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### Court

## DISCIPLINARY SANCTION BY SUPREME COURT WERE GIVEN TO JUDGES DURING THE PERIOD OF JANUARY–MARCH 2013

Supervisory Board of the Supreme Court during the period January to March 2013 have decided disciplinary sanctions against 68 officers from the Supreme Court and the courts. The information is published to the public through the website of the Supreme Court ([www.mahkamahagung.go.id](http://www.mahkamahagung.go.id)) and Supervision Agency ([www.bawas.mahkamahagung.go.id](http://www.bawas.mahkamahagung.go.id)). The largest number of officers who were given sanctions consists of 45 judges and four ad hoc judges. Disciplinary sanctions given to 45 judges were varies; consists of 15 hefty sanctions, 2 moderate and 28 minor ones. Meanwhile, sanctions for four ad hoc judges including one with heavy sanction and 3 minor sanctions. In addition, the Supervisory Board also gave disciplinary sanction to several employees also. However, the number of staff sanctioned from this group are only five people. During the year 2012, the Supervisory Board has given sentence to 160 officials on indisciplinary conduct, and 40% or 64 people of them were judges.

Publication of the results of such monitoring can encourage increased accountability of the judiciary in carrying out their duties and encourage people to contribute in monitoring the performance of the judiciary.

The monitoring report from Supreme Court Supervisory Board is really an encouraging one, since of the issues of law enforcement in Indonesia is lack of public trust to the court. Such mistrust lead people settled their legal problems anywhere but court. It is important also to note that disciplinary sanctions to high-rank judges and officials show that the Supervisory Board has an equal treatment to all offenders. The disciplinary sanction by the Supervisory Board put an importance to exert control upon judges and officials in court and the Supreme Court. (MNS)



#### **Legal Enforcement**

### **NO FURTHER ARGUMENT NEEDED: SUSNO DUADJI SHOULD BE PUT BEHIND BARS**

A much serious attention to the Susno Duadji circus is needed since the case is not merely about an ex-high ranking police officer become a fugitive. The verdict of the District Court, High Court, and the Supreme Court has firmly stated that the general is guilty (the punishment was dropped to 3 years 6 months and a fine of 200 million rupiah with subsidiary confinement 6 months in jail). While there may be errors in typing, the verdict was clear. A verdict could be considered as void but the case itself is not annulled by law. The Supreme Court decision number 1307K/Pid/2001 states that if a verdict is considered as void; it doesn't meant that the case itself is going to be being annulled. In other words, the administrative part does not negate the substantive aspect of the case.

Susno Duadji's failed arrest is a high stake in terms of legal enforcement in the of the public. Law officers should not gamble their institution integrity to enforce the law and let Susno Duadji slip before their eyes. If the general somehow fail to surrender himself before the law; the attorney assisted by the police should make an arrest of Susno Duadji. No one has the right, include Susno's lawyers or the district police, can obstruct the process. It should be put into serious consideration that the act of obstructing arrest process according to article 212-214 Criminal Code imposed criminal sanctions maximum 7 years in jail. (MSG)

## Supreme Court

# SUPREME COURT DECISION ON MINIMUM WAGES: MORE ATTENTION NEEDED FOR EMPLOYMENT RATE

The Supreme Court publishes a verdict that sentence 1-year prison and a fine of IDR 100 million to Mrs. Tjior Christina Chandra, a business owner, due to her violation of failing to pay her employee on local minimum wage standard. Through case No. 687 K/Pid.Sus/2012, Supreme Court justices has make their verdict that Mrs. Chandra is being alleged for Articles 90(1) and 185(1) violation. This decision supprises the public.

The credit should go to the Supreme Court decision as an initial step to enforce industrial relations law in Indonesia. However, this sanction could nevertheless open a discourse and gave lesson for legal observer and practitioner on which "business owner" should have been imposed a penal sanction. Artices 90(1) and 185(1) mention that business owner includes natural person, partnership, or legal entity either owned by himself/herself or by others, or located in Indonesia or outside Indonesia.

The case decided by the Supreme Court could be seen as a kind of threat to all business owners who paid their employee below minimun regional wages (UMR). However, to determine who should be given

sanction upon could be affected by the firm legal entities, or person in charge of the firm. Sanction cannot automatically be given to company's owner or company's management

If the firm's is a corporation in terms of legal entity, it is necessary to see who is "in charge" at that time being of not paying the employee minimum wages (be the directors, commissioner, or owner). Fiduciary duty and piercing the corporate veil principles apply for this kind of situation and context. If the form of company is unincorporated company, the responsibility lies on company's owner and management at one take.

Overall, the Supreme Court decision has given us enlightenment on how to enforce of industrial relations law. However, how the decision will come to impact the company and its employee is still much a question; will raise unemployment rate to a higher level? It is quite worrisome if such sanction imposed to business owner without necessary attention to the business aspect itself; employee's future in terms of job security will be compromised. (MFA)

## Legislation

# FURTHER DELAY ON PRESIDENTIAL BILL

At the closing session of the parliament, two weeks ago, the Presidential Election bill was declared to be postpone for later discussion. There were still contents which has not been agreed between each faction which consists of presidential threshold requirement for nominating presidential and vice presidential candidates by political parties. Such situation also happened in the last two election periods. Presidential Election bill is one of the laws that are routinely revised pre-election times. In one hand, it is good practice to evaluation function. But, comprehensively speaking, what was discussed by the legislators from different periods is still the same subject: presidential election threshold. A debate on the subject is indeed important; but there are still more

crucial topics needed to be discussed open. Campaign financing restriction, public participation for party selection of President and Vice President candidates, and the idea of parallel elections; to name some of the topics. Such limited scope of discussion could not be separated from the vested interest of political part; for which they prefer no change at all, particularly changes that would limit their political grip. This condition makes the Presidential and Vice-President election is not improve significantly and even has the tendency to increase the hegemony of power by political parties. Subsequently, such condition will led to the high cost of elections which resulted to more corruption in Parliament. (FN)