



Key-note Speech

5th Congress of the World Conference on Constitutional Justice

Session A

“SOURCE AND JURISDICTION”

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Bismillahirrahmanirrahim,

Assalamu’alaikum Wa Rahmatullahi Wa Barakatuh,

Good afternoon and greetings to us all,

- The honorable President of the Constitutional Court or other equivalent institutions;
- Distinguished guests and participants of the 5th WCCJ

First of all, allow me to welcome you to the beautiful island of Bali, the island of the Gods. The island has become a tourist destination for visitors from various countries. Hopefully, by conducting the 5th WCCJ Congress on the island of the Gods, useful outcomes could be provided to ensure peace and justice for all nations in the world.

In this congress, we can share and exchange experiences, related to the agreed theme, namely peace and justice. Specifically, today's sub-theme will discuss legal resources and jurisdiction which are an important part of realizing justice and peace. Therefore, this forum is important for all of us to share information about the validity of the constitution in our respective

countries, as well as the role and jurisdiction of the judiciary, in achieving peace and justice for all nations in the world.

Honorable ladies and gentlemen,

For Indonesians, peace and justice are the spirit or heart in carrying out the life of the nation and state. Therefore, both implicitly and explicitly, the Indonesian constitution can be said to be imbued with the principles of peace and justice. This is clearly illustrated in the first sentence of the first paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), which explicitly states:

“Whereas Independence is the inalienable right of all nations; therefore, colonialism must be abolished in the world as it is not in conformity with humanity and justice.”

Based on the opening sentence of the 1945 Constitution of the Republic of Indonesia, it is clear that the Indonesian constitution expresses its disapproval of colonialism because independence is the right of every nation. This disapproval of colonialism means that the Indonesian constitution upholds the principle of peace. It is even explicitly stated that, if colonialism occurs then it is contrary to the principles of humanity and justice. Therefore, the Indonesian constitution as the fundamental law of the state can be concluded, inspired, or based on the principles of peace and justice.

The word '*merdeka*' or 'free' in English which has the meaning of "peace" is even repeated seven times in the four-paragraph Preamble of the 1945 Constitution. This portrays a strong signal that peace is a principle that is firmly held in the Indonesian constitution. In fact, the fourth paragraph of the Preamble to the 1945 Constitution clearly states that the purpose of the establishment of the Government of the State of Indonesia among others is, "to participate toward the establishment of a world order based on freedom, perpetual peace and social." Thus, the foundation of the fundamental legal resource of the Indonesian state has provided a strong legal basis for the state to realize peace and justice, not only for Indonesian citizens, but also to actively participate in contributing to world peace, for the realization of independence, peace, and justice.

More concretely, the formulation for realizing peace and justice is to be imposed on and becomes the responsibility of the President and the legislature to implement it. Therefore, Article 11 of the 1945 Constitution states, "The President with the approval of the House of Representatives declares war, peace, and treaties with other countries". The formulation of this provision is general and also applies in virtually all countries. This is because the President is the head of state who has the highest authority to make strategic decisions for the country while protecting the nation and its people. However, the Indonesian national doctrine, related to efforts in creating peace, has become a substantial principle. This is observable in every consideration of the formation of law. The principles or considerations as written in the Preamble to the 1945 Constitution, become the basis for consideration for the formation of law.

For example, the establishment of Law No. 24 of 2000 which regulates International Agreements. In the preamble, the considerations are clearly written on the principle of peace as contained in the Preamble to the 1945 Constitution, in accordance with the aforementioned explanation. Likewise, the formation of other laws and regulations in Indonesia is in line with the said Preamble. The principles of peace and justice become the spirit in every formation of legislation. Thus, if there is a formation of a law that is not in line with the Indonesian constitution, then it can be annulled in the future by the Constitutional Court, bearing in mind that the Constitutional Court of the Republic of Indonesia has the authority to examine the provisions of the law against the 1945 Constitution.

Distinguished guests,

As we know and understand, in the concept of a state of law, there is nothing in the exercise of the authority of state institutions, or a policy or action of state officials, which is not based on a statutory provision. Therefore, following the authority of the Constitutional Court granted by the 1945 Constitution, namely to maintain the constitutionality of the state, the Constitutional Court must oversee so that the values contained in the constitution are achieved and implemented in the life of the nation and state. In this context, it is to maintain the provisions of the laws and regulations to remain in line with the constitution.

Therefore, the authority to review the law (judicial review) is one of the main authorities of the Constitutional Court. With this authority, the Constitutional Court can contribute and supervise, so that every policy taken by the executive and legislature remains in line with the constitution. Because if the policies taken by the executive and legislative bodies are not in line with the constitution, then this is where the role of the Constitutional Court lies to straighten it out.

Be that as it may, the Constitutional Court cannot immediately carry out its function to carry out a checks and balances mechanism on executive and legislative policies that are not in line with the constitution. Because as a judicial institution, the role of the Constitutional Court is passive. This means that the Constitutional Court can only start to work when there is an application submitted by the parties. In this context, the role of civil society becomes an important part, to realize the reinforcement of the constitution as the highest fundamental norm in the state.

In this regard, there are two cases in the Constitutional Court related to the theme of this discussion, namely the review of the law on "The Ratification of the Charter of the Association of Southeast Asian Nations" which was ratified through Law No. 38 of 2008, and the review of the Law No. 24 of 2000 on International Treaties.

In the case of judicial review of the law regarding "The Ratification of the Charter of the Association of Southeast Asian Nations" ratified through Law No. 38 of 2008, the application was submitted by 11 (eleven) Petitioners consisting of 8 (eight) applicants coming from civil society organizations; and 3 (three) other Petitioners who were individual citizens. In the application, there are at least two main issues examined by the Petitioner. The first is related to 1) whether the Constitutional Court has the authority to examine a law product whose material is the result of ratification as regulated in the preparation of international agreements; 2) if the Constitutional Court has the authority to examine law in the context of the ratification law, then the question is whether the Constitutional Court has further authority to examine materially the product of the international agreement.

Although in this case, the Constitutional Court rejected the petition of the Petitioners, the most important thing is that the Constitutional Court declared itself to have the authority to conduct a judicial review of a ratification law. Because explicitly, the Constitutional Court's authority in conducting a "judicial review" is to examine a law against the 1945 Constitution. This means that it is not impossible that one day the Constitutional Court will take action or steps to annul a law resulting from ratification, on the grounds that, both formally and materially, the law is contrary to the 1945 Constitution.

In the case of judicial review of Law No. 24 of 2000 concerning International Treaties, another application was submitted by 9 (nine) civil society organizations and 5 (five) individual citizens who were salt farmers. In the petition, there are several legal issues raised by the Petitioners, namely: **1)** Article 2 specifically regarding the phrase, "with the approval of the House of Representatives" which was altered to "consulting with the House of Representatives"; **2)** Article 9 paragraph (2) specifically relates to the phrase, "ratification of international agreements by the House of Representatives", which according to the Petitioner should have used the phrase, "approval of international treaties by the House of Representatives"; **3)** Article 10 is specifically related to, "international agreements that can be ratified by law have been limited as regulated in Article 10," even though international agreements that have an impact on people's lives are not limited to the provisions as regulated in Article 10. The provisions in question regulate related to a) problems of politics, peace, defence, and state security; b) changes in the territory or determination of the boundaries of the territory of the Republic of Indonesia; c) sovereignty or sovereign rights of the state; d) Human rights and the environment; e) establishment of new legal rules; f) foreign loans and/or grants.

After the Constitutional Court examined the petition, listened to information from the Government and the House of Representatives as the legislators, and listened to the expert testimony submitted by the Petitioner as well as the government and House of Representatives, the Court granted the petition, particularly concerning Article 10 by giving the following considerations.

"Developments that occur in international relations are increasingly intense; making fellow members of the international community increasingly dependent on each other in meeting

their needs, within the limits of reasonable reasoning, this will greatly affect Indonesia's national interests. In such interdependence, it is very possible that things that in the past did not have much impact on Indonesia's national interests and needs, will in the future have serious impacts. Therefore, by carefully considering the sufficient flexibility for the President to be able to effectively carry out his government functions, the formulation of norms contained in Article 10 will not be able to answer the needs, and the inability to answer such needs is not merely a technical-administrative issue but is directly related to fulfillment of the constitutional mandate. Accordingly, the Constitutional Court believes that the Petitioner's argument, particularly related to Article 10 is grounded according to law”.

Distinguished guests,

Justice and peace in the world or a country can only be realized if the fulfilment of the constitutional rights of citizens or human rights can be carried out optimally. Additionally, appreciation and mutual respect for the sovereignty of a country are carried out in a balanced manner.

Therefore, in addition to the examples of the two cases above, the authority of the Constitutional Court in protecting the constitutional rights of citizens becomes an important part to be fulfilled. Because without the fulfilment and protection of the constitutional rights of citizens, it will not be possible to realize a just life, and without a just life for every citizen, it is impossible for peace to be realized, both for the survival of the life of a country and for the peaceful life of all nations in the world.

Finally, to conclude this speech, I would like to thank you for the opportunity and honor that has been given to the Constitutional Court of the Republic of Indonesia to host the 5th WCCJ Congress in this honorable forum. Hopefully, the exceptional relations and cooperation that have been established between countries, fellow Constitutional Courts, and equivalent institutions around the world can continue to thrive and expand in the future.

Billahi Taufik wal Hidayah.

Wassalamu'alaikum Warahmatullahi Wabarakatuh.

May God bless us all.