Peradilan Tata Usaha Negara tidak dipenuhi oleh penggugat sekalipun ia telah diberi tahu dan diperingatkan, Pasal 56 Undang-Undang Peradilan Tata UsahaNegara:

   1. Gugatan harus memuat :
      a. nama, kewarganegaraan, tempat tinggal, dan pekerjaan penggugat, ataukuasanya;
      b. nama, jabatan, dan tempat kedudukan tergugat;
      c. dasar gugatan dan hal yang diminta untuk diputuskan oleh Pengadilan.
   2. Apabila gugatan dibuat dan ditandatangani oleh seorang kuasa penggugat, maka gugatan harus disertai surat kuasa yang sah
   3. Gugatan sedapat mungkin juga disertai Keputusan Tata Usaha Negara yang disengketakan oleh penggugat. Dalam perkara *aquo* yang diajukan sebagai objek sengketa adalah Surat Keputusan Kepala Badan Penanaman Modal dan Pelayanan Terpadu Satu Pintu Daerah Kabupaten Indragiri Hilir Nomor: 503/BP2MPD-IL/IX/2014/4 tanggal 24 September 2014 tentang Pemberian

Izin Lokasi Kepada X Untuk Pembangunan Pabrik Kelapa Sawit (PKS) di Kelurahan Selensen Kecamatan Kemuning, Kabupaten Indragiri Hilir (Keputusan 503/BP2MPD-IL/IX/2014/4). Kemudian juga Surat Keputusan Kepala Badan Lingkungan Hidup Kabupaten Indragiri Hilir Nomor: KPTS. 21/BLH-UPL/VI/2015 tanggal 26 Juni 2015 tentang Izin Lingkungan Atas Kegiatan Pabrik Kelapa Sawitoleh X di Kelurahan Selensen Kecamatan Kemuning Kabupaten Indragiri Hilir, Provinsi Riau (Keputusan 21/BLH-UPL/VI/2015). Pada kenyataannya surat Keputusan 503/BP2MPD-IL/IX/2014/4 dan surat Keputusan 21/BLH-UPL/VI/2015 tidak pernah ada. Pada perkara ini hanya ada Surat Keputusan Kepala Badan Lingkungan Hidup Indragiri Hilir Nomor: Kpts. 21/BLH/UKL-UPL/VI/2015 tanggal 26 Juni 2015, dengan demikian seharusnya perkara *aquo* tidak seharusnya sampai pada proses persidangan biasa melainkan sudah selesai di proses dismissal. Karena kelengkapan berkas awal sebagai bukti adanya keputusan yang merugikan tersebut tidak pernah ada. Apabila seandainya terverifikasi pada proses dismissal seharusnya dalam pemeriksaan persiapan sebagaimana disebutkan dalam Pasal 63 Undang-Undang Peradilan Tata Usaha Negara yang pada intinya mengenaisuatu pemeriksaan yang dilakukan sebelum diperiksanya pokok sengketa oleh hakim,

guna melengkapi gugatan yang kurang jelas, kemudian hakim juga dapat memberi nasihat kepada penggugat untuk memperbaiki gugatannya dan juga dapat meminta penjelasan kepada Badan atau Pejabat Tata Usaha Negara yang bersangkutan. Jika penggugat tidak menyempurnakan gugatannya, maka gugatan tidak dapat diterima dan tidak ada upaya hukum, tetapi dapat diajukan gugatan baru.

Pada intinya penggugat juga harus memperbaiki gugatan dan jika tidak disempurnakan maka gugatan tidak dapat diterima dengan konsekuensi akan munculnya gugatan baru. Fakta yang ada adalah obyek sengketa dalam perkara *aquo* tidak pernahada dan gugatan tersebut secara tidak langsung bisa dikatakan tidak lengkap. Namun proses persidangan berjalan hingga putusan akhir.

c. Gugatan tersebuttidakdidasarkan pada alasan-alasan yang layak, Pasal 53 ayat (2)Undang-Undang Peradilan Tata Usaha Negara, alasan-alasan yang dapat digunakan dalam gugatan:
   1. Keputusan Tata Usaha Negara yang digugat itu bertentangan dengan peraturan perundang-undangan yang berlaku;
   2. Keputusan Tata Usaha Negara yang digugat itu bertentangan dengan asas-asas umum pemerintahan yang baik.

d. Bahwa mengenai hal yang dituntut dalam gugatan sebe-

narnya sudah dipenuhi dalam Keputusan Tata Usaha Negara yang digugat;

e. Gugatan diajukan sebelum waktunya atau telah lewat waktunya. Pasal 55 Undang-Undang Peradilan Tata Usaha Negara. Gugatan dapat diajukan hanya dalam tenggang waktu sembilan puluh hari terhitung sejak saat diterimanya atau diumumkannya Keputusan Badan atau Pejabat Tata Usaha Negara.

Di sini sudah terlihat jelas bahwa pengadilan tata usaha negara yang mengadilip erkara *aquo,* mengabaikan persyaratan dari gugatan sebagaimana telah disebutkan dalam Pasal 56 Undang-Undang Peradilan Tata Usaha Negara. Hal ini tentu saja tidak sesuai dengan adanya proses dismissal, prosesini dibuat untuk memangkas perkara-perkara yang tidak layak untuk disidangkan di peradilan tata usaha negara, salah satunya adalah mengenai tidak terpenuhinya syarat gugatan pada Pasal 56 Undang-Undang Peradilan Tata Usaha Negara. Namun pada kenyataannya syarat mengenai gugatan sedapat mungkin juga disertai keputusan tata usaha negara yang disengketakan oleh penggugat, tidak terpenuhi. Karena bagaimana ingin terpenuhi jika obyek gugatan berupa keputusan tersebut tidak pernah ada.

Mengenai hal ini yang kemudiand ipermasalahkan melalui eksepsi oleh Tergugat II Intervensi, mengenai *error inobjecto*. Seharusnya sebelum dilakukan persidangan lebih lanjut mengenai obyek gugatan ini diperiksa terlebih dahulu pada proses dismissal, harusdipastikan keberadaan obyek gugatannya. Tetapi pada kenyataannya tanpa obyek gugatan yang jelas perkara *aquo* berlanjut pada persidangan biasa dan tidak gugur pada proses dismissal, bahkan dalam proses pemeriksaan pun lolos sehingga

dilakukan persidangan dengan acara biasa sampai putusan akhir.

Kita hanya melihat hukum sebagai suatu sistem norma belaka maka sulit untuk menjamin berlangsungnya penegakan hukum yang diadakan untuk mengatur perikehidupan masyarakat dan bangsa yang bersangkutan.[10] Namun lingkup suatu penerapan sebuah hukum merupakan persoalan mengenai interpretasinya.[11] Kelalaian atau bisa disebut juga sebagai kegagalan penjabaran konsep hukum dalam kehidupan nyata merupakan suatu awal kegagalan fungsi daripada suatu negara ataupun masyarakat hukum.[12] Dalamputusan akhirjuga tidak disinggung samasekali oleh Hakim mengenai *error inobjecto*. Hakim memutus terkait tidak adanya kerugian material, justru tidak menyinggung tentang obyek gugatan yang tidak ada. Tercermin dari sini bahwa hakim kurang cermat dalam memutus perkara *aquo*.

Persidangan pada hakikatnya memiliki asas sederhana, cepat dan biaya ringan. Namun dalam perkara *aquo* tidak tergambar hal tersebut. Padahal dalam Pasal 2 ayat (4) Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman (Undang-undang kekuasaan kehakiman) Peradilan dilakukan dengan sederhana, cepat, dan biaya ringan. Apa yang dimaksud dengan sederhana, cepat, dan biaya ringan menurut penjelasan dalam Pasal 2 ayat (4) Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman adalah sebagai berikut:

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[10]Sunaryati Hartono, dkk, *Reformasi Peradilan dan Tanggung Jawab Negara* (Komisi Yudisial Republik Indonesia, 2010), hlm. 110.

[11]H.L.A. Hart, *Konsep Hukum* (Penerbit Nusa Media, 2011), hlm. 67.

[12]Lili Rasjidi dan I.B. Wyasa Putra, *Hukum sebagai Suatu Sistem* (PT. Remaja Rosdakarya, 1993), hlm. 111-112.

1. Sederhana, berarti pemeriksaan berikut disertai penyelesaian perkara dilakukandengan cara efesien tak lupa juga secara efektif.
2. Biaya ringan dapat diartikan bahwa jumlah biaya berperkara di pengadilan dapat dijangkau oleh masyarakat
3. Tanpa mengabaikan ketelitian dan kecermatan dalam mencari suatu kebenarandan juga keadilan. Kemudian diperkuat dengan Pasal 4 ayat (2) Undang-Undang Kekuasaan Kehakimanyangmenyatakan, "Pengadilan membantu pencari keadilan dan berusaha mengatasi segala hambatan dan rintangan untuk dapat tercapainya peradilan yang sederhana, cepat, danbiaya ringan." Persidangan daripada putusan perkara 41/G/LH/2018/PTUN.PBR tidak memenuhi asas sederhana, cepat, danbiaya ringan.

Kesimpulan

Peradilan tata usaha negara memenuhi hukumacara yang berbeda dengan peradilan yang lainnya. Karena peradilan tata usaha negara, ada tahapan yang dilalui, yaitu pertama-tama pendahuluan baru yang kedua persidangan biasa. Dalam tahapan pendahuluan ada tiga hal, pertama terkait dengan administratif, kedua terkait dengan proses dissmisal dan, ketiga, terkait dengan proses pemeriksaan persiapan. Perkara yang obyek gugatannya tidak ada, harusnya langsung bisa diselesaikan di proses dissmisal. Jika diteruskan hingga pembahasan pokok perkara, halini hanya akan membuat disfungsional terhadap proses dismissal dan juga mencederai asas persidangan harusnya bersifat sederhana, cepat, biaya ringan.

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Regulations of Buyer's Tax Before Transfer of Land Rights

Introduction

Tax is a payment submitted by the community (taxpayer) to the government on a mandatory basis, aimed at funding needs carried out routinely by the state and development projects that do not get non-good compensation so that they can be identified directly.[1] This is a vital income, especially in almost all countries, including

Indonesia, where taxes are the primary revenue.[2] The obligation of citizens to pay taxes creates a responsibility for the state to provide counterinterpretation in return for taxes collected.[3] Taxes play a crucial role in supporting internal funding.

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[1] Rini Irianti Sundary. (2018). "Pengalihan Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) dari Pajak Pusat Menjadi Pajak Daerah sebagai Upaya Peningkatan Pendapatan Asli Daerah (PAD). Jurnal *Aktualita*, 1 (1), 279-294.

[2]Satria Braja Harianja, Julia Rahma Sitepu, dan Margaretha Saragih. Pemungutan Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) Ditinjau dari Undang-Undang Nomor 20 Tahun 2000 tentang Bea Perolehan Hak Atas Tanah. (2019). Jurnal Hukum Responsif FH UNPAB, 7(7), hlm. 115 – 125.

[3]Eka Wijaya Silalahi. (2019). Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Atas Warisan, Apakah Warisan (Dalam Garis Keturunan Sedarah) Harus Dikenai BPHTB?. Jurnal Hukum & Pembangunan, 49 (4), 880 – 893.

The obligation to pay taxes became a responsibility for the people, allowing them to participate constitutionally in financing development.[4]

The principle of 'fairness' regarding tax collection, as elaborated by Tjip Ismail in his work, refers to the concept of justice. This principle applies to the entire tax system, including local tax provisions. In this context, justice emphasizes the importance of clarity in the tax basis and payment obligations and opposes arbitrarily applying taxes.

The principle of horizontal justice demands that the tax burden be applied fairly among groups of similar economic standing. This means that even if the groups have differences in specific characteristics, they are supposed to pay the same proportion of taxes if their economic standing is similar. This principle reflects the idea that the distribution of the tax burden should reflect inequalities in economic capacity. The principle of justice is also applied in a geographical context, where tax collection should be the same except for providing citizen services in the area.[5]

This tax is a consequence of the actions of sellers who relinquish title to land. The Final Income Tax rule stipulates that this tax must be paid before the purchase-sale agreement. Final income tax sets the final character of this tax, and the seller must make payment before the sale and purchase transaction is completed. This payment requirement is connected

[4]Article 23A, Constitution of the Republic of Indonesia of 1945.

[5] Tjip Ismail. (2018). Potret Pajak Daerah Di Indonesia. Kencana, Jakarta, hlm. 33.

with submitting documents such as photocopies of Tax Deposit Letters or equivalent administrative documents.

The buyer should pay BPHTB, and this can be explored. This type of tax is an objective or material tax, where tax liabilities arise based on the tax object itself, then consider who the payer is. Involves actions to produce for whom the right should be granted, an individual or an institution.[6]

Land rights include management rights and buildings that stand on it, as explained in Law Number 5 of 1960 and other favorable laws.[7] The obligation to pay BPHTB is provided before the signing of the AJB. BPHTB aims to improve the welfare of all people by supporting development. This tax is imposed on the community as an obligation that can be imposed by the party who collects it.[8]

When there is a transfer of BPHTB, there are several obstacles due to the level of public awareness in fulfilling the obligation to pay local taxes. The level of public awareness of the obligation to pay taxes is the main issue that can affect tax revenue.[9]

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[6]Ronal Ravianto, Amin Purnawan. (2017). Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Pemungutan Bea Perolehan Hak Atas Tanah Dan Bangunan (BPHTB) Dengan Pendekatan Self Assessment System. Jurnal Akta, 4 (4), 567 – 574.

[7]Suryanto, Bambang Hermanto, Mas Rasmini. (2018). Analysis Of Potential Land And Building Transfer Tax As One Of The Local Taxes. Jurnal Adbis Preneur, 3 (3), 273 – 281.

[8]Mardiasmo. (2009). Perpanjakan. Penerbit CV Andi, Yogyakarta.

[9]Budi Ispriyaso. (2005), Aspek Perpajakan Dalam Pengalihan Ha Katas Tanah Dan/Atau Bangunan Karena Adanya Transaksi Jual Beli, Jurnal Masalah-Masalah Hukum, 34 (4).

The situation affects tax revenues, regulations, and infrastructure that supports the implementation of tax laws or regulations, as well as the level of citizens who are aware.[10]

Problems arise when the issuance of Government Regulation Number 35 of 2023 which becomes the implementing regulation of Law Number 1 of 2022 as Article 18 of this Government Regulation states that when BPHTB is payable, it is determined at the time of acquisition of land and/or buildings with the following conditions: a. on the date of making and signing of a binding sale and purchase agreement for sale and purchase, and in the case of sale and purchase of land and/or The building does not use the sale and purchase binding agreement as referred to in paragraph (2) letter a, when BPHTB owes for sale and purchase is at the time of signing the sale and purchase deed. Looking at the nature of PPJB so that there is a sale and purchase agreement for further legal actions, namely the creation of AJB. When signing the Deed of Ju a l Buy legally, there is a transfer of rights or acquisition of rights for the buyer. PPJB is a notary official, while AJB is the authority of PPAT.

PPJB is a binding agreement that continues the AJB process. PPJB is made by parties who will carry out land purchase-sale transactions, containing an agreement between those who want to sell and those who want to buy about the price of land, how to pay, and the date of making the sale and purchase deed.[11]

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[10]Suryanto. (2016). Analisis Pajak Daerah Di Kota Cimahi. Jurnal Agregasi, 4 (2), 211-226.

[11]Tresna Puja Asmara, T., dkk. (2023). Perjanjian Pengikatan Jual Beli Tanah: Pengertian, Fungsi, dan Permasalahan . Jurnal Hukum dan Peradilan,

The difference between PPJB and AJB lies in their legal force. PPJB is a temporary agreement, while AJB is a permanent agreement. PPJB cannot yet be used to prove ownership of the purchased land. AJB is an agreement stated in the form of a deed carried out by PPAT. AJB signifies a lawful transfer of rights.[12]

The obligation to pay buyer tax before the previous signature of AJB is Article 90, paragraph (1) letter a of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies. This Article stipulates that the time of BPHTB tax payable for sale and purchase is from the date of making and signing of the deed. This means that BPHTB tax is only payable when the sale and purchase deed is made and signed.

In contrast, in the new regulation, buyers must pay tax on the sale and purchase agreement. The buyer's obligation to pay taxes is contrary to the principle of ownership. The principle of ownership is that the owner of an item has the full right to use, collect the proceeds, and enjoy the item. At the time of signing the sale and purchase binding agreement, there was no transfer of land rights from the seller to the buyer. The sale and purchase binding agreement is only an agreement that binds the parties to carry out their respective achievements in the future, namely the preparation of the sale and purchase deed. Thus, at the time of the signing of the PPJB, the buyer did not have complete control over it. Thus, the buyer should not be taxed on the sale and purchase binding agreement.[13]

12(2), 272-290

[12]*Ibid.*

Research Methods

This research uses qualitative methods, where normative legal research methods are used. The normative approach involves examining the dimensions of reality from a normative perspective. In this context, qualitative methods are used for data collection and qualitative analysis to identify patterns, root causes, and underlying reasons underlying a particular event. The implementation of this method requires the analysis of documents, such as related regulations and public opinion.

Furthermore, case studies are conducted to provide empirical evidence related to implementing regulations. Analytical descriptive data is obtained from various research sources, especially documents and news contained in online media.[14]

Data for writing this Article comes from primary, secondary, and tertiary sources derived from library research without involving field research.[15] Information and data are obtained from e-books, e-journals, and online mass media news. These sources have been collected and then selected according to the research theme. After that, the texts are analyzed and mapped to provide comprehensive answers to the issues raised in this Article.

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[13]*Ibid.*

[14]Muhaimin. (2023). *Metode Penelitian Hukum*. Mataram University Press, NTB, hlm. 48.

[15]Bachtiar. (2018). *Metode Penelitian Hukum*. UNPAM Press, Tangerang Selatan, hlm. 60.

Result and Discussion

In this modern era, in any legal action between individuals in society, it is crucial to establish a legal relationship that is valid and has legality. Notaries and PPAT have the right to issue authentic deeds. Buying and selling is part of the process that requires the creation of the above.[16] Then, the binding agreement for sale and purchase is included in the anonymous or innominate agreement, arising because of the nature of the opening of the third book of the Civil Code.

BPHTB is managed and maximized by local governments.[17] Taxpayers feel they are responsible for the BPHTB tax collection system, but the public considers this unfair. A warning letter is mandatory for the payer to report tax payments. The payer must truthfully provide all information related to personal data, business, and the amount of wealth collectively related to the tax liability.[18]

Adrian Sutedi gave the following understanding: PPJB is an agreement that wants to sell and who wants to buy something, and if it has been paid in full, the right to transfer if the requirements and rules have been fulfilled as per Government Regu-

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[16]Yuliana Zamrotul Khusna, Lathifah Hanim. (2017). "Peran Notaris dan PPAT dalam Mencegah Terjadinya Penyalahgunaan Kuasa Jual Untuk Penghindaran Pajak". Jurnal *Akta*, 4 (3), 395 – 400.

[17] Silvia Christina Panggabean. (2015). "Pemungutan Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) di Kabupaten Samosir". *Jurnal Ilmu Administrasi*, XII(1), hlm. 119-136.

[18]Anak Agung Triana Putri, Ida Ayu Putu Widiati, I Wayan Arthanaya. (2021). "Pelaksanaan Pemungutan Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) di Kota Denpasar". Jurnal *Konstruksi Hukum*, 2(3), hlm. 450 – 455.

lation Number 24 of 1997.[19] Herlien Budiono said that PPJB is a preliminary agreement before the main agreement that the parties want to transfer rights.[20] Redirects have a significant relationship to definite laws and are characterized by documentation that validates the event.[21]Maria S.W Sumardjono understood the sale and purchase agreement related to the strata-title sales pattern, namely PPJB if the building is finished, certified, and has a proper occupancy permit."[22] Maria S.W Sumardjono understood the sale and purchase agreement related to the strata-title sales pattern, namely PPJB, if the building is finished, certified, and has a proper occupancy permit.

Article 40 of Law Number 1 of 2022 stipulates that the objects be paid by the buyer in the sale and purchase transaction, as referred to in paragraph (1) point a number (1), including the transfer of rights to land and/or buildings due to the sale and purchase.

Article 18 of the PP on Regional Taxes and Regional Retribution, the implementing rule of the Law, specifies the obligation to pay BPHTB at the time of PPJB.

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[19]Adrian Sutedi. (2010). *Hukum Rumah Susun dan Apartemen*. Sinar Grafika, Jakarta, hlm. 124.

[20]Herlien Budiono. (2004). "Pengikatan Jual Beli Dan Kuasa Mutlak". Majalah *Renvoi*, 1(10), hlm. 57.

[21]Indra Lestari, Rosmidah. (2023). ":Mekanisme Pengenaan Pajak Bea Perolehan Hak Atas Tanah dan Bangunan (BPHTB) pada Program Pendaftaran Tanah Sistematis Lengkap (PTSL)". *Recital Review*, 5(1), 174 – 193.

[22]Maria S.W Sumardjono. (2001). *Kebijakan Pertanahan Antara Regulasi dan Implementasi*. Penerbit Buku Kompas, Jakarta, hlm. 116.

If we look at the provisions of Article 18 P of government Regulation Number 35 of 2023 and Article 49 of Law Number 1 of 2022, they are very different from the provisions of Articles 90 and 91 of the old regulation, namely U U Number 28 of 2009.

It is stated that the BPHTB tax was payable from the deed's signing date. PPJB is temporary, and AJB is a permanent agreement. For example, A and B make land PPJB worth Rp 100 million. Based on the agreement, B will pay the price of the land gradually until it is paid off before it can be handed over to B by A. B does not have proof of ownership of the land. Based on the new regulation, A must pay income tax from the PPJB. Income tax where subject to liability is IDR 2.5 million. The seller's obligation is very realistic because the seller has received money from the sale even though there are stages and supporting documents for the sale, and the Purchase Deed has not yet been signed, so they cannot be signed. This arrangement is imitated in implementing the new buyer's tax / BPHTB, even though the signing of the sale and purchase binding agreement does not prove that there has been a transfer of ownership.

BPHTB arrangements create legal injustice and uncertainty for buyers. The parties are uncertain whether the arrangement will remain in effect or will be amended in the future. This can create uncertainty in financial and business planning. The arrangement has several impacts, including creating unnecessary economic burdens for buyers. The following is a further explanation of the new arrangement: first, income tax on PPJB is payable when making and signing PPJB. Second, tax or BPHTB on the sale and purchase binding agreement is owed to PPJB when the

AJB is made and signed. Third, BPHTB is on the binding agreement to sell and purchase the outstanding purchase when making and signing the PPJB. The new provisions contained in Law Number 1 of 2022 and P P Number 35 of 2023 are burdensome for buyers. One of the reasons for making a Sale and Purchase Binding Agreement is due to the buyer's economic ability, which is that they have not been able to pay the sale and purchase price or do not have the money to pay the buyer's tax / BPHTB.

The buyer's need for PPJB is a solution for buyers who have not had enough funds topay the buyer's tax on ownership in the future because ownership documents are being processed at the Land Office either because of the process of breaking certificates, returning names to heirs or being managed for recognition of rights, extension of rights and others. In order to avoid denial in the future, PPJB is carried out by listing all the rights and obligations of the parties. After the issuance of the new regulation, the buyer becomes burdened if the buyer has enough money for all the management of the sale and purchase; of course, the buyer does not need a Binding Sale and Purchase Agreement, directly AJB.

Against the new regulation, problems still arise, such as a seller wanting to sell part of his plot of land, which is 250 M 2 of his 400 M 2 land area. The seller is carrying out the process of splitting the land parcel at the land office where the territory of the object of sale and purchase is located. Before the new rules take effect, the seller can already receive payment from the selling price of the land and is bound to sell to the buyer. The seller should pay taxes because the seller has received

payment either partially or entirely. Conversely, because the buyer does not yet have, the buyer's obligation to pay BPHTB has not arisen.

Based on the new regulation, buyers must pay BPHTB to the Regional Revenue Management Agency (BAPPENDA) with data using the master certificate number, then complete the breakdown and the newly issued certificate for each split area. Then, the PPAT must correct BPHTB to adjust to the new certificate number. The next stage can be continued validation. Adjustment of the certificate number in BPHTB is needed when changing names at the Land Office, and all data must be synchronized, including data in BPHTB. Another problem is that if PPJB is canceled due to one party defaulting, then the processing of BPHTB returns from BAPPENDA takes months. Correction is needed if there is an error on the part of PPAT, but there is no error in BPHTB payments to PPJB. Instead, the mechanism is complicated and corrects the buyer and PPAT.

Conclusion

PPJB is an agreement towards AJB. Before AJB, there was no transfer or acquisition of rights while BPHTB's tax obligations were determined. This creates legal uncertainty, especially in the financial and business planning of the parties involved in land sale and purchase transactions. This provision burdens buyers because BPHTB tax is charged to buyers. Of course, it is detrimental because AJB has not been done. Many factors affect one of them: not having enough funds for repayment. However, it is precisely added to the burden that the buyer should not bear.

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dapatan Asli Daerah (PAD). Jurnal *Aktualita*, 1 (1), hlm. 279-294.

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Regulations:

The 1945 Constitution of the Republic of Indonesia Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.

Government Regulation Number 35 of 2023 on General Provisions of Regional Taxes and Regional Levies.

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The Constitutionality of Notaries Honorary Assembly in the Enforcement of the Notary Ethics Code

Introduction

Indonesia, as a country of law, of course, everything has been regulated by regulations. The regulations in force in Indonesia are based on the state philosophy, namely Pancasila, formulated more deeply in the 1945 Constitution of the Republic of Indonesia. The regulations that apply in Indonesia are made tiered. Because the Constitution of the Republic of Indonesia in 1945 is the culmination of the applicable regulations in Indonesia, all applicable regulations must not conflict with the 1945 Constitution of the Republic of Indonesia.

This applies to all sectors and professions in Indonesia, including notarial matters. Notaries, although not part of law enforcement, is one of the legal professions that are pretty interested in the public whose task is to make documents in the form of authentic deeds and other documents that are still within the scope of their work.

The position of Notary has recently come into the public spotlight mainly because of a case of unlawfully wiping or taking rights to land, which happened to befall the artist Nirina Zubir. Unfortunately, most people do not distinguish between Notaries and Land Deed Making Officers. Indeed, the Notary and the Land Deed Making Officer are different positions, although closely related. However, a Notary may concurrently serve as a Land Deed Making Officer or Auction Officer.

Based on the relationship between the work of a Notary and land issues, most Notaries also concurrently hold the position of Land Deed Making Officer, so the community views the Automatic Land Deed Making Officer as a Notary. If there is a dispute over land ownership due to a transfer of rights or inheritance taken care of by the Land Deed Making Officer, then in the assumption that the guilty community in the case is a Notary as reported both in online media, television, and newspapers.

The position of a Notary is considered a noble profession, but there are still notaries who make mistakes or are negligent in carrying out their positions. Therefore, an institution is required that carries out supervision of a Notary. The laws and regulations governing the supervision of Notaries are contained in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (Law on the Position of Notary), carried out by the Minister by establishing an Honorary Assembly of Notaries.

After the enactment of changes to the Notary Office Law in 2014, there is still a distrust of certain parties to the Notary Honorary Assembly Institution in supervising Notaries through

its tools, namely the Regional Supervisory Council at the Regency/City level and the Regional Supervisory Council at the Provincial level. This is proven to have been submitted several times by Judicial Review of the articles in the Notary Position Law related to the Notary Honorary Assembly, especially the provisions of Article 66 of the Notary Position Law contained in the Constitutional Court decision Number: 16 / PUU-VIII / 2020, the constitutional court decision Number: 22 / PUU-XVII / 2019 and the Constitutional Court decision Number 72 / PUU-XII / 2014. From these decisions, the Panel of Judges of the Constitutional Court still considers it necessary to maintain the existence of Article 66 of the Notary Position Law to ensure legal certainty and justice for the community and notaries..

Research Methods

The normative juridical method was used in this study. It is taken from the study of secondary data through a Literature study based on existing laws and regulations, as well as court decisions, contracts, and other legal documents. Besides that, there are also research results and other studies and references.[1] Descriptive analysis was a research method used in this paper, using detailed or accurate data about humans or other symptoms to clarify conjectures. Besides that, they can be used to make old theories used or in making newer theories.[2]

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[1]Badriyah Khaleed. (2010). Legislative Drafting Teori dan Praktik Penyusunan Peraturan Perundang-undangan. Yogyakarta: Medpress Digital. p. 41.

[2]Ahmad Tanzeh. (2011). Metodologi Penelitian Praktis. Yogyakarta: Teras. p. 5.

The data source is the subject from which data can be obtained.[3] The data source is also the data taken in conducting this study.[4] Primary data are data obtained from respondents through direct measurement. Secondary data is data obtained from books and so on. The data obtained from the secondary data does not need to be processed anymore.[5] Because of this, the writing of this paper is to use secondary data.

Result and Discussion

In Indonesia, the legal profession is one of the most popular professions starting with advocates, judges, and prosecutors, and also including, in this case, notaries. Notaries, like other positions, are professionals with no small rights and responsibilities to the public. Because the Notary has a specific scope in doing the deed, which in the trial has absolute evidentiary power, so the Notary must also obey the ethics of the notary profession so that his honor as a general official can still be maintained in carrying out his duties, not only inside at the time as a notary but also when serving outside his position. The notary profession is also honorable because the state gives attributive authority to notaries through the law to do authentic deeds for the public interest.[6]

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[3]Suharsimi Arikunto. (2006). Prosedur Penelitian Suatu Pendekatan Praktik. Jakarta: Rineka Cipta. p. 129.

[4]Andra Tersiana. (2018). Metode Penelitian. Yogyakarta : Start up. p. 74.

[5]Ibid, p. 75.

[6] Nabila Mazaya Putri Dan Henny Marlyna. (2021). Pelanggaran Jabatan Dan Perbuatan Melawan Hukum Yang Dilakukan Olehnotaris Dalam Menjalankan Kewenangannya, ACTA DIURNAL : Vol. 5, No.1. p. 64.

Notaries are required to take the oath before the Minister or officials appointed by the state before carrying out the duties of their office. In this oath of office, the Notary must not take sides with either party and must do justice to the parties in terms of explaining the consequences of the agreement made. This is done so that it is not easy to get a lawsuit from the parties who, in the future, feel aggrieved for doing a deed.[7]

In carrying out his activities as a Notary, he must be guided by the law and the code of ethics as part of professional morals. In Article 15 of the Notary Position Law, in essence, the authority of a Notary is as follows:

- The Notary is authorized to do authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and/or desired by the interested person to be stated in the authentic deed, guarantee the certainty of the date of doing the deed, keep the deed, provide gross, copies and quotations of the deed, all of which are as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by law.
- In addition to the authority as referred to in paragraph (1), Notaries are also authorized to:
  - certify the signature and establish the certainty of the date of the letter under the hand by registering in a particular book;

[7]Budi Hariyanto. (2022). Peran Majelis Pengawas Notaris Dalam Upaya Penegakan Terhadap Pelanggaran Kode Etik Notaris Berdasarkan Undang-Undang Jabatan Notaris. JURNAL IUS : Vol.X, No.01. p.18.

- keeping the letters under the hand by registering in a particular book;
- make a copy of the originals of the letters underhand in the form of copies containing the description as written and described in the letter in question;
- carrying out the endorsement of the compatibility of the photocopy with the original letter;
- providing legal counseling in connection with the making of deeds;
- make deeds relating to land; or
- make a deed of auction minutes.

• In addition to the authority as referred to in paragraphs (1) and (2), the Notary has other powers regulated in the laws and regulations.

According to Sudikno Mertokusumo, a letter is something that contains a signature, can be read, and states that a thought can be used as proof. Letter evidence consists of 2 (two) types: deeds and ordinary letters. A deed is a letter deliberate from the very beginning made for proof. The deed consists of an authentic deed and an underhand deed.[8]

• Authentic Act

According to Article 1868 of the Civil Code, an Authentic deed is a deed whose form is determined by

[8]https://www.djkn.kemenkeu.go.id/kpknl-lahat/baca-artikel/15189/Mengenal-Jenis-Alat-Bukti-dalam-Hukum-Acara-Perdata.html, accessed on July 9, 2022.

the Act made by or before the public servants in power at the place where the deed is done. As for what is meant, these general employees are notaries, police, and judges.[9]

- Act underhand.

  The underhand writing or also called the deed under hand is made in a form not prescribed by law or made by the parties based on the agreement or agreement of the parties, which is subject to the provisions of articles 1320 and 1338 of the Civil Code and is not required before an authorized official or Notary.

Authentic deeds and deeds under the hand are made to be used as evidence. The critical difference between the two types of deeds is that in the value of proof, the Notary deed as evidence, the deed must be seen as it is. It does not need to be assessed or interpreted but written in the deed. The deed under hand has the power of proof to the extent that the parties acknowledge it or there is no denial from the parties.[10]

In the world of notaries, there is what is known as the Honorary Assembly of Notaries. The Honorary Notary Assembly is a body that has the authority to carry out the development of a Notary and the obligation to give approval or refusal for investigation and judicial process, for taking photocopies of minutes deeds and summoning

[9]*Ibid*

[10]Habib Adjie. (2011). Kebatalan dan Pembatalan Akta Notaris. Bandung : Refika Aditama. p. 8.

Notaries to be present in examinations related to notarial deeds or protocols that are in the Notary's storage.

The function and purpose of establishing the Notary Honorary Assembly are to ensure legal certainty to the public that the notaries have carried out positions following the applicable corridors, namely the Notary Position law, by conducting guidance and supervision of notaries. Therefore it is necessary to have credible and impartial people in the Honorary Assembly of Notaries. The Honorary Assembly of Notaries is in Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of Notary (Law on the Position of Notary).

Article 66 of the Notary Office Act, as follows:

- For the judicial process, the investigator, public prosecutor, or Judge, with the approval of the honorary panel of Notaries, is authorized to:
  - take a photocopy of the Minuta Deed and/or letter attached to the Minuta Deed or Notary Protocol in the Notary's storage; and
  - Summons a Notary to be present in the examination relating to the Notary Deed or Protocol that is in the custody of the Notary.
  - Taking a photocopy of the Minuta Deed or letters as referred to in paragraph (1) letter a, the minutes of submission is made.
- Taking a photocopy of the Minuta Deed or letters as referred to in paragraph (1) letter a, the minutes of submission are made

- The honorary panel of notaries, within a maximum of 30 (thirty) working days from the receipt of the letter requesting approval, as referred to in paragraph (1), shall provide an answer to accept or reject the request for approval.
- Suppose the honorary assembly of the Notary does not answer within the period referred to in paragraph (3). In that case, the honorary assembly of the Notary shall be deemed to have received a request for approval.

It can be concluded from Article 66 of the Notary Office Act above that the Notary Honorary Tribunal has the absolute and final authority to approve or disapprove the summoning of a notary to be present in the examination of cases.

This is the highlight of the community because of the large number of Notaries who should be suspected of committing several acts that violate the law and code of ethics. However, the existence of the Notary Honorary Assembly is often considered to cover up this matter. This is illustrated by the many judicial reviews submitted against Article 66 of the Notary Position Law, namely the Constitutional Court Decision Number: 16 / PUU-VIII / 2020, the Constitutional Court Decision Number: 22/ PUU-XVII/2019, and the Constitutional Court Decision Number 72/PUU-XII/2014.

In the judicial review conducted in 2014, it was considered that the legal standing did not meet because the petitioner was an advocate, so the subject matter of the application was not considered again. In 2019 the petitioner was the one who was

the victim of an alleged criminal offense committed by a notary in the case of the use of false blanks, a deed of sale, and purchase of land rights. A deed of sale and purchase made by a notary not according to the ordinances and rules of the law, but the Panel of Judges said the application was unclear or vague and in this application was considered legal standing nor does it fulfill because the one deemed to be fulfilling is the Investigator, the Public Prosecutor or the Judge. Finally, in 2020, another examination of the applicants was carried out, including the Chairman of the Indonesian Prosecutors Association, some of his work prosecutors, and one prosecutor who conducted the investigation. The other four applicants were deemed not to meet the legal standing. Therefore, although some met the legal standing requirements, the Panel of Judges rejected the petitioner's application for legal standing.

As is the case in the petitioner's application in the Constitutional Court Decision Number: 16/PUU/VIII/2020, on page 38, point 97, it is said, "That the authority of the Notary Honorary Assembly also has the potential to be used as a criminal who works as a Notary to deliberately commit an act contrary to the law and use the Honorary Notary Assembly to avoid legal responsibility for his actions. It also does not rule out the possibility of criminals using the Authentic Deed made by the Notary behind the article, in the hope that the Notary as a gatekeeper cannot be examined by law enforcement so that the perpetrator is not revealed."

On the plea of a quo, in essence, the Constitutional Court said that it was precisely the effect or result of the absence of the role of the Honorary Tribunal so that the guidance of the

Notary could not be explicitly done in guiding the Notary when carrying out obligations, among others, to keep secrets about the deeds he produced following his oath of office. It was then said that another reason in consideration, the Constitutional Court conveyed Article 66 paragraph (4) of the Notary Office Act precisely to ensure legal certainty while limiting the authority of the Notary Honorary Tribunal when it comes to agreeing or not to the investigator, to the public prosecutor as well as to the Judge when there is a summons to the Notary and everything that follows it.

The similarity between the constitutional court decisions above is that in its petitum, it essentially requests that Article 66 of Act the Position of Notary is contrary to the Constitution of the Republic of Indonesia of 1945 and has no binding legal force.

From what is described above, there is a severe problem. So that it is related to the Honorary Notary Assembly is considered to have a conflict of interest to defend the Notary. To give rise to the confidence of the Notary Honorary Assembly that the Notary Honorary Assembly has already carried out, which should have been seen from a process from the beginning how the Notary Honorary Assembly. The elements are regulated in Article 4 of the Notary Position Law, which reads;

- The Notary Honorary Assembly consists of:
  - 3 (three) persons from the Notary element;
  - 2 (two) people from government elements; and
  - 2 (two) people from an expert or academic element.

- The Notary Honorary Assembly, as referred to in paragraph (1), consists of 7 (seven) members consisting:
    a. 1 (one) chairman concurrently a member;
    b. 1 (one) deputy speaker concurrently a member; and
    c. 5 (five) members.
- The Chairman and deputy speaker of the Notary Honorary Assembly shall be of different elements and be elected from and by the members of the Notary Honorary Assembly.
- The election of the Chairman and deputy speaker of the Honorary Assembly of Notaries is carried out by deliberation.
- Suppose the election by deliberation does not reach an agreement. In that case, the election of the Chairman and deputy speaker of the Honorary Assembly of Notaries is carried out by voting.
- The election of the Chairman and vice-chairman by way of voting, as referred to in paragraph (5), shall be carried out on the condition that it must be attended by at least 50% (fifty percent) plus 1 (one) of the number of members.

It can be seen from the article above that the Honorary Notary Assembly does not only consist of Notaries but there are governments and also experts or academics. It should be seen here that the Honorary Notary Assembly also considers opinions and views outside the scope of the Notary itself.

Then, to strengthen the public's trust, especially in law enforcement, the Honorary Notary Assembly needs strict conditions for the person to be elected as a person regulated in Article 6 of the Notary Position Law.

- To be appointed a member of the Notary Honorary Assembly must meet the following requirements:
  - Indonesian nationality;
  - fear the One God;
  - the least educated law degree;
  - physically and spiritually healthy;
  - never committed a despicable deed;
  - not being named as a suspect for committing a felony offense;
  - has never been convicted based on a court decision of permanent legal force for committing a criminal offense with a criminal threat of 5 (five) years or more;
  - has never been declared bankrupt based on a court ruling of permanent legal force; and
  - experienced in law for at least 3 (three) years.
- As referred to in paragraph (1) point c, the requirements are excluded for the Head of the Regional Office and the Head of the Legal and Human Rights Services Division of the Regional Office.
- In addition to meeting the requirements in paragraph (1), prospective academics or experts do not work as advocates or legal counsel.

- The requirements as referred to in paragraph (1) must be proven by the completeness of supporting documents which include:

  - photocopies of identity cards or other legalized proof of self;
  - photocopies of legalized law degree diplomas;
  - a certificate of physical and spiritual health from a government hospital doctor;
  - recent curriculum vitae and color photographs with a size of 4x6cm (four by six centimeters);
  - a sealed affidavit each stating:

- V' never committed a despicable deed;
- V' does not work as an advocate or legal counsel;
- V' has never been convicted of a sentence of 5 (five) years or more based on a court decision of permanent legal force;
- V' has never been declared bankrupt based on a court ruling of permanent legal force; and
- V' not being named as a suspect for committing a felony offense.

Such strict requirements for selecting candidates for the Notary Honorary Assembly are illustrated in the above conditions. This should have been able to make the public believe in the Honorary Notary Assembly itself.

Even so, the Honorary Notary Assembly should have won the public's trust, as evidenced by the Honorary Assembly of the East Java Region Notaries. As many as 733 notaries from 2017 until now were examined. Of these, 14 notaries were

declared criminally implicated. Both those still in the process of investigation, trial, and appeal to appeal to the cassation. For 2019, 6 notaries will have their accounts closed. This was revealed by the Head of the East Java Ministry of Law and Human Rights, Susy Susilawati, during a Focus Group Discussion (FGD) on the Use of Electronic Media in Notary Supervision.[11]

Carrying out the duties as a Notary Honorary Assembly is, in fact, not easy. In addition to the conditions that must be met, many can also be dismissed with disrespect based on the proposal of the Supervisory Board. (PasaL 18 paragraph (3) regulation of the Minister of Law and Human Rights 16/2021).

From the above, a new renewal is needed to increase trust in the Notary Honorary Assembly. There are seven members of the Notary Honorary Assembly where three people from notaries, two people from government elements, and two people from expert elements or academics. It is necessary to have a more open recruitment pattern, at least to elements of experts or academics, as the Corruption Eradication Commission does. The Corruption Eradication Committee carried out a pattern of inquiry openly. Even the selection committee asked for the opinions of the public and other institutions, such as the Center for Financial Transaction Reporting and Analysis, the Supreme Court, and the Attorney General's Office.

The selection committee for the Honorary Notary Assembly can imitate the open steps taken by the Committee of the-i

[11]https://jatim.tribunnews.com/2019/09/19/733-notaris-diperiksa-majelis-kehormatan-notaris-wilayah-jatim-tahun-ini-6-akun-notaris-ditutup, accesed July 9, 2022.

Commission of the Corruption Eradication Commission so that public participation is more significant, for example, open registration through the media, both online, print, and electronic, so that the Honorary Assembly of Notaries can carry out their duties without having to be overshadowed by accusations of being a party that obstructs law enforcement. The more involved the public is in the recruitment pattern, the more it increases public trust. In addition, the process carried out must be transparent, both indicators of assessment and the process that takes place. So that the purpose of creating an institution is achieved, namely to guide notaries in the context of law enforcement, but notaries are also protected so that other law enforcement agencies are not arbitrary towards notaries.

Conclusion

The process of forming the Honorary Assembly of Notaries is long and gradual. To become a member of the Honorary Notary Assembly, obtained from 3 elements, three people are obtained from the Notary element, two people are obtained from the government element, and two from the expert or academic element. The Notary Honorary Assembly is needed not only for coaching but also for assisting law enforcement. The Honorary Notary Assembly shall not protect the Notary if there is an alleged criminal act. However, on the contrary, the Honorary Notary Assembly must keep the Notary if it does not commit alleged criminal acts and should not be treated arbitrarily by law enforcement. However, it often still causes distrust in society in some instances. In the field, sometimes there is dissatisfaction

between the parties, so the existence of the Honorary Notary Assembly was questioned and considered to violate the 1945 Constitution of the Republic of Indonesia, so that judicial review was carried out several times, and at least a judicial review was carried out in 2014, 2019 and 2020. However, all of them were rejected by the Constitutional Court. New updates are needed to increase public confidence in the existence of the Notary Honorary Assembly.ts.

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Urgensi Pembuatan Undang-Undang Hukum Acara di Mahkamah Konstitusi

Pendahuluan

Mahkamah Konstitusi (MK), merupakan salah satu lembaga negara yang disebutkan dalam UUD 1945 dan termasuk dalam struktur ketatanegaraan, menjadi salah satu lembaga negara yang paling menonjol setelah UUD 1945 diubah. Amandemen terhadap UUD 1945 dilakukan sebanyak 4 (empat) kali.[1] MK telah menunjukkan upayanya untuk membaharui sistem peradilan Indonesia sejak berdirinya. Sejak awal pemerintahan, banyak terobosan dilakukan yang melanggar kebekuan hukum dan kebuntuan. Sejak awal, MK secara mandiri telah menetapkan cara lembaga peradilan menjalankan fungsinya untuk menegakkan hukum dan keadilan. Hal ini berdampak besar pada keyakinan masyarakat terhadap institusi peradilan dan menunjukkan bahwa mewujudkan peradilan yang bersih dan adil masihkah

[1]Mustajib & Ach. Fadlail, "Amandemen Ke-5 Undang-Undang Dasar NRI 1945: Peluang dan Tantangan", *HUKMY : Jurnal Hukum*, Vol 2, No. 1 (2022) : 54-69, https://journal.ibrahimy.ac.id/index.php/hukmy/article/view/1855.

ada harapan. Pengadilan memiliki tugas untuk memutuskan perkara bukan hanya untuk menjalankan hukum, tetapi juga untuk menegakkan keadilan dan menyelesaikan masalah hukum yang dihadapi masyarakat.

Dengan demikian, MK melakukan banyak inovasi dalam proses peradilan sebagai respons terhadap tuntutan hukum untuk memberikan keadilan. Tentu saja, inovasi-inovasi ini akan menimbulkan kontroversi, terutama di antara para akademisi, tetapi biasanya kontroversi tersebut disebabkan oleh ketidakpahaman tentang landasan berpikir dan alasan yang melatarbelakangi terobosan hukum tersebut. Perihal baru semacam ini pada awalnya menimbulkan pro dan kontra terutama bagi akademisi, namun biasanya pro dan kontra itu lebih pada belum dipahaminya latar belakang pemikiran dan argumentasi yang mendasari terobosan hukum itu sendiri. Konstitusi Indonesia telah menunjukkan bahwa tujuan dari penegakan hukum oleh pengadilan terciptanya keadilan.

Dalam bahasa hukum, keadilan didefinisikan sebagai keadaan yang pada titik tertentu dapat diterima secara umum sebagai apa yang benar. Ketika seseorang bergabung dalam komunitas yang disebut kontrak sosial, mereka berada dalam posisi unik mereka. Ketimbang terbelenggu ketentuan undang-undang (keadilan proses), para hakim diminta untuk menggali rasa keadilan substantif di masyarakat. Selain dibenarkan oleh UUD 1945, banyak undang-undang yang berkaitan dengan penegakkan hukum juga memuat keharusan mencari keadilan penting ini. Pada Undang-undang MK No. 24 tahun 2003 dalam menegakkan keadilan substantif, seperti yang dinyatakan dalam Pasal 45 Ayat 1, "MK memutus perkara berdasar Undang-Undang Republik

Indonesia Tahun 1945 sesuai dengan alat bukti dan keyakinan hakim." Ini berlaku bahkan dalam kasus di mana pihak yang berperkara secara eksplisit meminta putusan adil.

Untuk mencari keadilan yang sejalan dengan nilai-nilai masyarakat, hakim-hakim tidak boleh terikat oleh aturan hukum yang formal saja. Ini sesuai dengan UUD 1945 dan beberapa UU terkait penegakan hukum. Salah satunya adalah UU No 24 Tahun 2003 tentang MK. Pasal 45 ayat 1 menyatakan bahwa MK harus memutus perkara berdasarkan UUD 1945, bukti, dan keyakinan hakim. Artinya, hakim harus mempertimbangkan dan memakai kearifan mereka untuk menegakkan keadilan yang adil, apalagi jika pihak yang berperkara menginginkan putusan berdasarkan asas keadilan dan kesejahteraan. Kebebasan dalam melaksanakan wewenang yudisial bersifat tidak mutlak karena tugas hakim adalah untuk menegakkan hukum dan keadilan berdasarkan Pancasila, sehingga putusannya mementingkan Negara Hukum Republik Indonesia.

Untuk menjalankan tugas maka Hakim Konstitusi berdasar pada hukum acara MK. Namun uniknya hukum acara di MK tidak berdasar undang-undang namun mendasarkan pada peraturan MK yang tentu saja MK yang membuatnya sesuai Pasal 86 Undang-Undang No. 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dengan Undang-Undang No. 8 Tahun 2011 tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi dan

[2]Lihat lebih detail dalam Undang-undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi dan penjelasannya.

Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013.[2]

Mahkamah Konstitusi dapat mengatur lebih lanjut hal-hal yang diperlukan bagi kelancaran pelaksanaan tugas dan wewenangnya menurut Undang-Undang ini. Gunanya agar bisa mengisi kemungkinan adanya kekurangan atau kekosongan dalam hukum acara berdasarkan Undang-Undang tersebut dan perubahannya. Sebagai contoh, Mahkamah Konstitusi telah membuat beberapa Peraturan Mahkamah Konstitusi yang mengatur pedoman beracara dalam perkara-perkara yang menjadi kewenangannya, seperti perkara pengujian undang-undang, perkara perselisihan hasil pemilihan umum, dan perkara lainnya.

Berbeda dengan tulisan yang pernah ada sebelumnya karena dalam tulisan sejenis dengan penulis Soeharno yang berjudul "Hukum Acara Mahkamah Konstitusi Penegak Hukum dan Pengadilan", pada intinya meneliti tentang bagaimana Mahkamah Konstitusi dalam menjalankan perannya untuk menegakan supremasi hukum di Indonesia.[3] Dalam tulisan lain dari penulis Almaura Mutiara Sahara dan Purwono Sungkono Raharjo yang berjudul "Asas-asas Hukum Acara Mahkamah Konstitusi" hanya meneliti terkait dengan asas-asas yang berlaku dalam Hukum

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[3]Soeharno,"Hukum Acara Mahkamah Konstitusi Penegak Hukum dan Pengadilan", *Jurnal LPPM Bidang EkoSosBudKum,* Vol.1, No. 2 (2014) : 13-30, https://ejournal.unsrat.ac.id/index.php/lppmekososbudkum/article/view/7217

[4]Almaura Mutiara Sahara dan Purwono Sungkono Raharjo, "Asas-asas Hukum Acara Mahkamah Konstitusi", *Jurnal Dekomkrasi dan Ketahanan Nasional,* Vol. 1, No.2, (2022) : 373 – 378, https://journal.uns.ac.id/Souvereignty/article/view/143/162

Acara Mahkamah Konstitusi.[4] Kedua tulisan tersebut tidak meneliti mengenai permasalahan dalam hukum acara Mahkamah Konstitusi itu sendiri. Sedangkan dalam tulisan ini mengangkat pentingnya hukum acara MK yang dibuat dalam bentuk undang-undang agar lebih mempunya kepastian hukum dan pencari keadilan merasa lebih yakin keadilan didapatkan dengan hukum acaranya yang lebih mempunyai kekuatan hukum karena berbentuk undang-undang.

Metode Penelitian

Penelitian ini merupakan penelitian hukum normatif, diskursus penyelesaian masalah internal hukum yang berlaku.[5] Merupakan cara untuk menemukan aturan baru. Peneltian dalam ilmu hukum secara umum mempunyai sifat preskriptif dan terapan. Ketika penelitian membicarakan prinsip dan norma hukum, positif negatifnya suatu aturan, nilai keadilan dan juga tujuan hukum, itulah sifat hukum preskriptif. Namun jika ilmu hukum membuat tata cara, aturan-aturan dan batasannya dalam menegakkan aturan hukum itu saat ilmu hukum bersifat terapan. Data yang digunakan merupakan studi kepustakaan.

Hasil Peneliian

MK dalam menjalankan tugas dan tanggungjawabnya menggunakan hukum acara. Sesuai dengan bidang yang menjadi

[5]Kornelius Benuf, Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", *Jurnal Gema Keadilan*, Vol. 7, No. 1, (2020) : 20 -33, https://ejournal2.undip.ac.id/index.php/gk/article/view/7504.

ruang lingkup kewenangannya, maka banyak hukum acara yang berlaku. Terkait uji materi (*judicial review),* perselisihan hasil pemilihan umum (PHPU) dalam pemilihan legislatif, pemilihan kepala daerah, sengketa antar lembaga, pembubaran partai politik, sengketa pemilihan presiden dan wakil presiden. Hukum acara yang berlaku bentuknya berupa peraturan MK. Karena bentuknya adalah peraturan MK tentu saja gampang diubah. Pro dan kontra pun menjadi sesuatu yang lazim, kenapa tidak berbentuk undang-undang hukum acaranya? Permasalahan muncul penting hukum acara MK dalam bentuk undang-undang karena jika hukum acara hanya berdasar peraturan MK maka otomatis gampang diubah sesuai keinginan MK, bukan layaknya aturan lain yang mengikat dalam bentuk undang-undang dimana dalam pembuatannya tidak hanya melibatkan presiden namun juga presiden dan tentu saja itu sangat merugikan pencari keadilan. Harus ada terobosan baru terkait hukum acara di MK dengan dibentuk undang-undang Hukum Acara di MK.

Pembahasan

Amerika Serikat menjadi negara yang melakukan uji materi pertama kali[6] Kasus Hylton vs. Amerika Serikat di tahun 1796

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[6]Safi, *Sejarah dan Kedudukan pengaturan Judicial Review di Indonesia: Kajian Historis dan Politik Hukum*, (Surabaya: Scopindo Media Pustaka, 2021).

[7]Nasir C, "Judicial Review di Amerika Serikat, Jerman, dan Indonesia". *Jurnal Hukum Progresif*, Vol. 8, No. 1 (2020) : 67 – 80. doi : https://doi.org/10.14710/hp.8.1.67-80

[8]Handoyo B. H. C, "Idealisme Constituendum Mahkamah Konstitusi dalam Pengujian Undang-Undang terhadap Undang-Undang Dasar", *Arena*

dilakukan judicial review,[7] melalui putusan *Supreme Court* Amerika Serikat dalam perkara "Marbury Vs Madison" tahun 1803.[8] Putusan yang ditulis oleh John Marshall dan didukung oleh empat hakim agung lainnya di Supreme Court Amerika Serikat menyatakan bahwa pengadilan memiliki kewenangan untuk meninjau dan membatalkan undang-undang yang tidak sesuai dengan konstitusi, meskipun hal ini tidak diatur dalam Undang-Undang Dasar Amerika Serikat.[9] Pernyataan ini merujuk pada konsep "pengujian konstitusionalitas" yang dikemukakan oleh Hans Kelsen, sebagai pengembang teori hukum positif dan konsep hukum dasar (*grundnorm*). Konsep pengujian konstitusionalitasnya mengemukakan bahwa suatu lembaga atau organ independen harus diberikan tugas untuk memeriksa apakah produk hukum yang dihasilkan oleh badan legislatif sesuai dengan konstitusi atau tidak.

Selain itu, karya-karya lain dari Hans Kelsen dan literatur tentang filosofi hukum mungkin juga memberikan referensi tambahan tentang pandangannya terkait dengan pentingnya pengujian konstitusionalitas oleh lembaga independen dalam menjaga supremasi konstitusi. MK merupakan lembaga ketatanegaraan yang baru muncul. Undang-undang yang dibuat setelah tahun 1999 sesuai dengan arah politik hukum yang diambil pada periode tersebut. Langkah pertama dalam perubahan ini adalah

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Hukum, Vol. 14, No. 1, (2021) : 1–18. doi : https://doi.org/10.21776/ub.arenahukum.2021.01401.1.

[9]Mahkamah Konstitusi, "Perintisan dan Pembentukan Mahkamah Konstitusi", September 16, 2023, retrieved from https://www.mkri.id/index.php?page=web.Berita&id=11769.

mengamandemen Undang-Undang Dasar tahun 1945. Proses amandemen ini dilakukan sebanyak empat kali, dimulai pada Sidang Umum Majelis Permusyawaratan Rakyat pada bulan Oktober 1999 dan berakhir dengan amandemen keempat pada bulan Agustus 2002. Saat ini, politik hukum kembali menjadi fokus dalam upaya melaksanakan perubahan Undang-Undang Dasar tahun 1945 di parlemen. Salah satu hasil utama dari amandemen sebelumnya adalah pendirian Mahkamah Konstitusi.[10] MK tidak sama dengan MA yang sudah umum di negara-negara hukum demokrasi. MK berdiri sendiri dan tidak bergantung pada MA. MK memiliki hak untuk mengadili undang-undang apakah sesuai dengan konstitusi atau tidak. Kebanyakan, negara-negara yang membuat MK sendiri adalah negara-negara yang baru beralih ke pemerintahan demokrasi. Persoalan akan timbul yaitu bagaimana jika dengan adanya *full power* lembaga negara menimbulkan permasalahan karena semua hal sepenuhnya dilakukan lembaga negara itu sendiri? Misalnya MK selain mempunyai kewenangan yang disebutkan dalam undang-undang dasar 1945 juga berhak mem-buat hukum acaranya sendiri?

Penyalahgunaan wewenang atau *abuse of power* bisa terjadi di segala aspek kehidupan, baik politik, ekonomi, social budaya, hukum maupun pertahanan keamanan. Apapun bentuknya jika terjadi penyalahugunaan kewenangan tentu saja merugikan pihak

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[10]Adityadarma Bagus, "Analisis Perkembangan Lembaga Negara Pasca Reformasi Ditinjau Dari Perspektif Politik Hukum Analysis Of The Development Of Post-Reform State Institutions Is Reviewed From A Legal Political Perspective", *Jurnal Hukum Lex Generalis*. Vol.1. No.7, (2020) : 20 – 39 , https://ojs.rewangrencang.com/index.php/JHLG/article/view/229.

lain, apalagi dalam kehidupan berbangsa dan bernegara, maka rakyatlah yang paling dirugikan. Terlebih jika penyalahgunaan wewenang itu terjadi dalam aspek hukum, tentu implikasinya menjadi luar biasa, karena hukum adalah panglima. Hukum bisa hanya menjadi hiasan kertas saja jika hal tersebut terjadi. Maka hal-hal yang sangat krusial harus limitatif ditetapkan, tidak boleh membolehkan lembaga apapun juga secara penuh mendapatkan kewenangan tak terbatas. Jika itu terjadi maka bisa saja *abuse of power* tidak terelakkan tidak terkecuali di MK, apalagi putusan bersifat final dan mengikat. Keputusan Mahkamah Konstitusi memiliki kekuatan hukum yang tetap segera setelah diucapkan dalam sidang pleno yang terbuka untuk umum, sesuai dengan Pasal 47 Undang-Undang Mahkamah Konstitusi. Hal ini adalah hasil dari sifat keputusan MK yang bersifat final dan mengikat. Sifat final dari keputusan Mahkamah Konstitusi didasarkan pada tujuan untuk memberikan kepastian hukum segera kepada para pencari keadilan. Oleh karena itu, setelah diucapkan dalam sidang, keputusan Mahkamah Konstitusi memiliki kekuatan hukum yang tetap dan tidak ada lagi peluang bagi pihak-pihak yang terlibat untuk mengajukan upaya hukum lainnya. Dengan kata lain, sejak diucapkan, keputusan tersebut sudah berlaku dan mengikat secara hukum, sehingga tidak ada ruang bagi tindakan hukum tambahan yang dapat mengganggu kepastian hukum.[11]

[11]Wilma Silalahi, "Pemberlakuan Putusan Mahkamah Konstitusi Pada Saat Tahapan Pemilu Berlangsung", *Jurnal Bawaslu Provinsi Kepulauan Riau*, Vol.5, No. 1, (2023) : 13-23, https://journal.bawaslu.go.id/index.php/JBK/article/view/291

Salah satu lembaga negara yang memiliki kewenangan besar dalam sistem ketatanegaraan Indonesia adalah MK. MK bertugas untuk menafsirkan dan mengawal konstitusi, serta memutuskan perkara yang berkaitan dengan undang-undang, lembaga negara, partai politik, dan pemilihan umum. Putusan MK tidak dapat diganggu gugat oleh pihak manapun, dan harus dihormati dan dilaksanakan oleh semua pihak yang berkepentingan, termasuk lembaga legislatif, eksekutif, dan yudikatif. Dengan begitu, MK berperan sebagai penjaga keseimbangan dan keadilan dalam negara Indonesia.

Gagasan membentuk MK adalah upaya untuk menegakkan prinsip-prinsip negara hukum dan memberi perlindungan maksimum terhadap demokrasi dan hak-hak dasar warga negara.[12] Dalam Bab V terkait Hukum Acara Undang-undang Nomor 24 Tahun 2003 tentang MK, pemaparan terkait mekanisme Hukum Acara dapat dilihat bahwa terdapat tahapan Administratif dan Tahapan Teknis serta Klasifikasi jenis Sengketa yang akan diperiksa, diadili dan diputus oleh MK, dimana berupa tahapan administrative yang meliputi Pengajuan Permohonan, Pendaftaran Permohonan dan Penjadwalan sidang, kemudian tahapan Proses Teknis dari Komposisi kelengkapan Hakim Konstitusi, Alat Bukti, Pemeriksaan Pendahuluan, Pemeriksaan Persidangan sampai dengan Putusan. Adapun juga terkait Klasifikasi Jenis

[12]I Dewa G. Palguna, "Constitutional Question: Latar Belakang dan Praktik Di Negara Lain Serta Kemungkinan Penerapannya Di Indonesia", *Jurnal Hukum Ius Quia Iustum,* Vol. 1, No. 17, (2010) : 1-20. doi : https://doi.org/10.20885/iustum.vol17.iss1.art1.

Sengketa juga sudah diatur sebagaimana didasari oleh Pasal 24C ayat (1).

Bahwa MK memiliki banyak klasifikasi perselisihan sebagaimana diuraikan pada Pasal 50 s/d 85 UU No. 24 Tahun 2003 yang diatur dalam hukum acaranya, dan untuk setiap penyelesaian perselisihan tersebut memiliki pendekatan teknis yang berbeda-beda dalam hukum acaranya. Sebagai contoh Perselisihan Pemilu DPR, DPD & DPRD yang diatur dalam PMK No.2/2018 pelaksanaannya tidak bisa digunakan untuk menyelesaikan Pemilu Kepala Daerah Gubernur, Bupati & Walikota karena penerapannya berbeda dan telah diatur secara tersendiri dalam PMK No.6/2020 untuk penyelesaian perselisihan tersebut. Dalam prakteknya Hukum Acara yang telah diatur berdasarkan Peraturan MK tersebut apabila diteliti secara seksama maka terlihat selalu berubah-ubah dan tidak memiliki pola yang pasti bahkan hampir setiap musim pemilu bisa berganti seperti contoh Hukum Acara terkait Perselisihan Pemilihan Umum.

Entah apa yang menjadi dasar dari berubahnya Hukum Acara tersebut dalam pola yang tidak konsisten, tentunya hal ini menimbulkan kegelisahan bagi masyarakat yang memiliki kepentingan terhadap Penegakan hukum di Mahkamah Konsitusi. Ketidakpastian ini bisa saja dianggap bahwa MK sebagai Lembaga Pengawal Konstitusi tidak serius dan terkesan bermain-main dalam Proses Penegakan Hukum di Negeri tercinta ini. Sebagai contoh lain adalah tafsir yang hanya Mahkamah Kon-

[13]Diajukan oleh 6 Penggugat yaitu Dr. (Can.) Dewi Nadya Maharani S.H., M.H., Suzie Alancy Firman, S.H., Moch. Sidik, Rahmatulloh, Mohammad Syaiful Jihad dan Nian Syarifudin.

stitusi yang memberikan namun merugikan pencari keadilan. Dalam judicial review Perkara No. 15/PUU-XX/2022.[13]

Masalah menjadi muncul karena tidak ada batasan yang jelas kapan sebuah perkara selesai perbaikan berkas disidangkan untuk diputus karena syarat-syarat formil yang tidak terpenuhi contohnya terkait legal standing, nebis in idem atau masuk agenda pembuktian. Perkara ini menjadi menarik ketika syarat formil terpenuhi namun langsung diputus pokok perkaranya tanpa pembuktian terlebih dahulu sebagaimana dialami peneliti saat melakukan *judicial review*. Ini problem serius pencari keadilan menurut peneliti, menjauh dari gagasan pokok dibentuknya MK.

Menurut B. Widjojanto, gagasan pembentukan MK di dalam sistem ketatanegaraan di Indonesia karena, yaitu,[14] *Pertama* pertama kurangnya instrumen hukum yang efektif untuk mengatasi perseteruan yang terjadi. *Kedua*, belum adanya mekanisme yang jelas untuk menafsirkan konstitusi secara tepat dan memastikan kepatuhan terhadap konstitusi sesuai dengan aspirasi rakyat dan nilai-nilai demokrasi. *Ketiga*, perlunya konstitusi yang mengakomodasi prinsip check and balance dalam sistem pemerintahan yang akan datang. Hal tersebut merupakan hal prinsip.

Pasal 24C ayat (6) UUD 1945 menyatakan bahwa Hukum Acara serta hal-hal lainnya tentang MK diatur dengan undang-undang. Tentunya sudah jelas terkait mekanisme Hukum Acara MK yang menjadi dasar pijakannya adalah Undang-undang, karena frasa "diatur dengan" berdasarkan UU No. 12 Tahun 2011

[14]Bambang Widjojanto, *Kajian Yuridis Putusan Mahkamah Konstitusi*, (Jakarta: Kemitraan Partnership, 2009).

tentang Pembentukan Peraturan Perundang-undangan merupakan muatan materi yang wajib diatur hanya dalam ketentuan Perundang-undangan yang didelegasi sehingga tidak boleh ditindaklanjuti lebih lanjut dalam ketentuan perundang-undangan yang berada posisi dibawahnya.lebih rendah atau disebut subdelegasi. Adapun faktanya yang sebenarnya terjadi dalam praktik MK selama ini adalah mekanisme yang diatur dalam Hukum Acara MK bukan menggunakan formasi Undang-undang sebagai dasar pijakannya melainkan dalam bentuk Peraturan MK.

Sebagaimana dijelaskan diatas UUD NRI 1945 Pasal 24C ayat (6) menentukan bahwa *Hukum Acara tentang MK diatur dengan undang-undang*. Jadi jelas bahwa hukum Acara MK haruslah diatur dengan undang-undang. karena frasa "diatur dengan" menurut Lampiran II angka 201 Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan (UU 12/2011) sebagai berikut: "*Jika materi muatan yang didelegasikan sebagian sudah diatur pokok-pokoknya di dalam Peraturan Perundang-undangan yang mendelegasikan tetapi materi muatan itu harus diatur hanya di dalam Peraturan Perundang-undangan yang didelegasikan dan tidak boleh didelegasikan lebih lanjut ke Peraturan Perundang-undangan yang lebih rendah (subdelegasi), gunakan kalimat Ketentuan lebih lanjut mengenai .... diatur dengan ...*"

Dalam putusan MK No. 012-016-019/PUU-IV/2006 guna mempertegas pengertian "diatur dengan" sehingga diyakini bahwa berdasarkan ilmu perundang-undangan, frasa "diatur dengan undang-undang" haruslah difahami bahwa hal tersebut diatur dengan undang-undang tersendiri. Di samping itu, oleh karena itu frasa "diatur dengan undang-undang" juga berarti bahwa hal

dimaksud harus diatur dengan peraturan perundang-undangan dalam bentuk undang-undang, bukan dalam bentuk peraturan perundang-undangan lainnya. Ketentuan UU 12/2011 dan Putusan MK Nomor 012-016-019/PUU-IV/2006 secara jelas menerjemahkan bahwa makna frasa "diatur dengan" dalam suatu perintah pendelegasian pengaturan lebih lanjut. Norma yang dibentuk dalam dalam batang tubuh UU 24 Tahun 2003 Pasal 86 yang berbunyi: "MK dapat mengatur lebih lanjut hal-hal yang diperlukan bagi kelancaran pelaksanaan tugas dan wewenangnya menurut Undang-Undang ini" maka kemudian MK membuat tafsir diberikan kewenangan membuat Hukum Acara sendiri. Ketentuan yang ada adalah perintah pengaturan lebih lanjut terkait tata tertib sidang sebagaimana ditentukan Pasal 40 ayat (3) UU 24 Tahun 2003.

MK dalam melakukan perubahan terkait mekanisme Hukum Acara ini tentunya menimbulkan tanda tanya dari beberapa kalangan yang memiliki kepentingan dengan MK, baik dari Praktisi Hukum hingga Akademisi, mengingat MK hampir keseluruhan tugasnya bersinggungan dengan perkara besar mengenai politik dan kekuasaan sehingga sangat dikhawatirkan dan patut diragukan bahwa MK dalam menjalankan tugasnya dapat bersikap *fair* serta tidak dapat diintervensi oleh kalangan manapun. Mengapa keraguan demikian penulis utarakan karena alasannya adalah inkonsistensi MK dalam mengatur Hukum Acaranya yang berubah-ubah yang didasari oleh instrumen Peraturan MK, sehingga dapat dirubah sewaktu-waktu sesuai kebutuhan dan "Kepentingannya" karena apabila Hukum Acara tersebut didasari oleh diskresi Undang-undang maka harus melewati rangkaian proses yang cukup kompleks di DPR sebagaimana Pasal 1

UU 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan yaitu perencanaan, penyusunan, pembahasan, pengesahan atau penetapan, dan pengundangan.[15]

Dalam perspektif lain, yaitu Hukum Acara yang dibentuk oleh Peraturan MK yang dalam hal ini stratanya lebih rendah dari Undang-undang bahkan tidak masuk dalam tata urutan perundang-undnagan. Adapun urutan tata perundang-undangan yaitu Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945), Ketetapan Majelis Permusyawaratan Rakyat (Tap MPR), Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang (Perppu), Peraturan Pemerintah (PP), Peraturan Presiden (Perpres), Peraturan Daerah Provinsi, dan Peraturan Daerah Kabupaten/Kota.[16] Hukum acara MK yang mana diskresinya secara internal dimiliki oleh Mahkamah Konstitusi itu sendiri, sehingga akan bisa saja menimbulkan praduga bisa terjadinya Penyalahgunaan Wewenang (*abuse of power*) oleh oknum-oknum yang tidak bertanggung jawab demi mencari keuntungan pribadi karena mudahnya merubah ketentuan Hukum Acara yang didasari oleh Peraturan MK yang mana kewenangan tersebut dimiliki oleh Mahkamah Konsitusi itu sendiri dan dapat dirubah sesukanya. Berbeda halnya apabila Hukum Acara MK yang diatur secara tersendiri dalam Undang-undang yang prosesnya kompleks serta lebih dapat memberikan kepastian hukum

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[15]Undang-Undang No.12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan.

[16]Annisa Medina Sari, "Hierarki Peraturan Perundang – Undangan di Indonesia", September 24, 2023, https://fahum.umsu.ac.id/hierarki-peraturan-perundang-undangan-di-indonesia/

agar tercipta iklim demokrasi dan penegakan hukum yang bersih di negeri ini yang berdasarkan Pancasila.

Dua puluh tahun sudah MK telah ada dalam dunia hukum Indonesia. Pemikiran terhadap MK cukup progresif dalam Hukum Tata Negara dan Hukum Konstitusi, yang dulunya dianggap sebagai hukum statis, berkembang lebih cepat, dan dinamis. Adanya MK membuat lapangan hukum baru diperlukan untuk menegakkan Hukum Tata Negara, yaitu Hukum Acara MK, tidak lagi hanya dalam Peradilan Tata Usaha Negara.[17] Ternyata, Hukum Acara MK ini berubah terus semenjak dari MK berdiri. Hal ini menimbulkan respon pro dan kontra. Bagi kelompok yang pro terhadap perubahan Hukum Acara MK ini menyadari pentingnya penyesuaian dengan konteks-konteks kondisi kekinian. Kelompok yang kontra lebih melihat dan menduga MK telah bermain politik bukan negarawan lagi, karena Hukum Acaranya diatur dalam Peraturan MK.

Tulisan ini mencoba menyajikan pentingnya pembahasan hukum acara MK sehingga mendapat solusi terbaik dan mencoba berkontribusi dalam memberikan solusi hukum bagi Hukum Acara MK. Kenyataan penting tentang lemahnya hukum acara yang dibuat dan diberi tafsir sepihak MK atas perturan MK yang dibuatnya sendiri. Kasus hukum acara yang berubah-ubah maupun tafsir yang dilakukan seperti dalam perkara 15/PUU-XX/2022, harusnya tidak terjadi, yang hanya menunjukkan absolutnya kekuasaan MK yang tak terbatas. Perlu mekanisme lebih baku agar *check* and *balances* lebih berlaku melalui pembuatan hukum acara berbentuk undang-undang.

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[17] *Op.cit,* Adityadarma Bagus.

Dalam UU MK, hukum acara terbagi menjadi dua bagian. Bagian pertama mencakup aturan umum tentang hukum acara, yang mencakup pengajuan permohonan, pendaftaran dan penjadwalan sidang, alat bukti, pemeriksaan pendahuluan, pemeriksaan persidangan, dan putusan. Bagian kedua mencakup ketentuan hukum acara khusus, yang mencakup pengujian undang-undang terhadap UUD, sengketa kewenangan lembaga negara, pembubaran partai politik, perselisihan tentang hasil pemilihan umum, dan beracara di MK dan undang-undang khusus yang sesuai dengan sifat masing-masing perkara yang menjadi wewenang MK. Selain itu, UUD 1945, khususnya Pasal 7B, mengandung ketentuan tentang acara MK, dan UU MK, khususnya Pasal 28 hingga 85, mengandung ketentuan tambahan tentang acara tersebut. Selebihnya diatur oleh Peraturan MK dan putusan MK. Pasal 86 UU MK memungkinkan hal ini terjadi. Pasal ini memberikan MK kewenangan untuk mengatur lebih lanjut hal-hal yang diperlukan untuk kelancaran pelaksanaan tugas dan wewenangnya. Tentang pengaturan terdapat dua aspek utama yang harus dipahami dalam UU MK. Pertama, Pasal 28 hingga 49 mengandung ketentuan hukum acara yang bersifat global dan berlaku bagi seluruh kewenangan MK kedua khusus untuk setiap jenis kewenangan MK.

Penggelompokkam Pasal 50 hingga 60 digunakan untuk judicial review (uji materi), 61 hingga 67 jika ada sengketa antar Lembaga dengan batasan-batasan khusus. Pasal 68 hingga 73 mengatur prosedur parpol yang dibubarkan, 74 hingga Pasal 79 digunakan untuk menyelesaikan perselisihan pemilu. Pasal 80 hingga Pasal 85 UU MK mengatur prosedur yang berkaitan dengan kewajiban MK dalam memutuskan *impeachment*. Dengan

demikian, pengaturan ketentuan hukum acara dalam UU MK dapat dikelompokkan menjadi dua kategori, yaitu yang bersifat umum untuk seluruh kewenangan MK dan yang berlaku khusus untuk setiap jenis kewenangan MK.

Dari paparan terkait ketentuan Hukum Acara MK diatas dapat dilihat bahwa Hukum Acara MK selalu berganti rupa untuk setiap masanya dan pergantian Hukum Acara tersebut lebih sering dilakukan oleh MK pada perselisihan mengenai Pemilihan Umum dan hak uji materi. Sebelum tahun peraturan MK No. 2 tahun 2021 tentang Tata Beracara dalam Perkara Pengujian Undang-Undang, ada peraturan MK No. 9 tahun 2020 tentang Tata Beracara Dalam Perkara Pengujian Undang-Undang, mengenai hal yang sama, bahkan baru berumur 1 (satu) tahun.22 Jika hukum acara yang berlaku di MK berbentuk undang-undang, maka lebih memberi kepastian hukum. Hal tersebut karena tidak gampang diubah-ubah sesuai keinginan MK dan harus melalui proses yang lebih terbuka karena melalui tahapan-tahapan dalam pembuatan undang-undang.

Proses pembentukan undang-undang di Indonesia terdiri dari lima tahap, yaitu pertama, perencanaan, DPR dan Presiden menyusun daftar RUU yang akan disusun ke depan. Daftar ini disebut Program Legislasi Nasional (Prolegnas) yang berlaku untuk jangka waktu lima tahun. Kedua, penyusunan: RUU disiapkan oleh menteri atau pimpinan lembaga terkait jika berasal dari Presiden, atau oleh anggota/komisi/gabungan komisi DPR jika berasal dari DPR. RUU harus disertai dengan naskah akademik yang menjelaskan latar belakang, tujuan, dan urgensi RUU. Ketiga, pembahasan: RUU dibahas oleh DPR dan Presiden untuk mendapat persetujuan bersama. Pembahasan

dilakukan di tingkat komisi, badan legislatif, dan paripurna DPR. Jika terdapat perbedaan pendapat antara DPR dan Presiden, maka dapat dilakukan mediasi atau konsultasi publik. Keempat, pengesahan: Jika RUU mendapat persetujuan bersama, maka RUU tersebut disahkan menjadi undang-undang oleh DPR dan Presiden dalam rapat paripurna. Jika tidak mendapat persetujuan bersama, maka RUU tersebut tidak boleh diajukan lagi dalam persidangan DPR masa itu. Kelima, pengundangan: Setelah disahkan, undang-undang diundangkan oleh Presiden dan diterbitkan dalam Lembaran Negara. Pengundangan dilakukan paling lambat 30 hari sejak undang-undang disahkan. Undang-undang mulai berlaku pada tanggal yang ditentukan dalam undang-undang tersebut atau pada tanggal pengundangan jika tidak ditentukan.

Hukum acara yang digunakan dalam persidangan di MK adalah hasil karya MK sendiri, bukan undang-undang seperti kitab undang-undang hukum acara pidana untuk perkara pidana atau kitab undang-undang hukum acara perdata untuk perkara perdata. Pedoman persidangan di MK berbentuk peraturan MK. Karena ditetapkan oleh MK sendiri, tentu akan sangat sulit bagi pencari keadilan jika menemukan kekurangan dalam peraturan tersebut yang pasti berdampak hukum karena dijadikan sebagai dasar persidangan. Jika saja bukan berbentuk Peraturan MK tetapi berbentuk undang-undang maka lebih memperoleh kepastian hukum karena prosesnya yang transparan melalui mekanisme pembentukan undang-undang. Contoh nyata adalah perubahan per MK No. 9 tahun 2020 Tentang Tata Beracara dalam Perkara Pengujian Undang-Undang yang diubah Peraturan

MK No 2 tahun 2021 Tentang Tata Beracara dalam Perkara Pengujian Undang-Undang padahal baru berumur 1 (satu) tahun.[18]

Kesimpulan

MK sebagai lembaga pengawal konstitusi diharapkan dapat menjadi *role model* dalam memberikan jaminan kepastian hukum kepada seluruh warga. Negara melalui Konsistensi Instrumen Hukum Acara yang dibuat agar tidak berubah-ubah. Adapun instrumen Hukum Acara MK haruslah didasari oleh payung hukum undang-undang dan bukan merupakan subdelegasi dari undang-undang yang mana selama ini Hukum Acaranya diatur dalam Peraturan MK. Hal tersebut yang memiliki kerentanan terhadap penyalahgunaannya oleh berbagai pihak yang memiliki kepentingan. Pasal "karet" yang dimaknai memberi otoritas MK untuk mengatur hukum acaranya sendiri merugikan para pencari keadilan karena MK putusannya bersifat *final* and *binding*, artinya tidak ada upaya hukum yang bisa dilakukan jika terjadi kesalahan namun pada saat yang sama mempunyai kewenangan terlalu luas dengan penafsiran MK sepihak.

Saran yang penulis berikan adalah harus segara dibuat hukum acara berbentuk undang-undang agar ada *check* and *balances* bagi pencari keadilan. Karena jika berbentuk undnag-undang

[18]Lihat lebih lanjut dalam Peraturan MK No. 9 tahun 2020 tentang Tata Beracara Dalam Perkara Pengujian Undang-Undang..

harus melalui tahapan dan proses yang lebih transparan. Maka sekaligus mengurangi penafsiran kewenangan MK yang luar biasa. Penafsiran sepihak tidak akan terjadi lagi sehingga pencari keadilan lebih mendapat kepastian hukum.

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Government Regulation Substituting the Law on Job Creation in the Perspective of Constitutional Law

Introduction

The general explanation of the 1945 Constitution explicitly mentions the foundation of the state government system, affirming that the Indonesian state is founded on the rule of law (rechtsstaat). It further emphasizes that the Indonesian government operates on the fundamental principles of a constitutional system (basic law), rejecting the notion of absolutism or unlimited power.[1] In Indonesia, groundbreaking constitutional changes have taken place, and their ongoing implementation shapes various sectors and government levels daily. These changes influence everything from central governance to provincial, district/municipality, and village administrations, creating a significant

[1]Andrew Mario Ernesto Ataupah, "How the Justice Power Post Constitution Amendment? A Review Book Politik Hukum Kekuasaan Kehakiman Pasca Amandemen Undang-Undang Dasar 1945", Ma'shum Ahmad, Total Media Yogyakarta, 2017, 193 Pages, ISBN: 979-1519-25-0, *Journal of Indonesian Legal Studies*, Vol. 6 No. 1, 2021, p. 237–44.

impact across the board.[2] As for this matter, it is clearly related to justice. In the framework of transitional justice, material or substantive justice has more relevance than formal justice, but the term "justice" might have several interpretations.[3]

This research aims to assess whether the Government Regulation in Lieu of Law has been enacted into Law Number 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as a Law. It originated from efforts to address the issues concerning Law Number 11 of 2020 on Job Creation, which were considered urgent. Consequently, the Indonesian president was granted the authority to create Government Regulations in Lieu of Law that are equivalent to laws without requiring the approval of the People's Representative Council of the Republic of Indonesia (hereinafter mentioned as DPR RI, Dewan Perwakilan Rakyat Republik Indonesia).

Another study indicates that the emergence of regulations related to job creation, from a socio-legal perspective, requires time and reciprocal efforts between the government and the public. Regulations must be effectively implemented across all segments of society. The appearance of the Government Regulations in Lieu of Law (Perpu, Peraturan Pemerintah Pengganti

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[2]Zen Zanibar, "The Indonesian Constitutional System in the Post Amendement of the 1945 Constitution", *Sriwijaya Law Review*, Vol. 2, No. 1, 2018.

[3]Mirza Satria Buana, "A Realistic Perspective to Transitional Justice: A Study of Its Impedimentsin Indonesia", Journal of Southeast Asian Human Rights, Vol. 4, No. 2, 2020.

Undang-Undang) has also elicited both positive and negative responses from various sectors of society. The core issue lies in the need for legal certainty by the government and investors, while workers require legal protection to ensure a balanced and equitable position with business entities.[4] Indeed, when viewed from the perspective of the sociology of law, it differs from the constitutional law viewpoint. In the sociology of law, the emphasis is placed on the social reactions that arise when a regulation is implemented or the societal push for change that ultimately necessitates a rule to govern such changes. On the other hand, when looking at it from a constitutional law perspective, the focus is on the limitation of power in the administration of state authority.

The Omnibus Law on Job Creation was enacted on the basis of urgency. On the other hand, if we look at constitutional law. The Constitutional Court is part of constitutional law and is one of the institutions born from the results of constitutional amendments.[5] Constitutional courts, regardless of their form, are designed to uphold the core values of the constitution independently, free from external influence.[6] Disagreements

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[4]AA Muhammad Insany Rachman, Eva Dwi Hastri, and Rusfandi Rusfandi, "Tinjauan Penetapan Perpu Nomor 2 Tahun 2022 tentang Cipta Kerja Dalam Perspektif Sosiologi Hukum",

[5]Emy Hajar Abra and Rofi Wahanisa, "The Constitutional Court Ultra Petita as a Protection Form of Economic Rights in Pancasila Justice", *Journal of Indonesian Legal Studies*, Vol. 5 No. 1, 2020.

[6]John Sampe, Rosa Ristawati, and Be Hakyou, "The Guardian of Constitution: A Comparative Perspective of Indonesia and Cambodia", *Hasanuddin Law Review*, Vol. 9 No. 2, 2023, p. 211–32 7.

regarding the Government Regulation in Lieu of Law on Job Creation continue, even though this regulation has indeed been enacted as Law Number 6 of 2023 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as a Law. It all began with an effort to address issues related to Law Number 11 of 2020 on Job Creation, which led to the government issuing Government Regulation in Lieu of Law Number 2 of 2022 and subsequently sparked a pros and cons debate. This controversy revolves around the debate on whether it complies with Constitutional Court Decision Number 91/PUU-XVIII/2020, dated November 25, 2021, or if, on the contrary, it contradicts the Constitutional Court's ruling. The Constitutional Court Decision Number 91/PUU-XVIII/2020 rendered significant judgments. Firstly, it contradicts the Constitution of the Republic of Indonesia of 1945 and lacks conditional legal validity unless it is construed as "no modifications are implemented within a period of 2 (two) years from the date of this decision." Second, it shall remain in effect until amendments to its formation are made within a period of two years from the date of this decision. Third, it orders the legislator to carry out amendments within a maximum period of 2 (two) years from the date of this decision. If no amendments are made within this time frame, the Job Creation Law shall become permanently unconstitutional. Fourth, it declares that if, within the two-year period, the legislator cannot complete the amendments to the Job Creation Law, then the law or articles or contents of the law that were repealed or modified by the Job Creation Law shall be reinstated. Fifth, it suspends all strategic and wide-

ranging actions and prohibits the issuance of new implementing regulations related to the Job Creation Law.[7]

The enactment of Law Number 6 of 2023 concerning the Confirmation of Government Regulation in Lieu of Law Number 2 of 2022 led to 15 labor unions or workers' unions, led by Rizal Ramli, filing a formal request for a formal review with the Constitutional Court. The plaintiff's expert testimonies in case Number 54/PUU-XXI/2023 presented several reasons and grounds explaining why the JoTindakan yang tepat, Mam. Dipakainya nantii lebih nyaman dan lancar.b Creation Law was deemed unnecessary. It is stated that the government's claim of the country's economic instability due to the Covid-19 pandemic and the global crisis is deemed unrealistic. According to their observation, Indonesia's economy is projected to grow by approximately 5% from 2020 to 2023. This clearly indicates that Indonesia's economy is on an upward trajectory, not in crisis, and can still be managed innovatively. In this statement, the situation is considered grave only if there were an economic recession, which would require significant measures to restore it to a normal state. Meanwhile, the enforcement of this law is seen as being implemented for overly contrived reasons. Another reason the government provided is the simplification of overlapping regulations, permits, and regulations, with the expectation that initial investment would increase with the enactment of these regulations. It is acknowledged that the bureaucracy in

[7]President of the Republicof Indonesia, Law of the Republic of Indonesia No. 11 of 2020 on Job Creation, 2020, https://faolex.fao.org/docs/pdf/ins206548.pdf.

Indonesia can be quite complex, involving various types of permits. However, the emergence has, in fact, added to the complexity and complications in this regard.[8]

The creation of the omnibus law, also known as the Job Creation Law, was one of the most controversial processes in Indonesia. Numerous issues arose during its formation, making it legally and procedurally problematic. This law, seen as a tactical and political response to a complex situation, resulted in problems not aligned with the fundamental principles of the state. The omnibus law lacks democratic elements, limits participation, and has the potential to surpass constitutional provisions. From a good governance standpoint, it falls short of meeting principles like legitimacy, transparency, accountability, responsiveness, and the rule of law. While effectiveness and efficiency principles still apply, this study suggests re-evaluating the Job Creation Law.[9] The Job Creation Law marks a shift in Indonesian labor policy towards deregulation, reducing government involvement in labor relations. Unlike the Labor Law that introduced flexibility, this Job Creation Law further emphasizes agreements between parties. Deregulation seems to be a consistent trend, seen in various policies. The focus now is on strengthening trade unions and collective bargaining to safeguard

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[8]Mahkamah Konstitusi, "Cipta Kerja Tak Memenuhi Unsur Kegentingan Memaksa Masalah Ekonomi, 2023", https://www.mkri.id/index.php?page=web.Berita&id=19378.

[9] Bobi Yusuf Noor Fajar and Zaid Zaid, "A Critical Review on the Job Creation Omnibus Law- Forming Process", *Syiah Kuala Law Journal*, Vol. 5 No. 2, 2021.

workers' interests post-Job Creation Law. Despite changes, current rules related to these aspects remain unchanged, allowing workers to protect their rights. The effort to secure workers' rights, primarily through trade unions, must persist amid these shifts.[10] This is based on two different studies, one addressing the general aspects of the Job Creation Law and the other discussing the deregulation of labor laws due to the emergence of the Job Creation Law. However, this article emphasizes that the presence of Government Regulation in Lieu of Law about Job Creation Law creates uncertainty from a constitutional law perspective.

Upon closer examination, this law consists of thousands of pages, and when simplified, there are many differences of opinion among the articles. Generally, this system should only apply temporarily or for a minimum of three months, except for industries capable of applying this system. Due to this standard, workers do not receive healthcare benefits and economic support for their families, which is a form of modern slavery. The Job Creation Law impedes workers' rights, akin to the colonial past when indigenous communities were deprived of the chance to enhance their living conditions in a conventional manner.

Moreover, while examining history, it becomes evident that the Indonesian government and the vision of the founding fathers of the Republic of Indonesia, at the time of its establishment, were focused on establishing a welfare state rather than promoting a daring and susceptible capitalist investment system. The

[10] Nabiyla Risfa Izzat, "Deregulation in Job Creation Law: The Future of Indonesian Labor Law", *PJIH: Padjadjaran Jurnal Ilmu Hukum*, Vol. 9 No. 2, 2022.

roles of the state, cooperatives, and the private sector are crucial for the sustainability of well-being and the ideal economic prosperity of Indonesia. Consequently, this will give rise to an intelligent and prosperous Indonesian nation. However, according to their viewpoint, implementing the Job Creation Law is highly contradictory to the Constitution of the Republic of Indonesia of 1945. Once again, the regulations within it are perceived as an attempt to impoverish workers and merely exploit them as production tools rather than recognizing them as integral members entitled to share in prosperity.

Research Methods

This article will discuss the issuance of the Government Regulation in Lieu of Law on Job Creation in light of Constitutional Court Decision Number 91/PUU-XVIII/2020 and the concept of the rule of law in Indonesia.[11] This literature and media study employs a normative or legal research method with a qualitative approach. Using the normative legal research method, the authors use statutory, case, and conceptual approaches. Based on the research conducted, the authors found that the Constitutional Court aims to uphold the balance of companies' efficiency and outsourced workers' rights protection.[12]

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[11]Arya Setya Novanto, "Efektivitas Undang-Undang Cipta Kerja dalam Pembangunan Hukum Indonesia", Jurnal *USM Law Review*, Vol. 5 No. 1, 2022.

[12] I. D. G Palguna et al., Indonesia's Constitutional Court Decisions on Outsourcing Scheme: Balancing Protection and Efficiency, Journal of Indonesian Legal Studies, Vol. 8 No. 2, 2023, p. 405–452.

The normative approach involves examining the dimension of reality from a normative perspective. The normative approach entails examining the dimension of reality from a normative standpoint. The first step in using the normative approach is identifying the Constitutional Court Decisions. The qualitative method involves data collection and qualitative analysis to identify patterns, root causes, and fundamental reasons underlying a particular event. Document analysis, such as relevant regulations and public opinions, is necessary to implement this method. Furthermore, case studies should be conducted to provide empirical evidence of regulation implementation. Analytical descriptive data is obtained from research sources, primarily documents and news in online media.[13]

The data sources for this writing comprise primary, secondary, and tertiary sources obtained through library research rather than field research.[14] These sources are obtained from literary works, e-books, e-journals, and online mass media news. These sources are collected, then the texts are selected according to the research theme, and their content is mapped to address the issues intended to be answered through this article. This process can be described as a method to restate the main ideas within the data, provide an overview of patterns regarding the concepts generated from the data, and elucidate the meaning of the data to draw profound research conclusions.h).

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[13] Muhaimin., Metode Penelitian Hukum, Mataram, Mataram University Press, 2023.

[14] Bachtiar, *Metode Penelitian Hukum*, Tangerang Selatan, UNPAM Press, 2018.

Result and Discussion

1. The implications of the Government Regulation in Lieu of Law on Job Creation regarding the president's authority to amend regulations

President has constitutional authority to issue Government Regulations in Lieu of Law based on Article 22D of the Constitution of the Republic of Indonesia of 1945. However, the use of this authority should be limited to situations that are truly urgent and important, such as in emergency situations or when there is an urgent need to regulate a specific sector that requires rapid changes; furthermore, with the changes in the law. Government Regulations in Lieu of Law on Job Creation grant the president the authority to significantly alter these regulations without going through a longer and more complex regulatory process. This can have a significant impact on regulations and policies in Indonesia. Additionally, the president, as the authority responsible for determining the content of the Government Regulations in Lieu of Law, can play a crucial role in directing the national economic reform toward socio-economic outcomes. This is where the president's authority in using Government Regulations in Lieu of Law also requires other presidential responsibilities in making other policy decisions as implications of the content of the Government Regulation in Lieu of Law on Job Creation.[15]

[15]Cipto Prayitno, "Analisis Konstitusionalitas Batasan Kewenangan Presiden dalam Penetapan Peraturan Pemerintah Pengganti Undang-Undang", Jurnal *Konstitusi*, Vol. 17 No. 3, 2020.

However, the content of the Government Regulation in Lieu of Law on Job Creation must adhere to the constitution and legal principles. Although this Government Regulation in Lieu of Law introduces significant alterations to the legal framework that may impact citizens' rights and responsibilities, these changes are essential for upholding constitutional principles, protecting human rights, and promoting economic and investment reforms.

It only stated that the procedures for the formation of the Job Creation Law needed to be repeated, with the requirement for an omnibus law as part of the registration process. Furthermore, Mahfud MD stated the government's reasons for improving the Job Creation Law through the issuance of the Government Regulation in Lieu of Law. This is because the Government Regulation in Lieu of Law on Job Creation holds the same legal status as the law itself. Based on the grounds of compelling urgency, the birth of the Government Regulation in Lieu of Law on Job Creation is the president's subjective right that does not require debate.[16] Of course, this statement also needs to be debated, as there are always limitations (restrictions) even within one's authority.

The enactment of the Government Regulation in Lieu of Law on Job Creation, which preceded the Job Creation Law on December 30, 2022, during a recess period, constitutes a blatant violation of the constitution. This conclusion is based on a chronological analysis of the events that occurred during the

[16] *Kompas*, Peraturan Pemerintah Pengganti Undang-Undang Tentang Cipta Kerja dalam Perspektif Negara Hukum, 2023.

recess period. Article 52(1) of the Legislative Drafting Law explains that the "persidangan yang berikut" is the first session of the DPR RI that occurs after the Government Regulation in Lieu of Law is enacted.

The subsequent session after its enactment on Job Creation would have been the Third Session of the 2022/2023 legislative year, which began on January 10, 2023, and ended on February 16, 2023. During this Third Session, it should have obtained approval from the DPR RI in accordance with the provisions of Article 22(2) and (3) of the 1945 Constitution, together with the explanation provided in Article 52(1) of the Legislative Drafting Law. However, it is worth noting that it did not receive approval from the DPR RI during the Third Session of the 2022/2023 legislative year. It eventually obtained approval on March 21, 2023, which was outside the Third Session of that legislative year.

If we strictly adhere to the provisions of the norms mentioned above, then the one that did not receive approval during the first session of the DPR RI should be revoked. Consequently, it loses its validity and can no longer be ratified by the DPR RI to become a law. This is where the significance of the time limitation, as outlined in Article 22(2) and (3) of the 1945 Constitution, in conjunction with the explanation provided in Article 52(1) of the Legislative Drafting Law, comes into play regarding the enforcement of a Government Regulation in Lieu of Law. In this context, the limitation or time constraint aligns with the president's authority to issue Government Regulations in Lieu of Law, specifically in urgent situations requiring swift enactment to be ratified as laws. Therefore, if

anyone claims that the Government Regulation in Lieu of Law on Job Creation is still in effect because the approval of the DPR RI can be obtained during the Fourth Session of 2023, it can be confirmed that such a statement deviates from the law.[17]

Just as the right to decide a case depends entirely on the judge presiding, according to their convictions, it must still be based on two valid pieces of evidence. For the purpose of comparison, it is important to note that the evidentiary standard in accordance with the Criminal Procedure Code is established by Article 183 of the same code. This standard follows a negative statutory system, as stated in the text: The judge must not impose a criminal penalty on someone unless, with at least two valid items of evidence, they are convinced that a criminal act has truly occurred and that the defendant is guilty of committing it. In order to impose a penalty on the defendant, the following conditions must be met: Two valid items of evidence and the judge's conviction that a crime has been committed and that the defendant is guilty of committing that crime. Because evidence is the most important part of criminal procedural law, it governs how the state, through its instruments, exercises the power to prosecute and impose penalties. Certainty about the authenticity of the presented legal facts will lead to clarity regarding the legal status of the parties based on the legal arguments presented by the parties. This provides a clear picture for the

[17] Natasha, "Presiden Partai Buruh: Cabut Omnibus Law Cipta Kerja Tanpa Kata-Kata Bersyarat, Kedai Pena", September 11, 2023, https://www.kedaipena.com/presiden-partai-buruh-cabut-omnibus-law-cipta-kerja-tanpa-kata-kata-bersyarat/.

judge to draw conclusions and make decisions about the facts and the culpability of the parties involved in the case. As we know, the purpose of evidence is to provide a relevant picture of the truth of an event. The panel of judges considers whether, based on the defendant's statements, the testimony of witnesses, the documentary evidence presented by the public prosecutor, and the results of on-site examinations, the defendant can be prosecuted or not. So, what is meant by evidence is that a criminal act has occurred, and the defendant has committed that criminal act, making them accountable.[18]

In the authors' opinion, and also regarding the considerations and/or the decree of Constitutional Court Decision Number 91/PUU-XVIII/2020, the issuance of the Government Regulation in Lieu of Law regarding the Job Creation Law is not entirely in line with the Constitutional Court's decision. This means, on the one hand, the issuance of the Government Regulation in Lieu of Law must be acknowledged as an acceptable action. However, on the other hand, President Jokowi's reasons for issuing the Government Regulation in Lieu of Law regarding the Job Creation Law are legally problematic, especially in the context of Constitutional Court Decision Number 91/PUU-XVIII/2020. The Constitutional Court's panel of judges, in Constitutional Court Decision Number 91/PUU-XVIII/2020, page 412, declared the Job Creation Law conditionally unconstitutional for three reasons. First, it was not based on a precise,

[18] Stiklif John Ridel Loway, Adi T. Koesoemo, and Herlyanty Bawole, "Kedudukan Hakim dalam Proses Pembuktian Peradilan Pidana Indonesia",Jurnal *Lex Crimen*, Vol. 11 No. 5, 2022.

standard, and systematic method of law formation. Second, there were changes in the wording of certain provisions after the joint approval by the DPR RI and the president. Third, it contradicted the principles of legislation, especially the principles of clarity of purpose, formulation, and transparency. The legislators have addressed the first reason by incorporating the omnibus law method through Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. Regarding the second reason, the lawmakers responded by making corrections and providing more detailed additions to the substance of the Government Regulation in Lieu of Law concerning the Job Creation Law. This is exemplified, for instance, by examining the provisions related to halal certification or government administration in the Government Regulation in Lieu of Law concerning the Job Creation Law. There are more detailed regulations in the Government Regulation in Lieu of Law compared to the previous Job Creation Law. Considering the second and third reasons mentioned above, the statement made by Mahfud MD, the government's legal spokesperson, assuring us that the issuance of the Government Regulation in Lieu of Law did not violate the Constitutional Court's decision may be acceptable. As for the third reason, according to the Constitutional Court, the conditional unconstitutionality of the Job Creation Law arises because it does not adhere to the principles of legislation.

In this case, the first issue is the lack of clarity of purpose and formulation, mainly due to citation errors in referencing articles in the Job Creation Law. The second issue is the lack of transparency. The Job Creation Law was not openly discussed

as determined by the Constitutional Court. According to the Court, although various meetings were held with different community groups, they did not address the academic manuscript and the substance of the changes, leading to the public's lack of precise knowledge about the changes. The principles of clarity of purpose and formulation have been satisfied by the lawmakers through corrections made to the formulation of the Government Regulation in Lieu of Law concerning the Job Creation Law. In this context, in the authors' view, the issuance of the Government Regulation in Lieu of Law concerning the Job Creation Law can be understood. In the authors' perspective, the main issue with the Government Regulation in Lieu of Law concerning the Job Creation Law lies in the failure to fulfill the principle of transparency, which should have been addressed by the government, particularly the president, before its issuance. However, the Constitutional Court had given a maximum of 2 years to rectify the procedure to ensure openness that allows public participation in the formation process. Since the Constitutional Court's Decision Number 91/PUU-XVIII/2020, issued on November 25, 2021, until the issuance of the Government Regulation in Lieu of Law concerning the Job Creation Law on December 30, 2022, as we know, there was not enough public socialization or discussion regarding the issuance of the Government Regulation in Lieu of Law concerning the Job Crea-tion Law. This is a problem in terms of public participation. On the other hand, there is still ample time for the next year, until November 25, 2023, to create opportunities for public participation, as mandated by the Constitutional Court. This crucial

legal issue has been the subject of debate as to why the formal form of Government Regulation in Lieu of Law concerning Job Creation Law is considered contradictory to the Constitutional Court's Decision Number 91/PUU-XVIII/2020.

The Constitutional Court ordered the improvement of the law in the form of legislation and hence was given a maximum period of two years to ensure transparency in the legislative process. At the same time, the president made amendments through the formal issuance of the Government Regulation in Lieu of Law concerning the Job Creation Law, which lacked public participation. President Jokowi's urgency in issuing the Government Regulation in Lieu of Law, even though there was still a year left to provide room for public participation, cannot be simply attributed to an urgent necessity. If it is claimed that it was due to an urgent necessity, the question arises: why was it not issued immediately after the Constitutional Court's Decision Number 91/PUU-XVIII/2020, dated November 25, 2021? Why was the Government Regulation in Lieu of Law concerning the Job Creation Law only issued on December 30, 2022? It is indeed true that the issuance of Government Regulations in Lieu of Law is subject to the subjective judgment of the president. However, the Constitutional Court's Decision Number 138/PUU-VII/2009, dated February 8, 2010, page 20, emphasizes that the president's subjective judgment should not be absolute. This is because the president's subjective judgment must be based on objective circumstances, namely the presence of three conditions as parameters for the existence of an urgent necessity,

as interpreted by the Constitutional Court in the aforementioned decisions.[19]

Although the Government Regulation in Lieu of Law is considered to have issues, the process of challenging the Government Regulation in Lieu of Law does not go through the Constitutional Court. This is because the Constitutional Court itself does not have the authority to review Government Regulation in Lieu of Law since the 1945 Constitution of the Republic of Indonesia does not grant it the power to do so. The 1945 Constitution of the Republic of Indonesia explicitly stipulates that the authority to "review" Government Regulations in Lieu of Law lies with the DPR RI. The need in practice to review Government Regulation in Lieu of Law should be a serious consideration for the DPR RI to determine whether it is necessary to amend the 1945 Constitution of the Republic of Indonesia. The Constitutional Court cannot expand its authority based on practical needs. The opinion of the Constitutional Court on this matter should be conveyed to the DPR RI so that they can conduct a study on the issue.[20] Article 1, paragraph (2) of the 1945 Constitution of the Republic of Indonesia states, "Sovereignty is in the hands of the people and is carried out following the 1945 Constitution of the Republic of Indonesia." The authority granted by the sovereign, which is the people,

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[19] Didit Setiawan, "Analisis Putusan MK Nomor 91/PUU-XVIII/2020 Tentang Pengujian Formil Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Undang-Undang Tentang Cipta Kerja)", 2023.

[20] Ni'matul Huda, "Pengujian Perppu oleh Mahkamah Konstitusi", Jurnal *Konstitusi*, Vol.7 No. 5, 2010.

must be exercised by the 1945 Constitution of the Republic of Indonesia and must not deviate from it.

The Constitutional Court's authority, as stated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is limited to reviewing laws against the 1945 Constitution of the Republic of Indonesia. If this authority was expanded to include the review of Government Regulations in Lieu of Law, it could be argued that it would not be in accordance with the 1945 Constitution of the Republic of Indonesia but would deviate from it. Any expansion or even reduction of the powers of state institutions must be explicitly determined through an amendment to the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's action in reviewing Government Regulations in Lieu of Law could be considered a constitutional violation because, in essence, the Constitutional Court does not have the authority to do so. If there is a genuine need for the Constitutional Court to review Government Regulations in Lieu of Law, then amending the 1945 Constitution of the Republic of Indonesia would be the solution that should be pursued by the DPR RI. However, since the issuance of Constitutional Court Decision No. 138/PUU-VII/2009 and Constitutional Court Decision No. 145/PUU-VII/2009, the court has declared its authority to adjudicate The Government Regulation in Lieu of Law, which is why individuals like Rizal Ramli and their colleagues have filed constitutional challenges.

2. The Perspective of the Rule of Law

The Preamble to Indonesia's 1945 Constitution reflects the nation's core principles, guiding the creation of constitutional

articles to stay true to these fundamental values. The essence of the rule of law in Indonesia is rooted in the theory of State Sovereignty, emphasizing that the ultimate authority within the state is the law. This means that all parts of the government and citizens must follow and uphold the law without exceptions, regardless of their position or title. A.V. Dicey's perspective emphasizes the foundational elements of a government under the rule of law: the supremacy of the law, asserting that the highest authority in the state is the law itself; equality in legal status for all, emphasizing impartiality under the rule of law; and a distinctive view that the constitution is not the source of human rights, but rather a platform affirming the obligation to protect pre-existing rights. In Dicey's concise framework, legal sovereignty, egalitarian principles, and the constitutional role in human rights protection collectively shape a government committed to the rule of law. In this regard concerning human rights, national and international human rights bodies have suggested various ways to strengthen the foundation of human rights in Indonesia. This fundamentally requires a systematic and continuous strategy to enhance the realization of human rights.[21]

Enforcing the concept of the rule of law necessitates adherence to all constitutional norms without any exceptions.[22]

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[21] Max Regus, "Regulating Releigion in a Time of Covid Pandemic in Indonesia Contex Dynamic and Implications", *International Journal of Sociology and Soscial Policy*, 2021.

[22] Dian Agung Wicaksono and Faiz Rahman, "Influencing or Intervention?: Impact of Constitutional Court Decisions on the Supreme Court in Indonesia", *Constitutional Review*, Vol. 8, No. 2, 2022.

In the Theory of Law Supremacy concept, this theory teaches that government derives its power not from God, kings, or the state itself but is based on the law. It is the law that is sovereign. Both the government and the people obtain their power from the law. The principles of popular sovereignty and the rule of law must be implemented in tandem as two sides of the same coin.

Since the Republic of Indonesia, according to Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, is a democratic state based on the rule of law, it is both a democratic state governed by law (democratische rechtsstaat) and a constitutional democracy that are inseparable from each other.[23]

Based on the concept of the rule of law, the issuance of the Government Regulation in Lieu of Law concerning the Omnibus Law on Job Creation may not be considered a good and just legal product. Quoting the opinion of Franz Magnis-Suseno (1999), the idea of the rule of law should be based on two principles. First, there should be a relationship between those who govern and those who are governed based on an objective norm that binds all parties, which is the law. Second, the law should not only meet formal requirements but also align with the idea of law, where the law should be good and just. It should be good because it aligns with what society expects, and it should be just because the fundamental purpose of the law is justice.

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[23] Jimly Ashidiqie, *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat Undang- Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta, Rineka Cipta, 2007.

Perhaps formally, the Government Regulation in Lieu of Law concerning the Omnibus Law on Job Creation is considered to be in line with the Constitutional Court's Decision No. 91/PUU-XVIII/2020, especially by Mahfud MD, who serves as the government's legal spokesperson. However, the issuance of this regulation was not conducted openly and, therefore, lacked meaningful public participation. This makes it questionable whether the regulation can be considered a good and just law. Since it was issued without meaningful public participation, the Government Regulation in Lieu of Law concerning the Omnibus Law on Job Creation may not align with the expectations of society. Its issuance appears to be more a result of subjective judgment and hasty government policy. In this context, the regulation was not objectively driven by pressing urgency.

In the Constitution of the Republic of Indonesia of 1945, Article 22 states: "In the event of an urgent necessity, the president is entitled to issue government regulations in lieu of laws. These government regulations must obtain approval from the DPR RI at the next session. The government regulations must be revoked if they do not receive approval".[24] This provision suggests that the situation is more urgently pressing and highly compelling without waiting for the conditions established by a regular law and outlines the potential consequences that cannot be delayed under a regular law. The essence of issuing Government Regulations in Lieu of Laws is to anticipate situations of "compelling urgency," indicating a compelling need to address

[24] Pasal 22 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

these situations promptly. However, this must be done within the legal framework through the issuance of Government Regulations in Lieu of Laws. These regulations must be promptly discussed and ratified by the DPR RI to become laws. If they are not approved by the Dewan Perwakilan Rakyat, they must be revoked according to the law.[25]

Even Article 11 of the Law on the Formation of Laws and Regulations states that the content of Government Regulations in Lieu of Laws is the same as that of laws. However, the processes of creating Government Regulations in Lieu of Laws and laws are different, considering that laws are formed by the DPR RI with the president's approval, while Government Regulations in Lieu of Laws fall under the president's authority.[26] As per Ismail Sunny, the president's authority under the 1945 Constitution of the Republic of Indonesia includes administrative, legislative, judicial, military, diplomatic, and emergency powers. Administrative power involves the execution of laws and administrative policies; legislative power includes advancing legislative proposals and approving legislation; judicial power encompasses the authority to grant pardons and amnesties; military power relates to control over the armed forces and

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[25] Farhan Permaqi, "Politik Hukum Pembentukan Peraturan Pemerintah Pengganti Undang- Undang dalam Asas Hal Ikhwal Kegentingan yang Memaksa: Kajian Yuridis Normatif Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2017 tentang Perubahan Atas Undang-Undang Nomor 17 Tahun 2013 tentang Organisasi Kemasyarakatan", Vol. 14, No. 4, 2017.

[26] Ida Zuraida, "Batasan Kegentingan yang Memaksa dalam Pembentukan Peraturan PemerintahPengganti Undang-Undang (Perppu) di Bidang Perpajakan", *Jurnal BPPK Kemenkeu*, Vol. 1, No. 1, 2018.

governance; and diplomatic power pertains to foreign relations and emergency powers.[27]

3. The Contents of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation and Its Urgency for the State

The formation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation is based on the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that the president has the authority to establish Government Regulations in Lieu of Law. The Government Regulation in Lieu of Law on Job Creation comprehensively addresses various facets of economic development. It bolsters the investment and business ecosystem, streamlines labor and employment policies, and provides support and empowerment for cooperatives and micro, small, and medium-sized enterprises (MSMEs). The regulation also emphasizes the ease of doing business, encourages research and innovation, addresses land procurement issues, and outlines provisions for economic zones. Furthermore, it covers aspects such as Central Government investments, the acceleration of national strategic projects, and governance administration. The imposition of sanctions is a crucial component, ensuring compliance and accountability within the outlined regulatory framework. Collectively, these measures aim to foster a conducive environment for economic growth and job creation in Indonesia.

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[27]Mohammad Zamroni, "Kekuasaan Presiden dalam Mengeluarkan Perppu (President's authorsity to Issue Perppu", *Jurnal Legislasi Indonesia*, Vol. 12, No. 3, 2015.

The implications of the Government Regulation in Lieu of Law on Job Creation will have a significant impact on the government, society, and specific sectors. The changes in taxation will aid companies that have suffered losses due to the COVID-19 pandemic and can improve the country's economic conditions. Providing incentives to companies investing in specific sectors is expected to boost investments in those areas and contribute to national development.

The president issues Government Regulation in Lieu of Law, which grants the president authority to create regulations in urgent situations. Nevertheless, these regulations must thereafter get approval from the DPR RI in the next session. If the regulation is not accepted, it will be withdrawn. This procedure ensures prompt response during crises while simultaneously requiring democratic approval to prevent potential abuse of power.

The implications of the Government Regulation in Lieu of Law on Job Creation will have a significant impact on the government, society, and specific sectors. The changes in taxation will aid companies that have suffered losses due to the COVID-19 pandemic and can improve the country's economic conditions. Providing incentives to companies investing in specific sectors is expected to boost investments in those areas and contribute to national development. Meanwhile, the president's basis for issuing the Government Regulation in Lieu of Law is Article 22 of the 1945 Constitution of the Republic of Indonesia, which states:

1. The Theory of Popular Sovereignty

Since its inception, the Republic of Indonesia has recognized and adhered to the principle of popular sovereignty or democracy. The highest authority lies with the people. Real power originates from the people, by the people, and for the people. According to this theory, the state derives its authority from its citizens, not from God or a monarch. This theory contradicts the doctrine of divine sovereignty and presents facts that do not align with the teachings of divine sovereignty. Monarchs, who were supposed to govern their subjects justly, honestly, and benevolently (under the will of God), often acted arbitrarily towards their subjects. Recall the reign of King Louis XIV in France. These realities gave rise to doubts and prompted the emergence of new ideas that gave space to human thought (the Renaissance). This new realm in the field of governance would lead to a new concept: the theory of popular sovereignty.[28]

This belief was a reaction to the theories of divine and ro-yal sovereignty and later materialized in the French Revolu-tion. Subsequently, it has come to dominate the entire world up to the present day in the form of the 19th-century mythos that gave rise to the concept of popular sovereignty and representation (democracy).

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[28]Christine S.T. Kansil, *Hukum Tata Pemerintahan Indonesia*, Jakarta, Ghalia Indonesia, 1983.

2. The Theory of State Sovereignty

According to this theory, the existence of the state is a natural occurrence, and so is the supreme authority vested in the state's leader. In this view, sovereignty has existed since the birth of a State.[29] So, it is clear that the state is the source of sovereignty. Laws are binding because this is desired by the state, which naturally possesses absolute authority.

.3. The Theory of Supremacy of Law

This theory teaches that government does not derive its power from God, a king, or the state but rather from the law. The law is sovereign, and the government and the people derive their power from it. The principles of popular sovereignty and legal sovereignty must be implemented in tandem as two sides of the same coin. Because Indonesia, according to Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, is a democratic state under the rule of law (Democratische Rechstaat), it is simultaneously a democratic state based on law Constitutional Democracy, and these two aspects are inseparable from each other.[30]

4. The Theory of Legal Politics

The democracy that exists today is the result of a political process with its own political configuration. The

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[29] *Ibid.*

[30] Jimly Ashidiqie, *Struktur Ketatanegaraan Indonesia Setelah Perubahan Keempat Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, p. 155.

political confi-guration of a country gives rise to a particular character of legal products within that country. In a country with a democratic political configuration, its legal products tend to be responsive in character. This hypothesis applies to public laws that regulate power relationships or laws related to politics. As for private laws, while the hypothesis is true, its influence is not as pro-nounced.[31]

5. The Theory of Political Science

Political science, according to Miriam Budiardjo, encompasses various activities within a political system (or state) that involve the process of determining the goals of that system. Decision-making regarding the objectives of the political system involves the selection of several alternatives and the prioritization of the chosen goals. In order to achieve these objectives, it is necessary to establish public policies concerning the regulation and allocation of available resources. Implementing these policies requires the possession of power and authority, which can foster cooperation and resolve conflicts that may arise in the political process. The methods used can be persuasive or, when necessary, coercive. Without an element of coercion, these policies remain mere statements of intent. Politics always concerns the goals of the entire society (public goals), and it also involves the activities of various groups,

[31]Mahfud MD., Membangun Politik Hukum, Yogyakarta, UII Press, 2003, p. 67.

including political parties and individual actions.[32]

Political science examines and studies "politics," as menti-oned, which involves the political system of a state, decision-making, public policy or policies, power, authority, and distribution or allocation. The definition of political science can vary depending on what aspect a political science expert focuses on or pays attention to.[33]

6. The Theory of Legal Science

By definition, jurisprudence discusses and encompasses everything related to law. It is so vast in its scope that many opinions suggest its boundaries cannot be determined. In English, it is referred to as jurisprudence.[34] Some legal experts also argue that the study of law is the science that examines formulations of the law, which can encompass all aspects of this vast subject. Creating a comprehensive definition is indeed a challenging task, as it requires meeting various criteria, such as using as few words as possible while ensuring clarity and conciseness. Law, with its many facets, cannot be distilled into just a few sentences, making such a definition imperfect.[35]

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[32] Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Jakarta, Gramedia Pustaka Utama.

[33] Bintan Ragen Siragih, *Politik Hukum*, Bandung, CV Utomo, 2006.

[34] Satjipto Rahardjo, *Ilmu Hukum*, Bandung, Alumni, 2006.

[35] Lili Rasjidi, *Filsafat Hukum: Apakah Hukum Itu?*, Bandung, Remaja Karya, 1984.

7. The Concept of Legal Politics

The creation of legislation is intricately tied to the political configuration, which has implications for the politics of law and the emergence of regulations. According to Mahfud MD, Legal Policy or "Politik Hukum" is the legal direction set by the state to achieve the state's objectives, typically manifested through creating new laws and replacing existing ones. In this interpreta-tion, the law must be grounded in the state's objectives and the system in place in the respective country. Authentically, the document outlining the state's objectives in Indonesia is the Preamble to the 1945 Constitution of the Republic of Indonesia, particularly Pancasila, which gives rise to legal enforcement principles.[36]

The field of legal political science dissects all elements within a system, with its primary components, as categorized by Friedman, consisting of three major elements: legal substance, legal structure, and legal culture. In this context, legal political science not only encompasses the politics of law in the sense of the official direction taken by the state to enforce or not enforce laws in order to achieve State objectives, but it also encompasses the background and environment that influence it, as well as the various challenges encountered in the effort to uphold it.

8. The Theory of Constitutional Emergency Law

The authority of the president to establish Government Regulations in Lieu of Law is an extraordinary power in

[36] Mahfud MD, *Politik Hukum di Indonesia*, Jakarta, LP3ES, 2001, p. 9.

the field of legislation. Meanwhile, the authority to participate in the formation of laws, government regulations, and presidential regulations is a regular authority. The fundamental requirement that the president must fulfill in issuing Government Regulations in Lieu of Law is the presence of a "pressing emergency" or "urgent necessity." Before the amendment, article 22 of the 1945 Constitution of the Republic of Indonesia is explained as follows: "This article pertains to the president's emergency ordinance power. Such rules are necessary to ensure the security of the state, especially during pressing emergencies that compel the government to act promptly and swiftly. Nonetheless, the government remains subject to oversight by the DPR RI. There-fore, regulations issued by the government under this article, which have the same force as laws, must also be ratified by the DPR RI.[37]

Based on the description above, the question arises: does Article 22, paragraph (1) of the 1945 Constitution of the Repu-blic of Indonesia have the intended meaning with the issuance of the Government Regulation in Lieu of Law on the Job Creation Law, and does it comply with the applicable provisions? The reality is that there is still an ongoing and extensive debate among legal experts because the issuance of the Government Regulation in Lieu of Law on the Job Creation Law did not comply with Constitutional Court Decision No. 91, which provided a two-year period

[37]Bagir Manan, *Lembaga Kepresidenan*, Yogyakarta, FH UII Press, 2006, p. 158.

to amend the Job Creation Law. The Government Regulation in Lieu of Law issued by the President in Number 2 of 2022 is related to Article 22 of the 1945 Consti-tution of the Republic of Indonesia concerning situations of pressing emergency. Its appropriateness is determined by the specific circumstances and the need to prevent legal vacuums (rechtvaccum), the presence of threats that endanger the state, and the consideration of policies and laws that must be carefully observed and thoroughly studied before the regulations are enforced.

Considering the current situation in Indonesia, the issuance of the Government Regulation in Lieu of Law on the Job Crea-tion Law should be viewed as a policy that originates from a president in the continuity of the state system to achieve development with justice, without neglecting the rights of all citizens, including justice and welfare for citizens in various social groups, including the lower-middle class. Therefore, when it comes to policy-making related to the Government Regulation in Lieu of Law, the president's authority should take several consider-ations into account. The essence of issuing a Government Regulation in Lieu of Law is to anticipate a "pressing emer-gency" situation, which implies a compelling circumstance that requires immediate action. However, this should be done within the legal framework through the Government Regulation in Lieu of Law.[38] The Government Regulation

[38]Andi Yuliani, "Penetapan Kegentingan yang Memaksa dari Peraturan Pemerintah Pengganti Undang-Undang (Perppu)", Jurnal *Legislasi Indonesia*, Vol. 18, No. 3, 2021, p. 337–350.

in Lieu of Law must be promptly discussed and deliberated upon in order to be approved and enacted into law. If it is not approved by the DPR RI, then, by law, the Government Regulation in Lieu of Law must be revoked. The element of a pressing emergency must have the following general characteristics: (1) There is a crisis, and (2) There is urgency. A crisis exists when a grave and sudden disturbance creates an urgent necessity. Urgency arises when there is a situation that was not anticipated previously and demands immediate action without waiting for prior deliberation or when there are clear and reasonable indications that, if not regulated promptly, would disrupt both society and the functioning of the government.[39]

An emergency regulation (noodregeling) is a legal measure that arises from an emergency situation, as explained by Van Dullemen ¯The first is the necessity to have the highest interest of the state; the second is the necessity for the emergency regulations (noodreggeling); the enactment of emergency regulations (noodreggeling) for a temporary situation, that is, only applicable during the state of emergency. When a situation returns to normal, the ordinary regulations will apply, while the emergency regulations will no longer apply; and the fourth is upon the determination of the state of emergency, parliament cannot convene.[40]

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[39]Sri Pujianti., "Undang-Undang tentang Cipta Kerja Tak Memenuhi Unsur Kegentingan Memaksa Masalah Ekonomi", 2023, https://www.mkri.id/index.php?page=web.Berita&id=19378.

[40] Lutfil Ansori, "Regulations in Liew of Statutes in States of Emergency In Indonesia", *Prophetic Law Review*, Vol. 4, No. 1, 2022, p. 22–47.

The Government Regulation in Lieu of Law concerning Job Creation Law, despite becoming law, still raises issues, including among investors. Investors might reconsider their plans to invest in Indonesia if they are uncertain and perceive a lack of stability in the applicable regulations due to frequent changes in a short period. This uncertainty could lead to the cancellation of their investment intentions.[41] From the description above, the reality on the ground is that the submission of a formal challenge regarding Law No. 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation to the Constitutional Court is based on the argument that the Job Creation Omnibus Law did not follow the proper procedures outlined in the Legislation Formation Law.

As the Omnibus Law was discussed by the government and the DPR RI through a planning process, one of the required processes is public consultation, which should be preceded by an academic draft. However, in this case, there was no academic draft or public consultation; instead, the Government Regulation in Lieu of Law was issued. Therefore, this raises concerns, and that is why the submission to the Constitutional Court is made. The creation of the Indonesian Constitutional Court and the incorporation of socio-economic rights were the results of constitutional

[41]Novanto, "Efektivitas Undang-Undang Cipta Kerja dalam Pembangunan Hukum Indonesia", p. 401–411.

reform in Indonesia.[42] Essentially, the law and its institutions serve as a platform for resolving issues, aiming to minimize, if not completely resolve, conflicts and address them with a sense of justice. When it comes to a judicial body endowed with significant authority to interpret the constitution, the challenge extends further: ensuring that the constitution offers solutions to emerging problems and remains dynamic, actively safeguarding human rights.[43]

In light of this, it is hoped that the judges of the Constitutio-nal Court will be able to make wise decisions for the benefit of all parties involved. The controversy caused by the Job Creation Omnibus Law has also attracted international attention. Conse-quently, in the near future, the International Labour Organization (ILO) will also express its stance by visiting Indonesia. The ILO will send a direct contact mission, led by Director-General Gilbert F. Houngbo from Togo, Africa, to examine whether the Omnibus Law violates or conflicts with ILO Convention No. 98 on the Right to Organize and Collective bargaining.[44]

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[42]Stefanus Hendrianto, "Constitutionalized But Not Constitute: The Case of Right to Social Securityin Indonesia", *Constitutional Review*, Vol. 6, No. 2, 2020, p. 241– 281.

[43]Bayu Dwi Anggono, Rian Adhivira Prabowo, and Yussele Nando Mardika, "Constitutional Court and the Past Conflicts in Post- authorsitarian Indonesia", *Constitutional Review*, Vol.9, No. 1, 2023, p. 77 – 108.

[44] Natasha, Presiden Partai Buruh: Cabut Omnibus Law Cipta Kerja Tanpa Kata-Kata Bersyarat.

Conclusion

Despite being enacted as a law, the Government Regulation in Lieu of Law still raises uncertainty, especially the constant regulatory changes that may make investors hesitant. It is essential for the government to rigorously design regulatory products in order to guarantee stability for forthcoming issues. Although several derivative regulations have been put into effect, investments remain stagnant, and the purported necessity for these regulations contradicts the positive economic growth anticipated in 2023. The government should transparently communicate the urgency, potentially considering global economic conditions. From a Constitutional Law perspective, the president's authority for such regulations should be reserved for true emergencies. An open and transparent procedure should be in place to ensure that the boundaries set by the constitution are respected. In order to ensure compliance with decisions from the Constitutional Court and to maintain the principles of the rule of law and constitutional balance, it may be necessary to impose sanctions. As a research recommendation, it is crucial to consider revising the relevant laws to include provisions for sanctions in case of non-compliance with Constitutional Court decisions. This step is necessary to emphasize the importance of adhering to the rulings of the Constitutional Court, upholding the rule of law, and maintaining the constitutional balance of power as stipulated in the legal framework.

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Di tengah berbagai aktivitasnya di dunia hukum, Sulis masih menyempatkan diri menjadi aktivis di berbagai organisasi. Antara lain di Lembaga Penegakan Hukum dan Keadilan MN KAHMI (2012-2017), Mantan Ketua Umum Kohati Cabang Semarang, Mantan Sekjen DPP BM PAN, Mantan Ketua Bidang IKA UNDIP DKI Jakarta, Mantan HMPE FH UI, dan masih banyak lagi jika harus disebutkan satu per satu.

Sederet pengalaman kerja Sulis juga cukup banyak jika harus dicatatkan, seperti menjadi advokat/owner pada Sulistyowati and Partners Law Office, dosen di Fakultas Hukum Universitas Nasional, Jakarta,dan pernah menjadi Kaprodi Ilmu Hukum Fakultas Hukum Utama, Jakarta, serta Staf Khusus Wakil Ketua DPR RI AM Fatwa.

Sebagai perempuan yang banyak mencurahkan waktunya dalam bidang keilmuan hukum, Sulis banyak menuangkan gagasan pemikirannya melalui buku dan artikel. Buku yang diterbitkan adalah *Panduan Praktik Peradilan Perdata Bagi Advokat Baru* (2020), *Kapita Selekta KF Doktor: Kebhinekaan Ilmu dalam Satu Cita* (IPB Press, 2017) (buku bersama), *Pemilu & Pemenuhan Hak Politik Warga Negara dalam Berdemokrasi* (Penerbit Serat Alam Media, SAM, 2023) (buku bersama), *Hukum Konstitusi* (Penerbit SAM, 2023). dan *Hukum Acara Mahkamah Konstitusi dalam Bentuk Peraturan Mahkamah Konstitusi* (Penerbit SAM, 2023).

Sulis juga banyak menulis artikel yang diterbitkan secara nasional maupun internasional, seperti "Government Regulation Substituting the Law on Job Creation in the Perspective of Con-

stitutional Law", yang ditulis bersama tiga orang koleganya dan termuat dalam *Jurnal Hukum* FH Universsitas Islam Sultan Agung (Unissula), yang terindeks SCOPUS, pada 2023. Sebelumnya, artikelnya juga dimuat di *Jurnal Akt*a, Vol. 9, No. 2 (2022) (Sinta 2) dengan judul "The Constitutionality of Notaries Honorary Assembly in the Enforcement of the Notary Ethics Code", yang ia tulis bersama Umar Ma'ruf dan Deva Rita; "Tantangan dan Evaluasi Sengketa Perselisihan\Hasil Pemilihan U-mum", yang ditulis Sulistyowati bersama Dewi Nadya Maharani dalam Prosiding Seminar Nasional Hukum Tata Negara, Departemen Hukum Tata Negara UII (2023); dan "The Problem of Legal Protection for Human Rights Activists", *Sociological Jurispru-dence Journal*, Vol. 6 No. 1 (2023). (Sinta 3) yang ia tulis bersama Wahyu Nugroho dan Umar Ma'ruf. Selain itu, "Application of General Principles of Good Governance in Tourism Policy: Case Study of Borobudur Temple Tariff Increase", Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (Atlantis, ICBLT 2022), 25 January 2023. (proceeding Internasional).

Selain itu, Sulistyowati juga menulis bersama dengan penulis lain, yaitu "The Exception Rights Utilization Strategy to Enchance Defendant's Freedom Protection in Criminal Justice Proceedings", *International Journal of Law Reconstruction*, Vol. 8 No. (1) (2024). (Sinta 2), "The Urgency of Limiting the Presidential Term by the Constitution in the Discourse of Extending the Term of the President of Indonesia, *Journal of Law, Politic and Humanities*, Vol 4 No. 1 (2024). (Sinta 3), "The Legal Politics Aspect in the Importance of Consummation in Marriage Law", Jurnal *Pembaharuan Hukum*, Vol.11 No. 1 (2024). (Sinta 2), dan

"Regulations of Buyers Tax Imposition Before Transfer of Land Rights", Jurnal *Akta*, Vol. 10 No. 4 (2023).

Artikel lainnya yang dipublikasikan adalah "Urgensi Pembuatan Undang-Undang Hukum Acara di Mahkamah Konstitusi", yang ditulis bersama Nurhanudin Achmad, Surajiman, Syarif Polhaupessy, dalam terbitan *Salam* (Jurnal Sosial dan Budaya Syar'i), Vol. 10 No. 5 (2023) (Sinta 4) dan "Disfungsional Proses Dismissal pada Peradilan Tata Usaha Negara: Studi Kasus Putusn Nomor 41/G/LH/2018/PTUN.PBR", yang dimuat di Jurnal *APHTN-HAN*, Vol. 1 No. 1 (2022).

Profesinya sebagai pengajar akademik, membuatnya mengampu berbagai mata kuliah sejak dari program sarjana hingga magister. Dalam Program Sarjana, Sulis mengajar Hukum Acara Mahkamah Konstitusi, Praktik Peradilan Tata Usaha Negara, Praktik Peradilan Pidana, Praktik Peradilan Perdata, Hukum Acara Pidana, Hukum Acara Perdata, Hukum Penitensier, Tindak Pidana Tertentu dalam KUHP, serta Praktik Peradilan Agama. Sementara, di Program Magister Hukum, Sulis banyak mengajar tentang Teori Perundang-undangan, Hukum Tata Negara, TPPU (Tindak Pindana Pencucian Uang), serta Tindak pidana dalam perekonomian.

Kepakarannya dalam dunia hukum juga membuatnya berkesempatan menjadi narasumber di berbagai forum pertemuan, seperti menjadi penyaji makalah pada International Conference on Sosial and Politics (ICOSOP) ke-3, Auditorium UNAS, 19 Desember 2023, dengan tema "Pentingnya Penetapan Batasan Penggugat dalam Peraturan Perundang-undangan tentang Lingkungan Hidup". Selain itu, pembicara webinar Menuju Pilkada Serentak 2024 yang mengambil tajuk "Kontroversi Penunjukan

Kepala Daerah Pasca Putusan MK" di Fakultas Hukum UGM, pada 15 Juli 2022 dan narasumber seminar di Universitas Satya Negara Indonesia dengan tema "Risiko Hukum dalam Film Dokumenter", pembicara Webinar Praktikum Jurusan HTN (Siyasah) UIN Sunan Gunung Djati, Bandung, bertema "Praktik Beracara di PTUN" pada 2 September 2020.

Sulis juga menjadi pembicara di Webinar Ruang Perubahan #RUBRIK1 dengan tulisan berjudul "Refleksi Keputusan PHPU MK 2024 Terhadap Politik & Demokrasi di Indonesia" pada 4 Mei 2024. Kemudian, menjadi pembicara pada Basic Training (LK I) HMI Komfak. Ekonomi Unas pada 16 Desember 2023 dengan makalah berjudul "Strategi Hukum Kader HMI Hadapi Dinamika Perdagangan". Sebagai kader HMI, Sulis pernah menjadi pembicara diskusi di HMI Cabang, Jakarta Selatan, Komisariat Sastra UNAS pada 28 Juli 2022 dan diskusi di HMI Cabang Jakarta Selatan Komisariat Fakultas Hukum Unas pada 26 April 2022. Bahkan, ia pernah menjadi pemateri Stadium General LK II HMI Cabang Lubuk Linggau, pada 20 Mei 2017. Di tempatnya mengabdi saat ini, Sulis menjadi Pembicara dalam Diskusi Himpunan Mahasiswa Hukum (Himakum) Unas pada 26 April 2022.

Sulis menjadi pembicara pada diskusi Ferari Seri IV Season IV bertema Litigasi di Masa Pandemi: Tantangan, Solusi dan Harapan yang diadakan pada 23 Oktober 2020, radio RRI Makassar (*on air*) bertema Perempuan dan Hukum (1 Juni 2021), Webinar Masyarakat Peminat Penalaran dan Filsafat Hukum Mahasiswa Fakultas Hukum Syariah dan Hukum bertema Teori Penalaran Induksi dan Praktiknya (18 Mei 2020), Webinar Masyarakat Peminat Penalaran dan Filsafat Hukum Mahasiswa Fakultas Hukum Syariah dan Hukum bertema Hukum dan

Logika Deduksi (4 Juni 2020), dan Webinar Masyarakat Peminat Penalaran dan Filsafat Hukum Mahasiswa Fakultas Hukum Syariah dan Hukum bertema Penalaran Hukum (18 Mei 2020).

Selanjutnya, beberapa kali menjadi pembicara pada Pendidikan Khusus Profesi Advokat (PKPA) Ferari, yakni pada 25 Februari 2022 bertema Praktik Peradilan Pidana, 27 Februari 2022, bertema Praktik Peradilan MK & TUN (1 Oktober 2022), dan 30 September 2022. Di luar Peradi, Sulis mengajar PKPA Peradi (5 September 2022) dan PKPA Unas, masing-masing bertema Argumentasi Hukum (Desember 2021), bertema *Legal Reasoning* (Argumentasi Hukum) (14 Desember 2020), bertema Argumentasi Hukum (9 Desember 2019).

Selain menjadi pembicara, Sulis juga banyak diminta menjadi moderator diskusi. Misalnya, diskusi Forum Guru Besar dan Doktor Insan Cita yang bertajuk "Bagaimana Bila Putusan Mahkamah Konstitusi Cacat Hukum?" (5 November 2023) serta diskusi pada 3 Februari 2023 dan 24 Juli 2022.

Sebagai praktisi hukum, berbagai kasus besar maupun kecil ditangani oleh Sulis dengan bertindak sebagai penasihat hukum, baik di pengadilan negeri maupun di MK. Misalnya, pada kasus *judicial review* No.15/PUU-XX/2022 di MK, Habib Rizieq Shihab (HRS) di Pengadilan Negeri Jakarta Timur dan Pengdilan Negeri Jakarta Selatan; para mantan petinggi FPI (KH.Sobri Lubis dkk);

H. Munarman (dalam kasus pencemaran nama baik); dan Pasar Butung, Makassar (Sulawesi Selatan); mantan Walikota Gorontalo (Gorontalo); mantan Bupati Temanggung (Jawa Tengah); Menteri DKP periode 2004-2009; dan mantan Sekjen Kemenkumham Zulkarnaen Yunus, dalam kasus Sisminbakum.

Sementara di MK, Sulis menjadi penasihat hukum bagi mantan Menko Perekonomian Ir. Hatta Radjasa (sebagai pihak terkait di MK dalam pengujian UU mengenai menteri tidak boleh merangkap jabatan dengan ketua umum partai dengan pemohon Lily Wakhid); dan Prabowo-Hatta pada Pilpres 2014. Masih di MK, kasus sengketa pemilukada juga tak luput dari penanganan Sulis sebagai penasihat hukum. Di antaranya adalah pada pemilukada di Kabupaten Bone Bolango (Gorontalo) tahun 2015 dan 2010; Kota Singkawang (Kalimantan Barat) tahun 2012; Kabupaten Barito Selatan (Kalimantan Tengah); Bengkulu Tengah (Bengkulu); dan Kota Gorontalo (Gorontalo) tahun 2013. Sementara, pada pileg, baik DPRD maupun DPR, adalah pada kasus sengketa di Nabire Dapil III (Papua); Dapil IV Jayapura (Papua); Dapil V Pesawaran (Lampung); Palangkaraya Dapil I (Kalimantan Tengah); Samarinda Dapil I (Kalimantan Timur), Kalimantan Barat; Nias Selatan (Sumatera Utara); Jawa Timur; Mamuju Dapil IV (Sulawesi Barat); Bengkulu; Jakarta Dapil II, Kapuas Dapil I (Kalimantan Selatan); Banjar Dapil II (Kalimantan Selatan); dan Mamasa Dapil III (Sulawesi Barat).

Di sisi lain, sejumlah tokoh masyarakat yang kritis kepada pemerintah yang kemudian berkasus hukum juga pernah ia dampingi sebagai Penasihat hukum. Di antaranya, menjadi pensihat hukum bagi Jonriah Ukur, Alfian Tanjung, Haekal Hasan, Zulkifli Ali (Ustadz Akhir Jaman), Tamim Pardede (mantan wartawan BBC/wartawan senior), Nelly Rosa Yulhiana yang melawan Lippo group, Said Didu, puluhan korban Kasus 21-22 Mei 2019 di depan Bawaslu terkait Pilpres (termasuk di dalamnya beberapa anak di bawah umur), para kiai, ustaz, dan para santri Pandeglang dalam kasus lawan Ahmadiyah Cikeusik, Pandeglang (Banten);

Kota Gorontalo dalam dugaan kasus SPPD Fiktif; mantan Wakil Ketua DPRD Jawa Tengah (RK), anggota DPR-RI dalam kasus dugaan suap DPID, serta di Pengadilan Tata Usaha Negara Riau.

Kiprahnya membela kasus hukum dalam dunia industri juga cukup banyak seperti menjadi penasihat hukum bagi perusahaan di Pengadilan Hubungan Industrial Jakarta; Pengadilan Hubungan Industrial Jambi; dan Pengadilan Hubungan Industrial Palangkaraya. Selain itu, penasihat hukum bagi perusahaan yang bersengketa melawan WSF Limited, sebuah perusahaan asal Selandia Baru, dan PJM di Jakarta Pusat. Selanjutnya, kasus di PN Tanjung Karang (Lampung), pegawai imigrasi Cirebon (Jawa Barat), WNA Korea Selatan, KHY, dan peninjauan kembali (PK).