

INDONESIA LRWD Law Reform Weekly Digest

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Constitutional Court CONSTITUTIONAL COURT ANNULLED INTERNATIONAL STANDARD SCHOOL

On the 8th January last week, the Constitutional Court (MK) has declared article 50 par (3) Educational System Law as null and void. The implication of the decision has made the operational internationally standard school (RSBI) as unconstitutional. Therefore, the RSBI need to be disbanded from Indonesian educational system. From substantive point of view, the decision signifies the right to education at elementary level for all Indonesian. The design of RSBI is considered as discriminatory and blocked poor people to have good quality education for their children. However, despite the positive aspect, problem ensues to the implementation of the decision. The decision has created uncertainty to the status of current RSBI, which are currently running in the middle of curriculum season. To stop RSBI operational all together would jeopardizes the interest of current students.

The problem reflects the lack of policy consideration by MK, which the decision does not consider the impact of the decision. This type of decision is very different from the previous tenure/period of MK judges, which always put policy consideration in their decision. For instance, in the case of the Special Corruption Court, MK put a transitional period for 2 (two) years and asked the House to revise the Law accordingly. Additionally, the MK decision for RSBI is not made unanimous, there was the dissenting opinion made by Justice Achmad Sodiki, which call for MK to put a restrain in their decision by not giving misconduct in the implementation of the law as ground for nullifying a law.



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Parliament

HARTATI MURDAYA CORRUPTION CASE: BRIBES OR DONATION OF ELECTION?

Law professor and ex-Minister of Law and Human Rights, Yusril Ihza Mahendra, make his presence as an expert for Hartati Murdaya Poo, in her trial for the bribery case on palm oil plantation permit (Hak Guna Usaha/HGU) in Buol. In his testimony, Yusril stated that if an incumbent are going to run for election and accepting donations; his/her position are different since such donations are being regulated by the election law; not the anti corruption.

According to Yusril, it is true that Hartati 3 billion rupiah 'donations' to Buol Regent Amran Batalipu exceeds the allowed number of contributions on a campaign according to article 83 Law No. 32/2004; since it happened during the election season. Hence, it was not a corruption case but an election one instead. Despite Yusril's opinion, a conversation between Hartati and Buol Regent Amran Batalipu was being tapped and played out in court. In the conversation, Hartati was making herself clear to Amran that she handed the money for Amran to "make safe of her property out of dangers from others".

CONFLICT OF INTEREST ARISE ON LAW PROFESSOR'S DOUBLE ACT

Yusril Ihza Mahendra, the ex-Minister of Justice and Human right,- also known as lawyer and an expert on constitutional law, present at the anticorruption trial as an expert to provide testimony on the bribery case with Hartati Murdaya as the defendant. The Anticorruption Eradication Commission (KPK) objected his presence as the expert in her trial, since Yusril also representing other defendant in KPK's other cases. What at stake here is the level of objectiveness displayed by the trial here, since there's no rule yet to dismiss a lawyer who became a legal expert in similar case in court; to prohibit conflict of interests.

Yusril's presence at court could be justified at some point since for a fact he's a constitutional law professor and the Criminal Procedure Law (KUHAP) provided him the condition to act as one. But the law couldn't answer a potential conflict of interest, if a lawyer represent a client in anti-corruption court also become an expert in other corruption cases in the same court. When this happens the judge should call it quits and we strongly suggests lawmakers insert this potential conflict of interest case to the Criminal Procedure bill this year.



INTERNAL PROBLEM DISTURBED NATIONAL COMMISSION ON HUMAN RIGHTS PERFORMANCE

Less than two months after 13 commissioners of the National Commission on Human Rights (Komnas HAM) got themselves elected; problems arose at their Latharhary headquarter. Nine (9) member of the commission were making their case to change the chairmanship order of the Commission terms from 2,5 years to 1 year. Coalition of CSO's (civil society organizations)—including PSHK- said there's no ground to modify the chairmanship of the commission. After a hearing, held by CSO's with the commissioners on Friday, January' 11st 2013, some member said that the change is to establish a collective collegial leadership system. On the other hand, it was rumored that such initiative starts from personal unpleasantness experienced by commission members.

Such unfortunate start shouldn't be a problem if commission members aware of the huge task lay ahead for them. Internal consolidation gone awry within the commission itself is a troubling enough for a start. People has high expectation to the commission to resolve past human rights violations, despite their optimal effort and result should be supported politically by the government and the parliament to gain maximum result.



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ALTERNATIVE INDICTMENT IN ANGIE CASE

Jakarta Corruption Court sentenced Democratic Party lawmaker Angelina "Angie" Sondakh to four-and-a-half-years in jail and ordered her to pay a fine up to 250 million rupiah. The panel of judges found her guilty of accepting 2.5 billion rupiah and \$1.2 million from the Permai Group. Despite the much uproar to her relatively low sentences; actually in their indictment, the attorney general using the alternative approach instead cumulative to ensure the defendants wouldn't escape the law.

DPR THIRD PARLIAMENT SESSION

From 7th of January 2013 until 12th of April 2013, the Parliament enters third Parliamentary Session of 2012-2013. Relating to the legislative function, for the year 2013, the Parliament and the Government has set 70 bills as priorities. Some of the priority bills are Bill on Societal Organizations, Bill on Villages, and Bill on Supreme Court. Relating to their oversight function, the Parliament will conduct follow-up monitoring activities by Century Bank Investigation Team and Monitoring Team of the Land Settlement and Agrarian Conflict. In addition, the Council will also establish Migrant Workers Supervisory Team. There are some public officials stipulation should be done by the Parliament in this Parliamentary Session; among others are the nomination of Supreme Court Justices, Deputy Governor of the Central Bank, and the Constitutional Court Justices.