

CONSTITUTIONAL DISPUTE SETTLEMENT: INDONESIAN AND AUSTRALIAN FRAMEWORK

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Melbourne, 15 August 2023



OUTLINE

1. Constitutional Disputes and the Scope
2. Laws and Regulations of Constitutional Disputes Settlement in Indonesia and Australia
3. Constitutional Review in Indonesia and Australia
4. Electoral Disputes in Indonesia and Australia



1| Constitutional Dispute and the Scope

What is Constitutional Disputes?

Terminology wise, the term constitutional disputes is not formally known. However, constitutional disputes can be understood using the scope of constitutional issues.

Initially, constitutional review was the most common term found within constitutional disputes. It is until constitutional issues started to develop dynamically, according to the situation and condition of a country.



Constitutional Review as one of the forms of Constitutional Dispute

If a constitution is intended to be binding there must be some means of enforcing it by deciding when an act or decision is contrary to the constitution and providing some remedy where this occurs. In this case we call the process as **Constitutional Review**.

Constitution across the world have **devised broadly two types of constitutional review:**

1. By a specialized constitutional court; or
2. By court of general legal jurisdiction

But, there are however many variations on each model, and some system are even said to be **hybrid**.

Source: International IDEA, The Fundamental of Constitutional Courts

Starting from the constitutional review model, constitutional issues then continued to develop and produced other forms of constitutional disputes which later became the authority of the constitutional court.

Centralized System With A Constitutional Court

- Sometimes called a **constitutional court** or **constitutional tribunal** or **constitutional council** and also known as **European system**
- Its role is to review laws, and usually executive acts and decisions, to decide whether they are constitutionally valid and provide a remedy in cases where they are not.

A Constitutional court defined as a constitutionally-established, independent organ of the state whose central purpose is to defend the normative superiority of constitutional law within judicial order.

- Alec Stone Sweet

Constitutional courts are specifically charged with deciding political questions. In general, constitutional courts have decided cases in such a way as to encourage democratic politics and dialogue between different organs of the state. As multiparty democracy and constitutional government have diffused globally, most constitution-makers have preferred the centralized model to the diffused model of constitutional review.

Source: International IDEA, The Fundamental of Constitutional Courts

Carried Out By Court With General Jurisdiction

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- Also known as **diffused** or **American system**.
- In such system, any court can engage in constitutional review, not only constitutional question, but also over all question of civil, criminal, and public law.
- The power to decide constitutional questions with finality lies with the highest (apex) court, usually the supreme court, indicating its primacy over other courts.



Source: International IDEA, The Fundamental of Constitutional Courts

Four Main Types The Powers of Contemporary Constitutional Courts (1/2)

a. Constitution-drafting jurisdiction (controlling the constitution itself)

- adjudicating issues arising in the constitution-making process; and
- reviewing the constitutionality of constitutional amendments (e.g. as in Nigeria, Senegal, and South Africa)

b. Judicial review of legislative acts (controlling the legislature)

- reviewing the constitutionality of laws in advance of legislation (*ante factum*)
- reviewing the constitutionality of laws after legislation (*ex post facto*)
- reviewing the constitutionality of decision by the legislature; and
- initiating or requiring legislation

Source: International IDEA, The Fundamental of Constitutional Courts

Four Main Types The Powers of Contemporary Constitutional Courts (1/2)

c. Jurisdiction over official and agencies (controlling the executive)

- reviewing the constitutionality of executive actions and decisions
- hearing impeachment proceedings against holder of public office
- considerations of criminal or civil cases in respect of official corruption
- considerations of qualifications of individual to hold or continue to hold public office
- adjudication of appointment of office-holders under the constitution
- adjudication of disputes as to the competence of organs of state
- adjudication of disputes between organs of state

d. Jurisdiction over political parties and elections (controlling election)

- adjudication of the dissolution or merger of political parties and control over constitutionality of their actions
- examining the legality of elections and election results at any level
- hearing electoral petitions

Source: International IDEA, The Fundamental of Constitutional Courts

No Constitutional court possesses all four of these powers. The list simply denotes the range of possible choices constitutional designer may face. Note also that in some system there are separate, specialized administrative courts, which exercise exclusive jurisdiction over the legality of administrative (executive) actions and decisions, including delegated (or subsidiary) legislations.

Source: International IDEA, The Fundamental of Constitutional Courts

What are the differences of constitutional disputes between in Indonesia and in Australia?

The Differences of Constitutional Dispute in Indonesia and in Australia

No	The Differences	Indonesia	Australia
1.	Jurisdiction	Constitutional Court	High Court
2.	The Powers	1. Reviewing the constitutionality of laws after legislation 2. Adjudication of disputes between organs of state 3. Adjudication on the dissolution political parties 4. Examining the legality of elections and election results at any level 5. Deciding impeachment on the opinion of the parliament	1. Constitutional review 2. Electoral disputes

The Most Dominant Constitutional Disputes Settlement in Constitutional Court of Indonesia

No	Perkara	Jumlah	Persentase
1	PUU	1671	47.58%
2	SKLN	29	0.83%
3	PHPU	676	19.25%
4	PHPKADA	1136	32.35%
Total		3512	100%

- In Indonesia, constitutional disputes settlement is dominated by cases of constitutional review (*judicial review*) and electoral disputes.
- There has never been any case for the dissolution of political parties since the constitutional court was founded until now.

Source: Rekapitulasi Perkara Mahkamah Konstitusi Republik Indonesia 2004-2022

2| Laws and Regulations of Constitutional Disputes Settlement in Indonesia and Australia

Laws and Regulations of Constitutional Disputes Settlement in Indonesia

- Based on Article 24 C paragraphs (1) and (2) of the 1945 Constitution, the Constitutional Court has **four authority and one obligation in resolving constitutional disputes**. The authority possessed by the Constitutional Court is final and binding to:
 - (a) Reviewing the constitutionality of laws after legislation
 - (b) Adjudication of disputes between organs of state
 - (c) Adjudication on the dissolution of political parties
 - (d) Examining the legality of elections and election results at any level
- In addition, **the Constitutional Court is required to render a decision on the opinion of the People's Representative Council regarding alleged violations by the President and/or Vice President according to the Constitution.**



Laws on Constitutional Court in Indonesia

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 24 TAHUN 2003
TENTANG
MAHKAMAH KONSTITUSI

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 8 TAHUN 2011
TENTANG
PERUBAHAN ATAS UNDANG-UNDANG NOMOR 24 TAHUN 2003
TENTANG MAHKAMAH KONSTITUSI

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 4 TAHUN 2014
TENTANG
PENETAPAN PERATURAN PEMERINTAH PENGANTI UNDANG-UNDANG
NOMOR 1 TAHUN 2013 TENTANG PERUBAHAN KEDUA ATAS UNDANG-
UNDANG NOMOR 24 TAHUN 2003 TENTANG MAHKAMAH KONSTITUSI
MENJADI UNDANG-UNDANG

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 7 TAHUN 2020
TENTANG
PERUBAHAN KETIGA ATAS UNDANG-UNDANG NOMOR 24 TAHUN 2003
TENTANG MAHKAMAH KONSTITUSI

- The procedural law regulated in this act contains general rules for proceedings before the Constitutional Court and specific directions according to the characteristics of each case which are the authority of the Constitutional Court.
- To smoothly implement its duties and authorities, the Constitutional Court is authorized to form procedural law according to this Law.

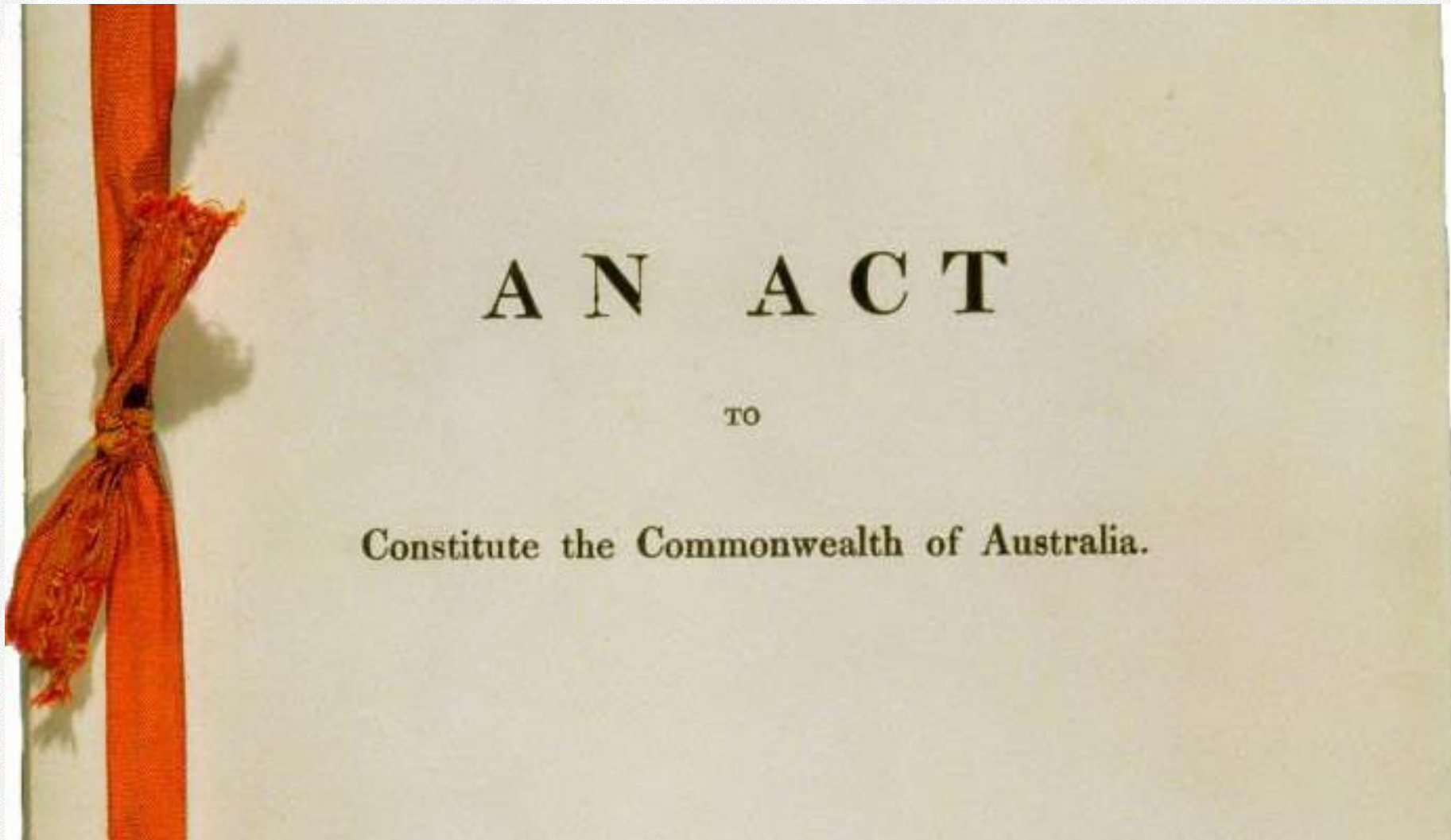
Regulations on Constitutional Court in Indonesia

There are some Constitutional Court Regulations (“**PMK**”) as guidelines for disputes settlement in the constitutional court, as follows:

- 1. PMK 4/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for the President and Vice President
- 2. PMK 3/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the Regional Representative Council
- 3. PMK 2/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the People's Representative Council and Regional People's Representative Council
- 4. PMK 2/2021 concerning Procedures in Cases Reviewing Laws
- 6. PMK 1/2020 concerning Constitutional Court Trials
- 7. PMK 21/2009 concerning Guidelines for Procedures in Deciding the Opinion of the House of Representatives Regarding Alleged Violations by the President and/or Vice President
- 8. PMK 12/2008 concerning Political Party Procedures
- 9. PMK 8/2006 concerning Guidelines for Proceedings in Disputes of the Constitutional Authority of State Institutions



Laws and Regulations of Constitutional Disputes Settlement in Australia



There are several laws relating to constitutional dispute settlement in Australia, as follows:

1. Australian Constitution Section 76;
2. Commonwealth Electoral Act 1918;
3. Commonwealth Electoral Act 1924;
4. Representation Act 1983;

3| Constitutional Review in Indonesia and Australia

(a) Constitutional Review in Indonesia (1/2)

- Based on Article 24 C paragraph (1) of the 1945 Indonesian Constitution, the Constitutional Court has the authority to examine laws against the 1945 Indonesian Constitution whose decisions are final and binding. The judicial review authority is also strengthened in Article 1 paragraph 3 letter A of the Constitutional Court Act (and its amendments).
- Judicial reviews are divided into 2 (two) types:
 - (1) Substantive Review.** This is a review of material content in verses, articles, and/or parts of laws or Perppu that are deemed to be contrary to the 1945 Indonesian Constitution.
 - (2) Procedural Review.** This is a review of the process of forming laws or Perppu that are inconsistent with the provisions for forming laws or Perppu as referred to in the 1945 Indonesian Constitution.



Article 2 paragraph (3) and (4) PMK 2/2021 concerning Procedures in Cases Reviewing Laws

Constitutional Review in Indonesia (2/2)

Parties that can submit a judicial review are as follows:

- (1) Individual Indonesian citizens or groups of people who have the same interests;**
- (2) Indigenous communities;**
- (3) Public legal entities or private legal entities; and**
- (4) State institutions.**



Leading Cases of the Judicial Review in Indonesian Constitutional Court

There are at least four cases that can be classified as leading cases, namely the **judicial review** case related to the **presidential threshold**, the **Omnibus Law (Job Creation Law)**, and recently regarding the **extension of the term of office of the KPK leadership and general election system** (as a monumental case).

Home > Economy & Business

Protesters to Hold Rally Amidst Job Creation Act Lawsuit Hearing at Constitutional Court

Translator Editor
Tempo.co Laila Afifa

6 July 2023 00:00 WIB

Home > Economy & Business

Labor Party to Stage Protest Against Job Creation Act and Presidential Threshold Today

Translator Editor
Najla Nur Fauziyah Petir Garda Bhwana

9 August 2023 12:52 WIB

Judicial Review of Presidential Threshold (1/5)

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- INTEGRITY has filed a judicial review regarding the presidential threshold in **Article 222 of Law Number 7 of 2017 concerning General Elections.**
- **First, in the Constitutional Court Decision Number 49/PUU-XVI/2018. The Constitutional Court rejected the application for the annulment of the provisions of Article 222 of the Election Law.**



Judicial Review of Presidential Threshold (2/5)

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- **Second**, in the **Constitutional Court Decision Number 52/PUU-XX/2022**. The petition cannot be accepted because (Petitioner I “Dewan Perwakilan Daerah”) does not have legal standing.
- As for (Petitioner II “Partai Bulan Bintang”), the Constitutional Court rejected all of them. However, it is unique, even though Petitioner II meets the **legal standing qualifications** and the petition is not **nebis in idem**, suddenly the Constitutional Court decides **"to refuse everything"** without going through a judicial examination.
- The Constitutional Court has violated the act in **Constitutional Court Regulation Number 2 of 2021 concerning Procedures for Judicial Review**, specifically Article 8 paragraph (1) letter L, Article 34 paragraph (2) letter b, Article 48 paragraph (1), and Article 49 paragraph (1).

Denny Indrayana Sebut PT 20 Persen Bisa Inkonstitusional Jika MK tidak Independen

Denny Indrayana Gugat PT 20%: Demokrasi Jangan Munculkan Capres Pura-Pura

kumparanNEWS 

2 Februari 2022 17:55 · waktu baca 2 menit

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Judicial Review of Presidential Threshold (3/5)

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- From 2017 – 2022, there has never been a case for a judicial review of the presidential threshold that has been granted.
- The Constitutional Court always uses the "**Open Legal Policy**" basis of consideration, so that it is not the authority of the Constitutional Court to make a decision. But in practice, the use of open legal policy requires certain interests.

The poster is for a Constitutional Discussion event titled "CONSTITUTIONAL DISCUSSION #6". The main theme is "SELAMATKAN PEMILIHAN PRESIDEN 2024: TOLAK PRESIDEN BONEKA, TOLAK PRESIDENTIAL THRESHOLD". It features a Keynote Speech by Prof. Denny Indrayana, S.H., LL.M., Ph.D., and four panelists (NARASUMBER): Rocky Gerung, Bivitri Susanti, M. Raziv Barokah, and Febri Diansyah. The event is moderated by Musthakim Alghosyaly, S.H. and is part of the "FINAL DEBAT HUKUM INTEGRITY SCHOLARSHIP". The event is scheduled for Wednesday, February 2, 2022, at 13.30 WIB. The poster also includes logos of various institutions and the Integrity Law Firm's contact information.

IN TE GRI TY CONSTITUTIONAL DISCUSSION #6

SELAMATKAN PEMILIHAN PRESIDEN 2024: TOLAK PRESIDEN BONEKA, TOLAK PRESIDENTIAL THRESHOLD

Keynote Speech

Prof. Denny Indrayana, S.H., LL.M., Ph.D.
Guru Besar Hukum Tata Negara / Senior Partner INTEGRITY Law Firm

NARASUMBER

ROCKY GERUNG
Pakar Filsafat dan Politik

BIVITRI SUSANTI
Dosen STHI Jember

M. RAZIV BAROKAH
Senior Lawyer INTEGRITY Law Firm

FEBRI DIANSYAH
Managing Partner Visi Law Office

BEKERJA SAMA DENGAN

Moderator
MUSTHAKIM ALGHOSYALY, S.H.
Junior Lawyer INTEGRITY Law Firm

LIVE REFLY HARUN*
LIVE DENNY INDRAYANA
Link Pendaftaran
<https://www.integritylawfirm.id/ICD6>

Rabu, 2 Februari 2022
13.30 WIB - Selesai
yang dirangkaikan dengan
FINAL DEBAT HUKUM
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Judicial Review of Presidential Threshold (4/5)

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INTEGRITY IN TE
INDRAYANA CENTRE FOR GOVERNMENT, CONSTITUTION, AND SOCIETY GRI TY

- It is clear that the rules in **Article 6A paragraph (2), 6A paragraph (3) of the 1945 Indonesian Constitution** should explain that the rules related to the presidential threshold are a closed legal policy.
- **Article 6A paragraph (5) of the 1945 Indonesian Constitution** has locked that the areas that become open legal policies in the election of the President and Vice President are limited to technical implementation.

#Indonesia LeadersTalk
<http://bit.ly/WirILT>

SERI KE-94
Dialektis
Tuntas
Fundamental

JR PRESIDENTIAL THRESHOLD 20% OLEH PKS

MARDANI ALI SERA
Politisi PKS

ZAINUDDIN PARU
Kuasa Hukum PKS

DENNY INDRAYANA
Senior Partner INTEGRITY Law Firm
Guru Besar HTN

ROCKY GERUNG
Guru dan Pengamat

JUMAT 08.07 2022 **PUKUL 20:00 22:00**

LIVE ON YOUTUBE & FB MARDANI ALI SERA
SIARAN RELAY PKS TV & PKS TV JAKTIM
RADIO RASIL AM 720
Daftar PKS: <http://bit.ly/PKSMAS>

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INDONESIA LEADERS TALK
“*Judicial Review Presidential Threshold 20% oleh PKS*”

Prof. Denny Indrayana, S.H., LL.M., Ph.D.
Senior Partner, *INTEGRITY Law Firm*
Guru Besar Hukum Tata Negara

Jum'at, 8 Juli 2022

Judicial Review of Presidential Threshold (5/5)

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- The following is a list of judicial reviews regarding the presidential threshold that has been decided by the Constitutional Court for 2017 – 2022.
- With details, **3 cases were rejected** and **19 were not accepted** (*Niet Ontvankelijke Verklaard*).

Number	Decision	Judgment
1	44/PUU-XV/2017	Niet Ontvankelijke Verklaard
2	53/PUU-XV/2017	Rejected
3	59/PUU-XV/2017	Niet Ontvankelijke Verklaard
4	70/PUU-XV/2017	Niet Ontvankelijke Verklaard
5	71/PUU-XV/2017	Niet Ontvankelijke Verklaard
6	72/PUU-XV/2017	Niet Ontvankelijke Verklaard
7	49/PUU-XVI/2018	Rejected
8	50/PUU-XVI/2018	Niet Ontvankelijke Verklaard
9	54/PUU-XVI/2018	Rejected
10	58/PUU-XVI/2018	Niet Ontvankelijke Verklaard
11	61/PUU-XVI/2018	Niet Ontvankelijke Verklaard
12	92/PUU-XVI/2018	Niet Ontvankelijke Verklaard
13	74/PUU-XVIII/2020	Niet Ontvankelijke Verklaard
14	66/PUU-XIX/2021	Niet Ontvankelijke Verklaard
15	68/PUU-XIX/2021	Niet Ontvankelijke Verklaard
16	70/PUU-XIX/2021	Niet Ontvankelijke Verklaard
17	5/PUU-XX/2022	Niet Ontvankelijke Verklaard
18	6/PUU-XX/2022	Niet Ontvankelijke Verklaard
19	7/PUU-XX/2022	Niet Ontvankelijke Verklaard
20	8/PUU-XX/2022	Niet Ontvankelijke Verklaard
21	11/PUU-XX/2022	Niet Ontvankelijke Verklaard
22	52/PUU-XX/2022	Rejected

Judicial Review of Job Creation Law (1/5)

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- As with the **Constitutional Court Decision Number 91/PUU-XVIII/2020**, it has become the leading case for various judicial review cases, especially **procedural reviews**, because it develops one of the legal principles, namely "meaningful participation" in the law-making process.
- This legal principle has always been a reference for the Constitutional Court in carrying out procedural reviews.

The poster is for a virtual event titled "JOB CREATION LAW IS ON HOLD, WHAT'S NEXT?". It features a portrait of Denny Indrayana, a man with glasses wearing a batik shirt. In the top right corner, there are three wooden blocks with icons of a gavel, scales, and a person. The event is organized by Dinsights (Virtual Series) and Katadata. The date and time are Tuesday, 30 November 2021, from 05:00-06:00 PM Jakarta Time. It is an "Off the Record Meeting with: Denny Indrayana", who is a Professor of Constitutional Law & Senior Partner at Integrity Law Firm. The event is limited to D-Insights members and will include a discussion and Q&A session. Contact information for more details is provided at the bottom left, and the moderator, Yura Syahrul, is mentioned at the bottom right with his photo.

Dinsights VIRTUAL SERIES

Katadata

TUESDAY, 30 NOVEMBER 2021

05:00-06:00 PM
Jakarta Time

Limited Seat at
 zoom

Off the Record Meeting with:
Denny Indrayana
Professor of Constitutional Law & Senior Partner
Integrity Law Firm

JOB CREATION LAW IS ON HOLD, WHAT'S NEXT?

Discussion, Q&A with participant

Exclusive for D-Insights Member

For More Information:
dinsights@katadata.co.id
0819-9022-7272

Moderator:
Yura Syahrul
Chief Editor,
Katadata.co.id

Judicial Review of Job Creation Law (2/5)

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- The Constitutional Court stated that it granted the principal part of the petition of the Petitioners **conditionally unconstitutional in part.**
- By stating that the formation of the Job Creation Law is contrary to the 1945 Indonesian Constitution and does not have conditionally binding legal force as long as it does not mean no amendments have been made within 2 (two) years of this decision being pronounced.

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**CONSTITUTIONAL
DISCUSSION #5**

Kerjasama dengan



[CALS]
Constitutional and
Administrative Law Society



PRO-KONTRA PUTUSAN MK:
ANTISIPASI HUKUM & BISNIS PASCA PEMBATALAN UU CIPTA KERJA



Keynote Speech

Prof. Jimly Asshiddiqie

Narasumber:

- **Hariyadi B Sukamdani**
Ketua Umum Asosiasi Pengusaha Indonesia (APINDO)
- **Susi Dwi Harijanti**
Guru Besar HTN Universitas Padjajaran
- **Bivitri Susanti**
Pengajar STHI Jentera, CALS
- **Feri Amsari**
Direktur Pusako FH Andalas, CALS
- **Iwan Satriawan**
Peneliti Pusat Kajian Konstitusi dan Pemerintahan UMY
- **Muhamad Raziv Barokah**
Senior Lawyer INTEGRITY Law Firm
- **Denny Indrayana**
Guru Besar Hukum Tata Negara /
Senior Partner INTEGRITY Law Firm



Moderator

Tareq M. Aziz Elven, S.H.
Junior Lawyer INTEGRITY Law Firm

- **Link Pendaftaran :**
<https://www.integritylawfirm.id/icd5/>
- **Rabu, 1 Desember 2021**
13.00 WIB - SELESAI
- **LIVE** Youtube INTEGRITY
- **Link zoom INTEGRITY :**
<https://us02web.zoom.us/j/85853877568?pwd=Rnl5TmpeWEF2Q0FIMndSaTRNR2p5dz09>

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Judicial Review of Job Creation Law (3/5)

- However, instead of perfecting the Job Creation Law, the President and the DPR actually took an act of **constitutional disobedience**, by issuing a **Perppu** which later became the new Job Creation Law.
- There are two reasons why the actions taken by the President and the DPR are considered constitutional disobedience:
 - (1) The **addresat** ignored the Constitutional Court's decision which caused a delay in constitutional justice; and
 - (2) Discrepancies between the contents of the regulations for implementing decisions and the interpretation of the Constitutional Court.

Novendri M. Nggilu, "Initiating Sanctions for the Acts of Constitution Disobedience Against the Decision of the Constitutional Court", *Jurnal Konstitusi*, Vol. 16 No. 1, 2019, pg. 56 – 57.

NASIONAL /

Perppu Cipta Kerja Resmi Jadi UU, Ini Komentar Denny Indrayana

Soal Perppu Cipta Kerja, Denny Indrayana: Presiden Tak Menghormati MK

Estu Suryowati - Minggu, 1 Januari 2023 | 14:08 WIB

Perppu Ciptaker Sah Jadi UU, Denny Indrayana: Cacat Dari lahir, Presiden-DPR Berjamaah Langgar UUD!

"Dengan menyetujui Perppu Ciptaker pada masa sidang DPR sekarang, Presiden dan DPR nyata-nyata melanggar norma UU PPP yang mereka buat sendiri..."

Judicial Review of Job Creation Law (4/5)

- In response to this, INTEGRITY has become a legal representative representing 15 labor unions submitting a procedural review of **(Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang)** in case number **54/PUU -XXI/2023**.
- Currently, this case will enter the agenda for Hearing the President's Expert Statement on Wednesday, August 23, 2023.



Judicial Review of Job Creation Law (5/5)

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- There is no reason not to cancel the Job Creation Law. Because it is clear, from the start its formation was contrary to Article 22 paragraph (2) of the 1945 Indonesian Constitution.
- ***Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja*** did not receive the approval of the House of Representatives (DPR) in the next session, so it must be declared no longer valid.
- The definition of the trial is as stipulated in Article 52 of Law Number 12 of 2011 concerning the Formation of Legislation (*with amendments thereto*). This is also a consideration in Constitutional Court Decision Number 43/PUU-XVIII/2020.

Home > Nasional > Hukum Kriminal

Denny Indrayana Nilai Pengesahan Perppu Ciptaker Langgar Konstitusi

CNN Indonesia

Kamis, 23 Mar 2023 08:55 WIB



- The Constitutional Court's decision Number 112/PUU-XX/2022 (related to the extension of the term of office of the “Komisi Pemberantasan Korupsi” (KPK) leadership) can be classified as a decision that formulates new norms.
- The reason is that the decision changed and formulated a new norm in **Article 34 of Law Number 30 of 2002 concerning the Corruption Eradication Commission Act** by increasing the term of office extension for the KPK leadership.

Denny Indrayana: Masa Jabatan Pimpinan KPK 5 Tahun Strategi Pemenangan Pilpres

kumparanNEWS ✓

Denny Indrayana: Perpanjangan Masa Jabatan Pimpinan KPK Strategi Pukul Lawan di Pilpres

Beranda > Nasional

Denny Indrayana Menduga Putusan MK Soal Masa Jabatan Pimpinan KPK untuk Kepentingan Pilpres 2024

Judicial Review of Corruption Eradication Commission Act (2/2)

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This decision disrupts legal reasoning and the systematic logic of interpreting the constitution, so it is not surprising that behind the current Constitutional Court decision there is an immaterial gratification in the form of an extension of the term of office of the currently serving KPK commissioner.



Denny Indrayana: Putusan MK soal Masa Jabatan KPK Bagian Strategi Pilpres

Dwi Andayani - detikNews

Jumat, 26 Mei 2023 07:50 WIB

Judicial Review of the Electoral System

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- Substantial review of Law Number 7 of 2017 concerning General Elections related to the general election system.
- The Petitioner asked the Constitutional Court to change the *open list proportional representation* to a *closed list proportional representation*.
- The Constitutional Court **rejected** the Petitioner's petition based on **Constitutional Court Decision Number 114/PUU-XX/2022** because the *open list proportional representation* is closer to the electoral system desired by the 1945 Indonesian Constitution.

Denny Indrayana: Semoga Putusan MK soal Sistem Pemilu Tak Untungkan Kubu Politik Tertentu



**Denny Indrayana Usai MK
Putuskan Pemilu
Proporsional Terbuka:
Kemenangan Rakyat**



MERDEKA.COM
Sekitar 1 Bulan yang lalu

(b) Constitutional Review in Australia (1/3)

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Constitutional review is one of the High Court's jurisdiction in Australia

Role of the High Court

font size - + | [Print](#) | [E-mail](#)

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Constitution. The functions of the High Court are to interpret and apply the law of Australia; to decide cases of special federal significance including challenges to the constitutional validity of laws and to hear appeals, by special leave, from Federal, State and Territory courts.

The seat of the High Court is in Canberra, where it is located in its own building within the Parliamentary Triangle. The High Court building houses three courtrooms, Justices' chambers, and the Court's main registry, library, and corporate services facilities. In addition, there are offices of the High Court Registry in Sydney and Melbourne, staffed by officers of the High Court. In Adelaide, Brisbane, Darwin and Perth, registry functions are performed on behalf of the High Court by officers of the Federal Court of Australia, and in Hobart they are performed by officers of the Supreme Court of Tasmania.



Constitutional Review in Australia (2/3)

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Australian Constitution

75. Original jurisdiction of High Court.

In all matters—

- (i.) Arising under any treaty:
 - (ii.) Affecting consuls or other representatives of other countries:
 - (iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:
 - (iv.) Between States, or between residents of different States, or between a State and a resident of another State:
 - (v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:
- the High Court shall have original jurisdiction.

76. Additional original jurisdiction.

The Parliament may make laws conferring original jurisdiction on the High court in any matter—

- (i.) Arising under this Constitution, or involving its interpretation:
- (ii.) Arising under any laws made by the Parliament:
- (iii.) Of Admiralty and maritime jurisdiction:
- (iv.) Relating to the same subject-matter claimed under the laws of different States.

77. Power to define jurisdiction.

With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

- (i.) Defining the jurisdiction of any federal court other than the High Court:
- (ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:
- (iii.) Investing any court of a State with federal jurisdiction.

<https://www.legislation.gov.au/Details/C2013Q00005/Download>

Every Australian court of competent jurisdiction has the power to declare a law of the Commonwealth or of a State void because of transgressing the Constitution.

The High Court, which is the ultimate court of appeal in Australia, is the authoritative and final interpreter of the Constitution. Though **this authority is not expressly stated in the Constitution**, it can be discerned through various sources.

Source: The Oxford Handbook of the Australian Constitution

Constitutional Review in Australia (3/3)

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The methods of review vary according to both the nature of the constitutional head of power under which legislation is said to have been enacted, as well as whether the challenge to the validity of the legislation is based upon its restrictive effect upon a **constitutionally protected freedom**. These freedoms are not individual rights or freedoms, but instead effect a restriction or limitation on the legislative power of the Commonwealth.

CHAPTER

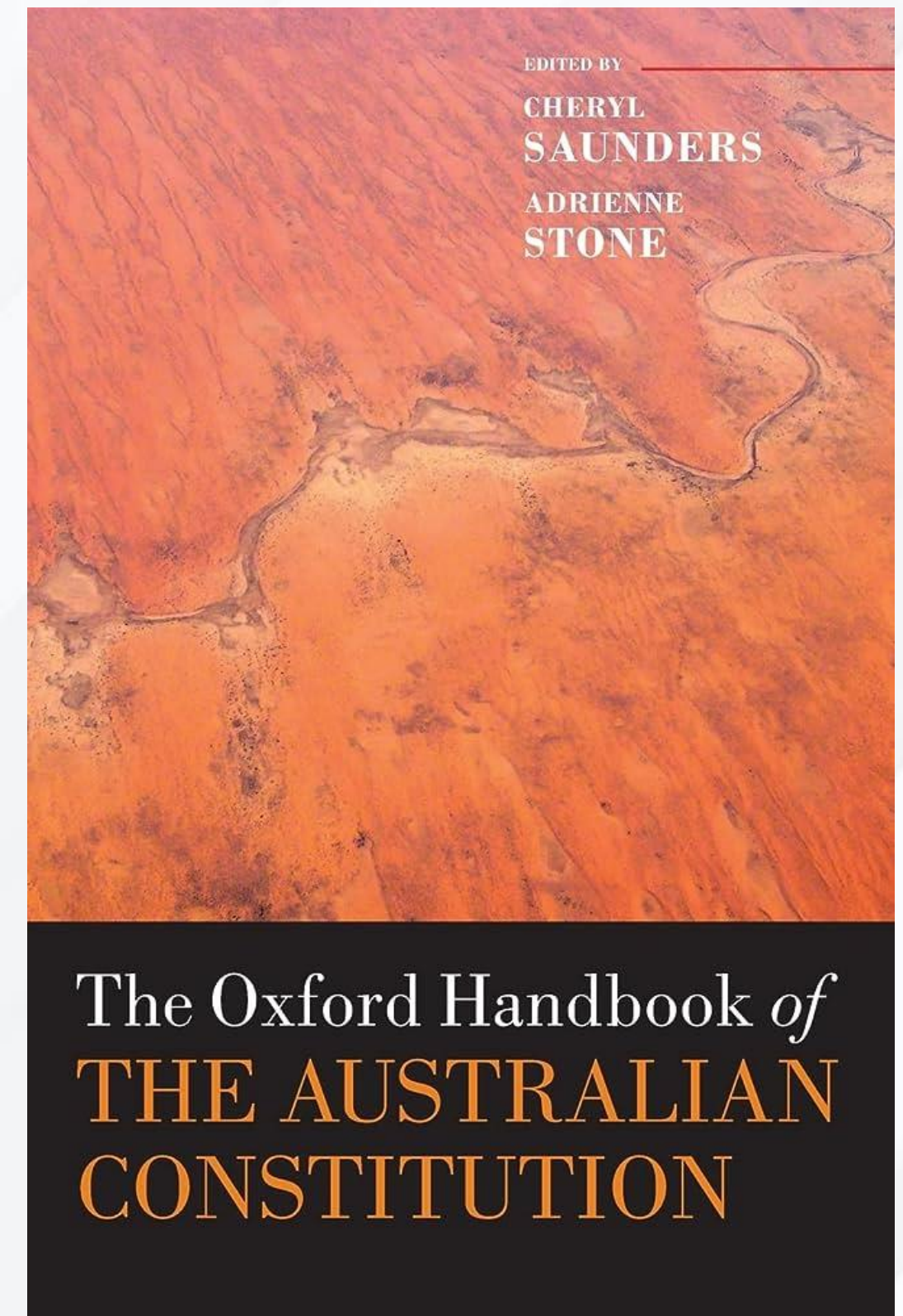
21 Standards of Review in Constitutional Review of Legislation

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Susan Kiefel

<https://doi.org/10.1093/law/9780198738435.003.0022> Pages 488–509

Published: 07 November 2018



Cases (1/2)

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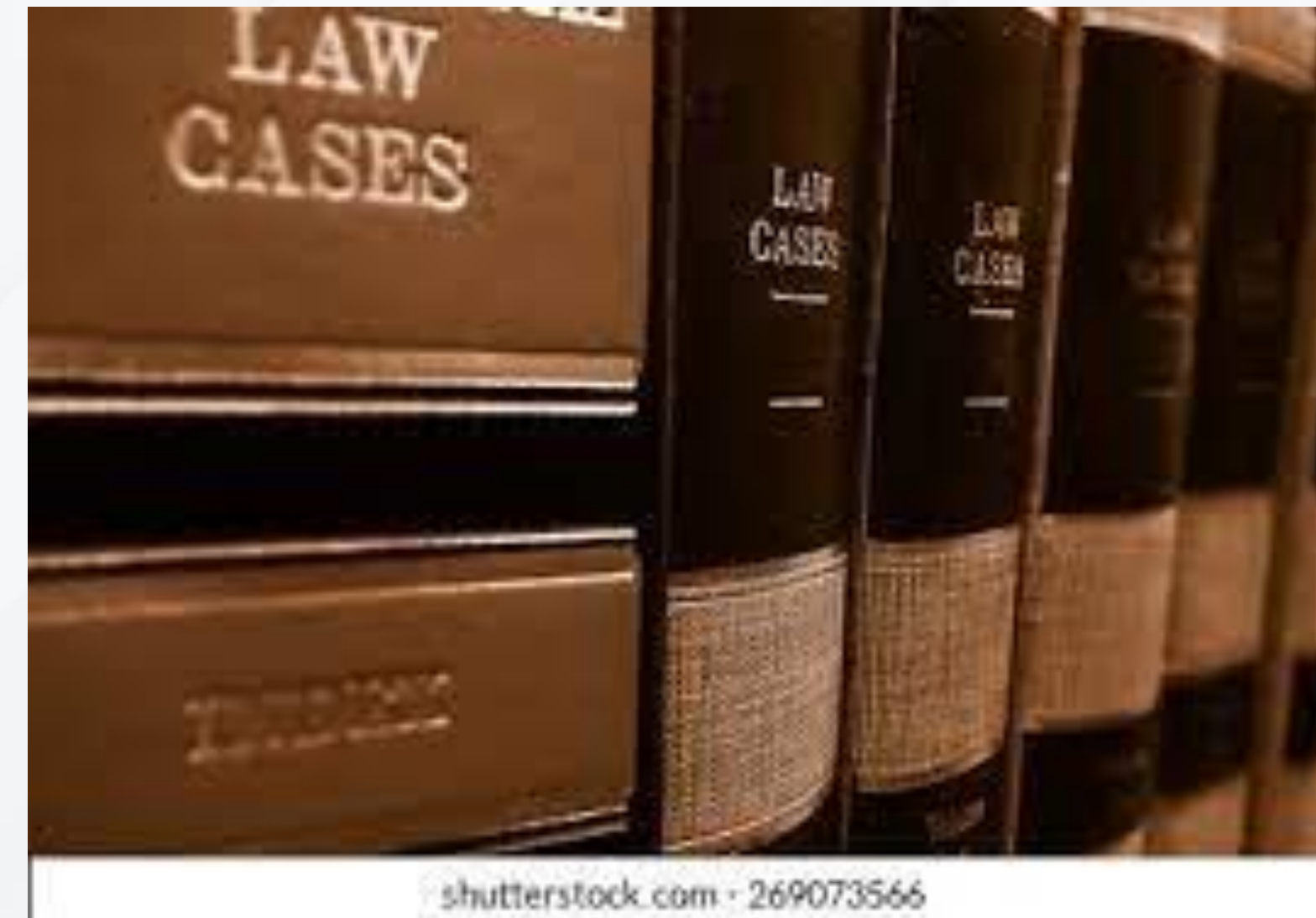
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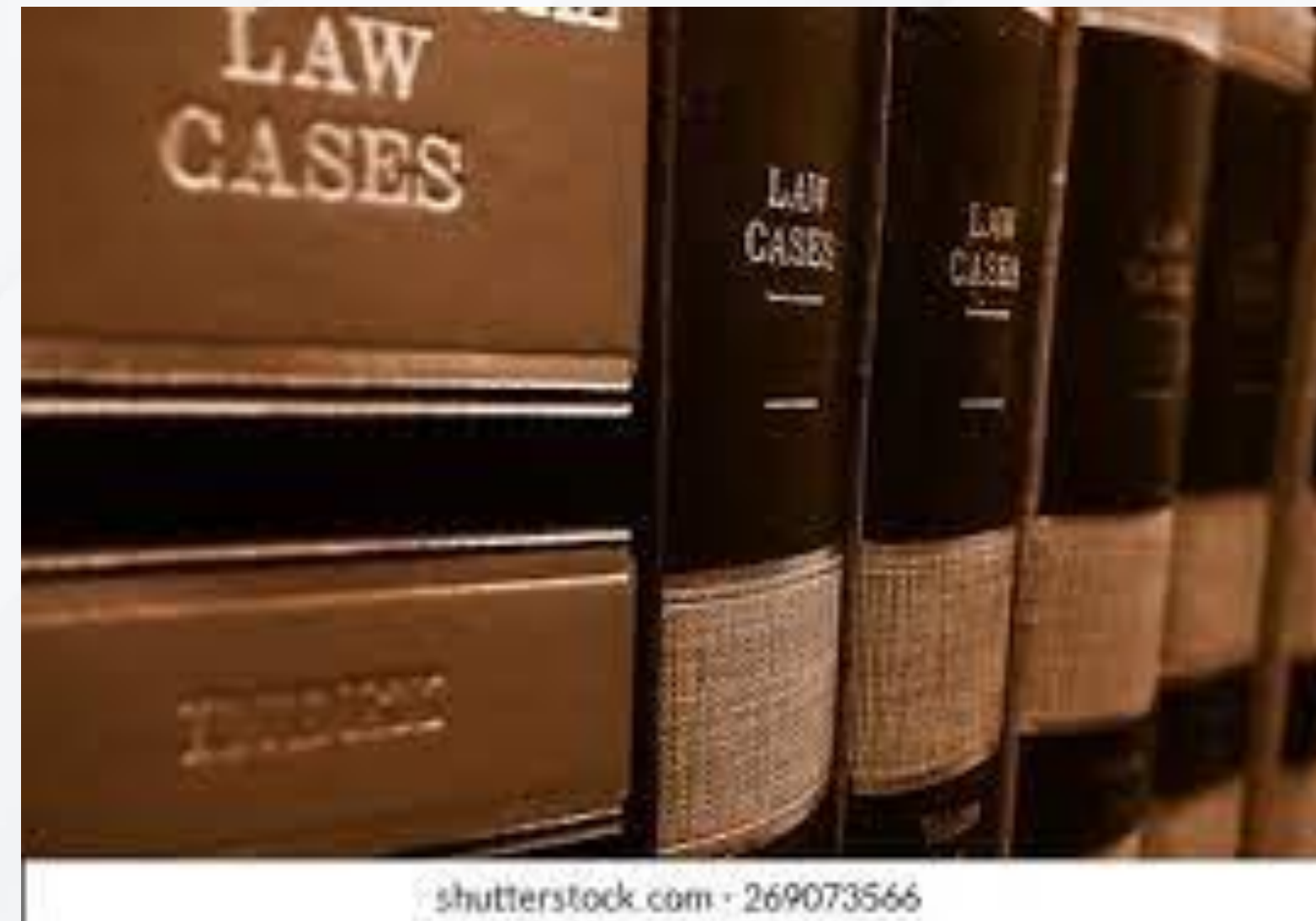
Rowe v Electoral Commissioner & Commonwealth, which decided on amendments to the *Commonwealth Electoral Act 1918* (Cth).

It reduced the time available to enrol to vote after the issue of the writs for a federal election or to transfer enrolment were invalid as infringing the constitutional requirement that members of the Parliament be 'directly chosen by the people'.



Graham v Minister for Immigration and Border Protection [2017] HCA 33

- The Graham Case involved New Zealand citizens whose visas were canceled due to their affiliation with the Rebel Outlaw Motorcycle Gang.
- Legal questions arose about the validity of Migration Act sections 501(3) and 503A(2), impacting judicial power and the right to seek High Court relief.
- The High Court upheld the character test and national interest criteria but invalidated section 503A(2) due to excessive limits on Court powers, leading to visa cancellations; Minister Dutton still deported Graham despite the ruling.



4| Electoral Disputes in Indonesia and Australia

(a) Electoral Dispute in Indonesia

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The Indonesian Constitutional Court also has the authority to decide election disputes, as follows:

- (1) Disputes over the Results of the General Election for the **President and Vice President**;
- (2) Disputes over the Results of the General Election for **Members of the Regional Representative Council**,
- (3) Disputes over the Results of the General Election for **Members of the People's Representative Council and Regional People's Representative Council**; and
- (4) Disputes over the Results of the Election of **Governors, Regents, and Mayors**.



Disputes over the Results of the General Election for the President and Vice President

- The Petitioners in the dispute over the election of the President and Vice President are the **presidential and vice presidential candidate pairs**. While the Respondent is the **General Election Commission**.
- The object of this case is the **General Election Commission Decision** regarding the determination of the vote acquisition results for the Presidential and Vice-Presidential Election which has an impact on:
 - (a) pair of candidates for President and Vice President who are entitled to take part in the second round of Presidential and Vice Presidential elections; or
 - (b) election of presidential and vice presidential candidates.



Article 3 paragraphs (1) and (2) and Article 5 PMK 4/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for the President and Vice President

Disputes over the Results of the General Election for Members of the Regional Representative Council

- As for the Petitioners is **Members of the Regional Representative Council** in general elections. While the Respondent is the **General Election Commission**.
- The object of this case is the **General Election Commission Decision** regarding the determination of the national election results for Members of the Regional Representative Council which affects the election of the Petitioner.



Article 3 paragraphs (1) and (2) and Article 5 PMK 3/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the Regional Representative Council

Disputes over the Results of the General Election for Members of the People's Representative Council and Regional People's Representative Council

- The Respondent is the **General Election Commission**.
- The object of this case is the **General Election Commission Decision** regarding the determination of the vote acquisition results for Members of the People's Representative Council and Regional People's Representative Council which affect the acquisition of seats and/or the election of candidates for Members of the People's Representative Council and Regional People's Representative Council in a constituency.

Petitioners

Pasal 3

- (1) Pemohon sebagaimana dimaksud dalam Pasal 2 ayat (1) huruf a adalah:
- Partai Politik Peserta Pemilu untuk pengisian keanggotaan DPR dan DPRD;
 - Perseorangan calon anggota DPR dan DPRD dalam satu Partai Politik yang sama yang telah memperoleh persetujuan secara tertulis dari ketua umum dan sekretaris jenderal atau sebutan lainnya dari Partai Politik yang bersangkutan dan dinyatakan dalam permohonannya;
 - Partai Politik Lokal peserta Pemilu untuk pengisian keanggotaan DPRA dan DPRK;
 - Perseorangan calon anggota DPRA dan DPRK dalam satu Partai Politik Lokal yang sama yang telah memperoleh persetujuan secara tertulis dari ketua umum dan sekretaris jenderal atau sebutan lainnya dari Partai Politik Lokal yang bersangkutan dan dinyatakan dalam permohonannya.

Article 3 paragraphs (1) and (2) and Article 5 PMK 2/2023 concerning Procedures in Cases of Disputes over the Results of the General Election for Members of the People's Representative Council and Regional People's Representative Council

Disputes over the Results of the Election of Governors, Regents, and Mayors

Petitioners

Pasal 4

- (1) Pemohon dalam perkara perselisihan hasil Pemilihan adalah:
- pasangan calon Gubernur dan Wakil Gubernur;
 - pasangan calon Bupati dan Wakil Bupati;
 - pasangan calon Walikota dan Wakil Walikota; atau
 - pemantau pemilihan dalam hal hanya terdapat satu pasangan calon.
- (2) Pemantau Pemilihan yang bertindak sebagai Pemohon sebagaimana dimaksud pada ayat (1) huruf d adalah:
- Pemantau Pemilihan yang terdaftar dan memperoleh sertifikat akreditasi dari KPU/KIP Provinsi untuk pemilihan Gubernur dan Wakil Gubernur;
 - Pemantau Pemilihan yang terdaftar dan memperoleh sertifikat akreditasi dari KPU/KIP Kabupaten untuk pemilihan Bupati dan Wakil Bupati;
 - Pemantau Pemilihan yang terdaftar dan memperoleh sertifikat akreditasi dari KPU/KIP Kota untuk pemilihan Walikota dan Wakil Walikota.

Respondent

- (3) Termohon sebagaimana dimaksud dalam Pasal 3 ayat (1) huruf b adalah KPU/KIP Provinsi atau KPU/KIP Kabupaten/Kota.

The object of this case is the respondent's decision regarding the determination of significant vote acquisition results and can influence the determination of the elected candidate.

Dispute over the 2019 Presidential and Vice Presidential Election Results

INTEGRITY Law Firm became the attorney for the Petitioner in the Dispute over the 2019 Presidential and Vice Presidential Election Results at the Constitutional Court, representing the Presidential Candidate Pair Prabowo Subianto and Vice Presidential Candidate Sandiaga Salahudin Uno as **Constitutional Court Decision Number 01/ PHPU-PRESS/XVII/2019**.



Dispute over the election results for the Governor and Deputy Governor of the Province of South Kalimantan in 2020 (I)

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- INTEGRITY Law Firm became the attorney for the Petitioner in Dispute over the election results for **the Governor and Deputy Governor of the Province of South Kalimantan in 2020**, by representing the pair of candidates for Governor and Deputy Governor of South Kalimantan, namely Denny Indrayana and Difriadi.
- The Constitutional Court ordered a re-voting for the 2020 Election for the Governor and Deputy Governor of South Kalimantan Province in all Polling Places in several sub-districts because the implementation of the election process does not comply with statutory regulations, in particular the implementation which must be guided by the principles of direct, public, free, confidential and honest, fair. **[Constitutional Decision Number 124/PHP.GUB-XIX/2021]**

Kompas.com / News / Nasional

Denny Indrayana dan Difriadi Ajukan Sengketa Hasil PSU Pilgub Kalimantan Selatan

BERITA

Kabulkan Permohonan Denny-Difriadi, MK Perintahkan PSU Pilgub Kalsel

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Beranda > News

Denny Indrayana Beberkan Dugaan Kecurangan Pilgub Kalsel di Sidang MK

Dispute over the election results for the Governor and Deputy Governor of the Province of South Kalimantan in 2020 (II)

- The candidate pair for Governor and Deputy Governor of South Kalimantan, namely Denny Indrayana and Difriadi, for the second time submitted a dispute over the election results for the Governor and Deputy Governor of the Province of South Kalimantan in 2020.
- Based on **Constitutional Decision Number 146/PHP.GUB-XIX/2021**, the application submitted cannot be accepted because Denny Indrayana and Difriadi as candidates for Governor and Deputy Governor of South Kalimantan do not have legal standing.



(b) Electoral Dispute in Australia

Disputed elections are outlined in section 47 of the Constitution:

47. Disputed elections.

Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

‘Until the Parliament otherwise provides’ is found throughout the Constitution and means that until the Parliament makes legislation for how the process is to be conducted the procedure is set out in the Constitution.

The Court of Disputed Returns (1/2)

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The Parliament did otherwise provide by delegating the High Court as the Court of Disputed Returns. **Section 354 of the Commonwealth Electoral Act 1918** defines the Court of Disputed Returns:

The Court of Disputed Returns

The High Court shall be the Court of Disputed Returns, and shall have jurisdiction either to try the petition or to refer it for trial to the Federal Court of Australia (the Federal Court)....

The Electoral Act gives the High Court the authority to act as the Court of Disputed Returns if a petition is brought to it by electors or unsuccessful candidates. Cases can be heard by just one judge and they can be referred to the federal court.



The Court of Disputed Returns (2/2)

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The Court of Disputed Returns in Australia is a special jurisdiction of the High Court of Australia that hears challenges regarding the validity of federal elections. The jurisdiction is twofold:

- (1) on a petition to the Court by **an individual** with a relevant interest or by the **Australian Electoral Commission**, or
- (2) on **a reference by either house of the Commonwealth Parliament**.

This jurisdiction was initially established by Part XVI of the Commonwealth Electoral Act 1902[1] and is now contained in Part XXII of the Commonwealth Electoral Act 1918.

Challenges regarding the validity of State elections are heard by the Supreme Court of that State as the State's Court of Disputed Returns.



[https://en.wikipedia.org/wiki/Court_of_Disputed_Returns_\(Australia\)#:~:text=The%20Court%20of%20Disputed%20Returns,the%20validity%20of%20federal%20elections.](https://en.wikipedia.org/wiki/Court_of_Disputed_Returns_(Australia)#:~:text=The%20Court%20of%20Disputed%20Returns,the%20validity%20of%20federal%20elections.)

1. Petition by individual or AEC

- Election result challenges involve petitions by individuals or the Australian Electoral Commission (AEC) to the High Court within **40 days**.
- The High Court reviews specific election issues, involving "**illegal practices**" like bribery, within its jurisdiction; constitutional interpretations are decided by the Full Court.
- If upheld, the Court can **alter election outcomes, declare individuals unelected, validate candidates, or require new elections**; costs are similar to standard High Court proceedings.



2. Parliamentary reference

- Parliament can refer **questions about qualifications or vacancies** of Senators or Representatives to the Court.
- Referral is made through the Speaker or Senate President; **no time limit** applies.
- Court's powers include **declaring qualifications, capabilities, and vacancies**.
- References seek Court's guidance on filling arising vacancies; the full Court can order recounts supervised by a Court member.
- Unlike election petitions, there's no automatic right to be heard; individuals need Court's permission; limited instances of leave granted.



1998 Election

- In the 1998 Senate election challenge, **Henry Sue and Terry Sharples contested Heather Hill's eligibility** due to her dual citizenship with the UK, arguing it violated section 44(i) of the Constitution.
- The case Sue v Hill established that the UK was a foreign power, as it had no significant influence over Australia, making **Hill ineligible as a dual citizen to be a Senator**.
- Another challenge by Mr. Ditchburn questioned the above-the-line voting system's alignment with section 7 of the Constitution, but it was dismissed by Hayne J, as were similar petitions by others in different elections..



2013 Senate Election for Western Australia

- The 2013 Senate election in Western Australia was closely **contested for the 5th and 6th seats**, hinging on the 50th exclusion point.
- After original and fresh scrutiny, Zhenya Wang and Louise Pratt were initially elected, but a re-count revealed misplaced ballots, changing the outcome in favor of Wayne Dropulich and Scott Ludlam.
- Due to the lost ballots, the Australian Electoral Commission petitioned the Court, **which ruled the election void, leading to a special election** on April 5, 2014.



[https://en.wikipedia.org/wiki/Court_of_Disputed_Returns_\(Australia\)#:~:text=The%20Court%20of%20Disputed%20Returns,the%20validity%20of%20federal%20elections.](https://en.wikipedia.org/wiki/Court_of_Disputed_Returns_(Australia)#:~:text=The%20Court%20of%20Disputed%20Returns,the%20validity%20of%20federal%20elections.)

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HARI KE 1 - 28 SEPTEMBER 2021
Pukul. 10.00 - 15.00 WIB

SESI I
Ganjar Laksamana, S.H., M.H.
Asst. Hukum Pidana Univ. Indonesia

SESI II
Dr. Yamus Hussein, S.H., LL.M.
Kepala PPAK Tahun 2002-2011
Kelas STIR - Jakarta

HARI KE 2 - 29 SEPTEMBER 2021
Pukul. 10.00 - 15.00 WIB

SESI III
Prof. Denny Indrayana, S.H., LL.M., Ph.D.
Senior Partner INTEGRITY Law Firm

SESI IV
Adnan Pandu Praja, S.H., Sp.N., LL.M.
Wakil Ketua KPK (2011-2015)
Associate Vice Integrity

HARI KE 3 - 30 SEPTEMBER 2021
Pukul. 10.00 - 15.00 WIB

SESI V
Febri Dianepah, S.H.
Managing Partner Vice Integrity Law Office

SESI VI
Irene Putri, S.H., M.Hum.
Kepala Subdirektorat Tindakan Hukum Lain & Pelayanan Hukum pada Direktorat Perimbangan Hukum JAMDATON KEJAGUNG

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Pukul 10.00 WIB - 15.00 WIB

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2. Memahami Tindakan Pidana Pemerasan yang terkait korporasi

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2. Studi Kasus Implementasi Business Judgment Rule

SESI IV

1. Memahami Sistem Antikorupsi di Korporasi
2. Memahami Penegakan dan Penegakan melalui Sistem Manajemen Anti-Pengawasan (SMAP)
3. Memahami Penegakan Internal Korporasi melalui Sistem Manajemen Anti-Pengawasan (SMAP)

SESI V

1. Pengantar: gambaran, sejarah dan bentuk pemberian kepada publik official
2. Strategi menghadapi public official yang meminta uang
3. Studi kasus

SESI VI

1. Tinjauan Kasus Korupsi di BUMN dan Anak Perusahaan BUMN
2. Strategi Pencegahan Korupsi di BUMN dan Anak Perusahaan BUMN
3. Studi kasus

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PHK & ISU KETENAGAKERJAAN DI TENGAH PANDEMI COVID-19: Antisipasi & Solusi Hukumnya

NARASUMBER

Prof. Denny Indrayana, S.H., LL.M., Ph.D.
Karya Besar KPA & Wakil Ketua INTEGRITY

Dr. Indah Anggoro Putri, M.Bak
Pakar Hukum Ketenagakerjaan & Hukum Perburuh

Faisal H. Bani, S.E., M.A.
Manajer Hukum

KOORDINATOR
Karni, 17 Agustus 2021
Live on Zoom, 13.00 - 16.00 WIB

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URGENSI AMANDEMEN KONSTITUSI DI TENGAH PANDEMI: UNTUK KEPENTINGAN SIAPA?

KEYNOTE SPEAKER **NARASUMBER**

Moh. Mahfud MD
Mantan Ketua Mahkamah Agung RI

Yudi Latief
Ketua FPI Indonesia

Arslan Sami
Wakil Ketua DPR RI

KOORDINATOR
M. Ruzi Saifan
Senior Partner INTEGRITY Law Firm

Wahyuni Ruzan
Mahkamah STIR - Jakarta

Denny Indrayana
Senior Partner INTEGRITY Law Firm

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Narasumber: Denny Indrayana 081320447127

INTEGRITY CONSTITUTIONAL DISCUSSION #3
PRO-KONTRA TIGA PERIODE MASA JABATAN PRESIDEN

KEYNOTE SPEAKER **NARASUMBER**

Denny Indrayana
Senior Partner INTEGRITY Law Firm

Moh. Saifan
Ketua Mahkamah Agung RI

Rafly Harun
Pakar Hukum Tata Negara

KOORDINATOR
Rizki Nur Hafidha
Senior Partner INTEGRITY Law Firm

Yuli Anggoro
Senior Partner INTEGRITY Law Firm

Tan Liliyany
Pakar Hukum Tata Negara

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