

### Parliament

## CONSTITUTIONAL COURT FOLLOW UP: HOUSE'S INTERNAL REGULATION SHOULD BE REVISED

The legislation procedure will change according to the latest Constitutional Court decision on the judicial review of the Law No. 12 Year 2011 on Law Making Process. Through this decision, the Regional Representative Council has the authority to engage in bill discussions on the first level of discussion: along with Legislation Body (Badan Legislati), or Special Committee (Panitia Khusus) and to present their statement during the second tier of meeting. The Constitutional Court decision has given the correct position for the Regional Representatives Council in accordance to the Constitution. With this decision, any regional interest now has more legitimation to voice out their concern in legislation context accordingly.

However, the implementation of Council involvement in the discussion of the bill in the House requires a change in the internal regulation (tata tertib) of the parliament, especially related to technicalities details. In addition, some materials are required to change accordingly, like the limits of regional authority that relates to the scope of the Council's involvement on legislative forming. Such provision is required to determine what legislation should involve the DPD. Any technicalities that needed to be arranged in the internal regulation, among others are concerning the mechanism of the discussion at the first level and second level. The involvement of Regional Representatives Council is also potentially will affect the time required to making the law. So there's a regulatory need to solve the potential problems while discussing future bill and to ensure the implementation of Constitutional Court decision itself. Both the House of Representatives and the government urgently need to conduct a follow up upon the decision since future bills will potentially annulled by the Constitutional Court if the process doesn't involve the Regional Representatives Council. (MNS)



## Constitutional Court

# CONSTITUTIONAL COURT DECISION REAFFIRMS REGIONAL REPRESENTATIVES LEGISLATIVE AUTHORITY

March 27, 2013 the Constitutional Court issued their decision No. 92/PUU-X/2012 on the Law No. 27/2008 and the Law No.12 /2011. Judicial review applicants are Regional Representatives Council (DPD) members who contested the provisions that regulate DPD authority in the legislation process. Especially when interpreting the phrase "may propose and draft laws" in Article 22D paragraph (1) from the constitution and the phrase "come to discuss" set out in Article 22D paragraph (2); still from the constitution.

With this decision, DPD may propose a bill without having to consult the House of Representatives as they used to do. The decision also ruled that the DPD is authorized to join parliamentary legislation sessions although still the one who could have the final say is still the House of Representatives.

The decision, on one hand, formally confirms the meaning of the phrase "*come to discuss*" referred for the DPD. Despite the better position now for DPD, it should be noted that by far DPD already have been involved as one of the actors in lawmaking process, however insignificantly; relied only to the House of Representatives of government initiatives. (FN)

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## Legislation

### ADVOCATES BILL:

### SINGLE ORGANIZATION FOR GLOBAL COMPETITION

Recently, Advocate Bill is discussed in the House of Representatives; which will replace current Advocate Law No. 18/2003. Advocates' bar is one of the issues underlying the drafting of Advocates' Bill. This is classic issue that has been, being a never-ending one; debated by advocates in Indonesia since time immemorial. A future deadlock could be seen in the horizon only to debate this topic only during the bill discussion.

Things that must be concerned by the drafter of Advocates' bill related to advocates' bar is about functions of education, development, regulating and monitoring both local and foreign advocates. Have advocates ready to face further competition with foreign advocates from neighboring countries? The Advocates' bill should prepared local advocates for direct to global competition. To go on that particular direction, capacity building of advocates and bar is needed. For advocates, a capacity building training is needed in order to make advocates become more competitive. For bar association, this comes as quality control on selecting foreign advocates. To implement those functions above, it is unrealistic to use multi-bar model because such model will create uncertain situations which will harm local advocates. A model of single-bar association is a much more realistic option to trigger local advocates to have a healthy competitive attitude and to have effective selection on foreign advocates. (MFA)



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## Legal Discourse

# JUDGE CRIMINALIZATION DECLARED AS NULL AND VOID IN THE CHILD CRIMINAL JUDICIAL SYSTEM

On 3 July 2012, the House and Government endorsed Law Number 11 Year 2012 on Child Criminal Judicial System (SPA). The law replaced the previous law number 3 Year 1997 on Child Court. The substance of the law has adopted *restorative justice* concept, which reduce sentencing of detaining period, the limit of age of prosecution, and the diversion process as result of peace settlement between the victim and child perpetrators. Apart from the positive accomplishment, the law also contained controversial clauses on criminal sanction stipulation. There are three criminal stipulations, which conflicted and threaten judicial independence guarantee by the constitution.

On 24 October 2012, Indonesia Judges Association (IKAHI) petitioned the law to Constitutional Court on the basis that the criminal stipulation articles, especially for judges are considered as unconstitutional. The judge argued, especially in the article 96, 100, and 101 of the SPA has reduced the

judge independence in performing judges' judicial obligation. Each of the law threaten to criminalize judges if the judge failed to perform obligation or violated to right of child defendant related to diversion process, detention period limits, or settling child cases within the 25 days limit.

On last Thursday, the Constitutional Court declared that each of the articles are unconstitutional, therefore they both considered null and void. The debate surrounding the case is whether the violation of rights outline in article 96, 100, and 101 ought to be punished by criminal sanction or whether the nature of judicial administrative process, which includes part some of the article contain, is also part of judicial independence, thus need to be protected. Although there are opposite views to answer the question, the Constitutional Court has decided that the judicial independence ought to also include the administrative process, where judges are independence in performing their judicial task. (SMR-GAT)



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