INDONESIA LRWD

Edition XIV/Apr/2013

LEGAL REFORM WEEKLY DIGEST

PSHK

Indonesia LRWD is published by Indonesian Centre for Law and Policy Studies (*www.pshk.or.id*). This weekly newsletter provides info, updates, and analysis on law reform in Indonesia. To subscribe, please contact *lrwd@pshk.or.id*.

Parliament

ADJOURNMENT OF SOCIETAL ORGANIZATION BILL

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At first, the Parliament and Government scheduled the passage of Societal Organization Bill on Friday, 12 April 2013. But the pressure from a numerous parties, particularly religious organizations such as Nadlatul Ulama and Muhammadiyah, the Parliament and Government finally suspended it until the upcoming House session. The Parliament and Government promised a more intensive public consultation with hopes that the public are not misunderstood the good deeds from the lawmakers intention.

In fact, Societal Organization ***Bill is*** indeed a misguided and misdirected bill. It really should be repealed, not revised (as proposed by the House and Government through Societal Organization Bill). The issues at stake are not just the articles, but the basic concept of the bill itself. In other words, any attempt to revise the articles from the bill is a useless one since the concept is already a mistaken one from the very start.

It should be understood that the existing legal framework for civil society organizations in Indonesia are divided into 2 (two) types. For non membership-based organizations, Indonesian law provides a type of legal entity (the foundation),: regulated by the Foundation Law (Law No 16 of 2001). For membership-based organizations, Indonesian law provides association, as its legal entity. It was still regulated in Government Gazette (Stb) 1870-64 on Incorporated Associations (*Rechtpersoonlijkheid van Verenegingen*). (MNS)

CONSTITUTIONAL COURT

Antasari Azhar has filed a judicial review against article in Criminal Procedures Code (KUHAP) that bans him from filing a case review more than once. Antasari feel his constitutional right is violated. Prior to Antasari's appeal, Nasrudin Zulkarnaen's family had filled a judicial review for the article and it was rejected by the Constitutional Court. According to Article 268 paragraph 3 Criminal Procedures Code a case review of can only be conducted once.

Case appeal to cassation level is an extraordinary legal attempt. The philosophical basis for cassation is to provide a sense of justice. In practice, there's a precedent that the Supreme Court grant a Case Review on Case No. 183/PK/Pid2010; which the Supreme Court allowed the defendant to have another round of Case Review against the

But the Supreme Court already has previous experience that showed a Case Review can be conducted twice. If such reconsideration can be done more than once, it will add burden to our Supreme Court. What we need should be done is a more efficient case management from the very early stages of court in district level, despite adding more cases to be put on trial in the end. (RMF)

Supreme Court

Selection of Supreme Court Justice: Building A Better Foundation for the Supreme Court

Judicial Commission has finished selecting justice candidates for Supreme Court. The written test part has been done and from 53 candidates, 35 were declared passed; 20 from the candidates are career judges. The selection next stages are health, personality and psychology assessment; followed by track record checking for those who will pass those tests.

Reforms in Supreme Court must comprehensively oversee the upstream to downstream aspect. Selection mechanism for Supreme Court justice candidates is always a good start for reform within the institution. A transparent, participatory, and accountable open investigation (tracking) process which would be conducted by the Judicial Commission will be another very good start. Similarly, it is expected that the public could able to view, monitor, and provide input about candidates. Aside from public participation, parliament role in conducting a fit and proper test should be assessed from the point that the Parliament is a political institution which will add unnecessary politization to the process (FN)

Parliament

Not A Hard Day's Night: Ineffective Working Days of Indonesian Parliament

The Parliament will adhere the Constitutional Court decision which gave power to the Regional Representative be involved in the parliamentary law making process . House will revise the Law. Number 27 of 2009 on the MPR, DPR, DPD and DPRD and also their internal regulation. This was stated by the Speaker of the House in his closing speech on the 3rd Hearing Session of Year 2012-2013. The speech was delivered in the plenary session, Friday, April 12, 2013 while the next House session will start on May 13, 2013.

There are six laws passed by the House during their hearing session that lasted 67 days from January 7, 2013. These six laws are the Law on the Prevention and Eradication of Criminal Acts of Terrorism Financing, Law on the ratification of Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, the law on Ratification of Rotterdam Convention on the Prior of Informed Consent Procedure for Certain Hazardous Chemical and Pesticides in International Trade, law on the establishment of the North Morowali District in North Sulawesi, the Bill on the Establishment Konawe Island District in Southeast Sulawesi, and the Law on amendment to Law no. 56 of 2008 on the establishment of Tambrauw district in West Papua.

From the six laws made by the House of Representatives during the 3rd hearing session, only one law is substantive and the next five are administrative ones. The number and type of indicates problems in the legislation process and planning by Parliament. Speaker of the House already stated that 60% of the working days are allocated and dedicated for the implementation for legislative function and the rest are for oversight and budget function. But the plan doesn't seem to work out since the legislation the House produced are insignificant in terms of substance. Could it be, again, a sign superficial intention from the Parliament when it comes to legislation? The alarming number of absentees during House hearing sessions could be a sign to that. All the while, the House is targeting the completion of a very important set of law in law enforcement in Indonesia: Penal Code, Criminal Procedure Code, Attorney General and Supreme Court. To ensure the quality of the law, House, faction leaders and the Honorary Body should be more direct on members and dare to impose sanctions. (RR)

Court

Article 75 of TNI Law: Blocked Civilian Court Application in Cebongan Case

Note:
This article is a revision of last week's edition by Giri Ahmad Taufik.

The application of article 65 par.2 of TNI law is blocked by Article 75 TNI law. The article 65 par.2 gives the possibility of TNI members to be trial in civilian court, if the nature of the crime is civilian in nature. However, the application of the article is blocked by article 75 of TNI Law, which stipulates the pending of the application of the Article 65 until the new law to amend Law Number 31 Year 1997 on Military Tribunal has been done. Thus, based on this law the Cebongan case could not go to the Civilian Court.

The existence of Article 75 of TNI law is problematic, since the parliament in session does not show any indication to amend the Law Number 31 Year 1997 on Military Tribunal. Thus, it creates situation where military personnel will enjoy certain privilege to be trial in Military Tribunal, which potential can be bias due to the structure of the Military Tribunal is under Armed forces commander. In solving the issues, human rights NGO's urge president to enact special law, which guarantees the application of civilian court to trial Cebongan perpetrators. However, the weakness of special law, beside the debate over the need to enact such law is based on the temporary nature of the law, which in long term cannot address the much needed reform to the military personnel criminal justice system. Alternatively, it can also be argued that the use of Judicial Review to the Parliament can also be considered, to eliminate the Article 75 from TNI law. The downside of this strategy, it potentially cannot be applied to trial Cebongan case due to retroactive application of the decision, but it become strategic because in the future, if constitutional court declare the Article unconstitutional, the Article 65 par.2 can automatically be applied. (GAT)