

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 6/PUU-XVII/2019**

**REGARDING**

**Procurement of State Civil Apparatus**

**Petitioner** : Ahmad Ihsan, A. MD., KEP., S.H.

**Type of Lawsuit** : Judicial review of Law Number 5 of 2014 concerning State Civil Apparatus (Law 5/2014) of the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution).

**Case of Lawsuit** : Article 58 paragraph (1) of Law 5/2014 is contrary to Article 28C paragraph (1) and paragraph (2), Article 28D paragraph (1), paragraph (2), and paragraph (3), Article 28H paragraph (1), paragraph (2), paragraph (3), and paragraph (4), and Article 28I paragraph (2) and paragraph (4) of the 1945 Constitution.

**Injunction** : Rejecting the Petitioner’s Petition in its entirety.

**Date of Verdict** : Tuesday, March 26, 2019.

**Verdict Summary** :

The Petitioner as an individual Indonesian citizen who works as an active nurse, works in Government agencies feels disadvantaged by the provisions in Article 58 paragraph (1) of Law 5/2014, so that some of the provisions derived from it become discriminatory for the nursing profession and impair the Petitioner's constitutional rights. According to the Petitioner the provision of Article 58 paragraph (1) of Law 5/2014 has produced other laws and regulations, including Government Regulation of the Republic of Indonesia Number 11 of 2017 concerning Management of Civil Servants and subsequently. The Government Regulation on Management of Civil Servants has given birth to a Decree of the President of the Republic of Indonesia Number 25 of 2018 concerning the Position of Doctors, Dentists and Midwives as Specific Positions with the Highest Age Limit of Applicants 40 (forty) Years which is very detrimental to Applicants who work as active nurses.

Related to the authority of the Constitutional Court, because the Petitioner's petition is a petition to review the constitutionality of the norms of the law, in this case the State Civil Apparatus Law against the 1945 Constitution, the Court has the authority to adjudicate the said petition.

Related to the legal standing of the Petitioner, the Petitioner has specifically described that with the enactment of the provisions of Article 58 paragraph (1) of Law 5/2014 which has produced other laws and regulations derived from it detrimental to the Petitioner who works as an active nurse. Therefore, the Court has the opinion that the Petitioner has specifically described the constitutional impairment that has occurred or has the potential to occur with the enactment of the norms of the law that was filed the petition. Thus, the Petitioner has the legal standing to act as the Petitioner in the said petition.

Whereas because the said petition has been clear, based on Article 54 of the Constitutional Court Law, the Court has the opinion that there is no urgency or need to hear the statements of parties as referred to in such Article 54 of the Constitutional Court Law.

Against the argument of the Petitioner's petition, that Article 58 paragraph (1) of Law 5/2014 has the potential to be in conflict with the 1945 Constitution and impair the constitutional rights of Indonesian citizens who have the same rights in law and government. In addition, according to the Petitioner, the matter of procurement of State Civil Apparatus is only the subjectivity of the Government in determining the decision on procurement of State Civil Apparatus, so that the said article is contradictory to Article 28D paragraph (1) of the 1945 Constitution which regulates the right to recognition, guarantee, protection and fair legal certainty, as well as equal treatment. before the law. According to the Court, the procurement of State Civil Apparatus carried out by the Government must go through an objective assessment based on competencies, qualifications, needs of Government agencies, and other requirements needed in an office. The procurement of State Civil Apparatus is held nationally by the Government based on the planning of the need for the number of State Civil Apparatus carried out through the "national selection committee for procurement of State Civil Apparatus" by involving elements from the ministries that organize government affairs in the field of the state apparatus and the State Personnel Agency.

In an effort to fulfill the procurement of State Civil Apparatus which is in accordance with needs, a strong legal basis is needed for the Government to fill those needs, both the needs of administrative positions and/or functional positions in one government agency. In such a position, the existence of the norms of Article 58 paragraph (1) of Law 5/2014 is to provide a legal basis in meeting the needs of such State Civil Apparatus. Therefore, in the procurement of State Civil Apparatus, the Government must provide equal space and opportunity for citizens to compete in the recruitment of State Civil Apparatus. That is, every citizen has the same opportunity to become an State Civil Apparatus, as long as it meets the requirements determined by laws and regulations. The procurement of State Civil Apparatus held by the government based on the principles of good governance. Such an equal opportunity is in accordance with the provisions of Article 27 paragraph (1) of the 1945 Constitution which states that all citizens have the same position in the law and government, as well as must uphold the law and government with no exception and Article 27 paragraph (2) of the 1945 Constitution, which is every citizen has the right to work and a decent living for humanity. Therefore, in the process of recruitment of the State Civil Apparatus, the Government must consider the terms and criteria determined by the laws and regulations, among others, the number and type of positions, implementation time, the number of government agencies that need and distribution. Juridically, the possibility to consider in filling the needs of administrative positions and/or functional positions is based on the provisions of Article 58 paragraph (1) of Law 5/2014.

Against the Petitioners' argument declaring that the provisions of Article 58 paragraph (1) of Law 5/2014 contradicts Article 26 paragraph (3) of Law 36/2009, the Court considers that the norm in Article 58 paragraph (1) of Law 5/2014 which declares, "Procurement of Civil Servants constitutes an activity to fulfill the needs of administrative positions and/or functional positions in a government agency", can be positioned as general norms if related to Article 26 paragraph (3) of Law 36/2009. By positioning Article 58 paragraph (1) of Law 5/2014 as a general norm, the existence of Article 26 paragraph (3) of Law 36/2009 becomes a legal instrument to determine specificity in regulating the filling of State Civil Apparatus personnel in the field of health or health services. Specificity in filling State Civil Apparatus for health workers or health services, where their needs can be determined by noting the provisions of Article 26 paragraph (3) of Law 36/2009, namely: namely: a) the type of health services needed by the public, b) the number of health service facilities, and c) the number of health workers in accordance with the existing health service workload. Thus it is not appropriate to say that the provisions of Article 58 paragraph (1) of Law 5/2014 contradicts Article 26 paragraph (3) of Law 36/2009. Even the existence of Article 26 paragraph (3) of Law 36/2009 is a specialty that can be considered by the government in filling the State Civil Apparatus needs for health workers or health services. Moreover, the existence of the two laws actually complement each other and vice versa if the petition of the Petitioner is granted and the norm of Article 58 paragraph (1) of Law 5/2014 is interpreted "to fill the required number of personnel in accordance with the service workload and service period", then the matter will eliminate the purpose of the establishment of these provisions as a guide in the procurement of State Civil Apparatus whose purpose is to meet the needs of administrative positions and/or functional positions in a government agency. Moreover, it cannot be justified to review the constitutionality of a norm of law with other norms of law, unless there is a constitutional problem between the two laws in question which makes one or both norms of the law are unconstitutional.

Regarding the argument of the Petitioner declaring that the provisions of Article 58 paragraph (1) of Law 5/2014 have produced other laws and regulations, such as Presidential Decree 25/2018, so that it is very detrimental to the Petitioner who work as active nurses because he feels that his constitutional rights are not given, in which is distinguished from other professions, against the said Petitioners' argument, the Court considers that the further implementation of the law, in this case Law 5/2014, to the laws and regulations derived from it is a necessity in the laws and regulations system. Regarding the Petitioners' argument, Article 58 paragraph (1) of Law 5/2014 has produced the laws and regulations derived from it, such as Presidential Decree 25/2018, as argued by the Petitioner, has impaired the Petitioner's constitutional rights, in fact such argument is not appropriate because of the Presidential Decree 25/2018 was formed not constituting an order of Article 58 paragraph (1) of Law 5/2014 because the Preamble of "Bearing in mind", point 2 of Presidential Decree 25/2018 only mentions Law 5/2014 in general. In fact, Government Regulation Number 11 of 2017 concerning Management of Civil Servants (Government Regulation 11/2017) which was argued by the Petitioner as the basis for establishing Presidential Decree 25/2018 does not include Article 58 paragraph (1) of Law 5/2014 as a provision that is the basis or reference to the establishment of Government Regulation 11/2017. This means that there is not enough reason to justify the Petitioner's argument that Article 58 paragraph (1) of Law 5/2014 is a reference to the establishment of the Government Regulation in question which then becomes a reference to Presidential Decree 25/2018 to declare that Article 58 paragraph (1) is contrary to the 1945 Constitution. Even if Presidential Decree 25/2018 and Government Regulation 11/2017 which form the basis of the Petitioner's constitutional impairment arguments are contrary to the 1945 Constitution, quod non, in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution, such matter is not the authority of the Court to judge it. In addition, such problems are more the enactment or implementation of norms of the said Law and is not an issue of constitutionality of norms.

Based on the entire description of the above considerations, according to the Court, the Petitioners' petition has no legal grounds in its entirety.

Thus, the Court handed down a verdict, in which the injunction rejected the Petitioners' Petition in its entirety.

This document is translated from Indonesian into English by me, **Drs. EMIL SUSANTO**,

the Authorized and Sworn Translator in Jakarta - Indonesia

JAKARTA, June 24, 2020