



THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA
SUMMARY OF DECISION
ON CASES NUMBER 32/PUU-XVIII/2020

Concerning

Legal Entity Arrangement of Joint Business Based on the Law

- Petitioner** : **Hj. Nurhasanah, et al.**
- Case** : Testing Law Number 40 of 2014 concerning Insurance (Law 40/2014) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Case of Lawsuit** : Article 6 paragraph (3) of Law 40/2014 against the 1945 Constitution.
- Injunction** : 1. Granted requests the Petitioners in part;
- 1.1 Declare phrase “**...regulated in Government Regulation**” in Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), contradicts to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force;
- 1.2 Declare phrase “**...regulated in Government Regulation**” in Article 6 paragraph (3) of Law Number 40 of 2014 concerning

Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), changed so that it becomes regulated by Law, so that in full Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), becomes "Further provisions regarding joint venture legal entities as referred to in paragraph (2) shall be regulated by Law".

1.3 Order the House of Representative of the Republic of Indonesia and the President to finalize the Law on Joint Business Insurance within a maximum of two years after this decision is pronounced.

1.4 Ordering the publication of this Decision in the State Gazette Republic of Indonesia as it should be.

Date of Decision : Thursday, January 14, 2021

Decision Overview :

Whereas the Petitioners are Indonesian citizens who are also holders of the Bumiputera 1912 Joint Life Insurance (AJB) policy and members of the AJB Bumiputera 1912 Member Representative Body (BPA).

Whereas the Petitioners' petition is an application to examine the constitutionality of the norms of the Law, *in casu* Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance, against the 1945 Constitution, so that the Court has the authority to hear the a quo petition.

Whereas the Petitioners as individual Indonesian citizens who are policyholders of AJB Bumiputera 1912 and as members of BPA AJB Bumiputera 1912 feel disadvantaged by the enactment of the provisions of Article 6 paragraph (3) of Law 40/2014 because their constitutional rights to recognition, guarantees, protection and fair legal certainty as well as an equal treatment before the law as guaranteed in Article 28D paragraph (1) of the 1945 Constitution are hindered. Based on the description of the legal standing of the Petitioners, according to the Court, factually the Petitioners have been able to explain their constitutional rights and the said rights can be considered impaired and the presumption of the loss referred to according to reasonable reasoning can be ascertained to occur if the Petitioners continue to run the insurance business of AJB Bumiputera 1912 which is based on the norms requested for testing. In addition to the description of these considerations, according to the Court, the Petitioners have also been able to explain the existence of a causal relationship (causality) between the loss of their constitutional rights which are considered to be impaired with the application of the phrase "regulated in Government Regulation" in Article 6 paragraph (3) of Law 40/2014 which requested testing. Therefore, the Court believes that the Petitioners have legal standing to act as Petitioners in the *a quo* petition.

Whereas the Petitioners argue that Article 6 paragraph (3) of Law 40/2014 contradicts the Article 28D paragraph (1) of the 1945 Constitution because it is not following the Decision of the Constitutional Court Number 32/PUU-XI/2013 where legal considerations and orders instruct the Legislator to make a norm that Joint Business Insurance is further regulated by law, and the Court has given two years and six months to the Legislators to enact a Law on Joint Business Insurance. However, it turns out that the Amendment to the Law on Insurance, *in casu* Law 40/2014 does not accommodate the Institutional Court Decision Number 32/PUUXI/2013,

which states that Joint Venture Insurance is regulated by law. The legislators degrade it to regulate it with government regulations. Therefore, according to the Petitioners, the provisions of Article 6 paragraph (3) of Law 40/2014 are contrary to Article 28D paragraph (1) of the 1945 Constitution. About the arguments of the Petitioners, the Court considers the following:

That the joint effort as referred to in Article 33 paragraph (1) of the 1945 Constitution is a firm mandate for the state to form an economy based on the principle of kinship that works together to improve the economy to promote the general welfare, not just individuals as a manifestation of the objectives of the Preamble to the 1945 Constitution.

That the history of insurance in Indonesia for the first time has established a Joint Insurance Company (mutual insurance) known as AJB Bumi Putera 1912 which has survived to this day. That is, Article 33 paragraph (1) of the 1945 Constitution has embodied that a joint venture can be in the form of a cooperative or a joint venture in the form of a Joint Venture Insurance company which is formed to increase the status of the Indonesian nation. And according to the historical facts regarding Joint Business Insurance (mutual insurance) that existed before Indonesia's independence, the legislators in the Insurance Law prior to the amendment had strengthened the Joint Business Insurance (mutual insurance), namely in Article 7 paragraph (3) of Law Number 2 of 1992 concerning Insurance Business. Therefore, the existence of Joint Business Insurance (mutual insurance) is recognized and strengthened by the legislators to develop and compete with both the insurance business in the form of a company and the insurance business in the form of a cooperative, and the Court in the Decision of the Constitutional Court Number 32/PUU-XI/2013 further confirmed the strengthening of Joint Business Insurance (mutual insurance) by ordering the legislators within two years and six months after the decision is pronounced to establish and legislate a Law on Joint Business

Insurance other than the law on insurance business. Therefore, based on the description of the considerations above, Joint Venture Insurance is a business that must be established by law as mandated by Article 33 paragraph (1) of the 1945 Constitution.

Whereas the decision of the Constitutional Court which stated that the norm of the law was unconstitutional and then followed by an order that ordered the legislators within a certain period to form a law as stated in the Decision of the Constitutional Court Number 32/PUU-XI/2013, then the two orders, in addition to containing a constitutive or declaratory injunction, also contain a *condemnatoir*. That is, the decision of the Constitutional Court also contains an order to take any action, namely to form a new/separate law within two and a half years since the decision was pronounced. In the context of Constitutional Court Decisions, decisions that have legal force are still reflected in Article 24C paragraph (1) of the 1945 Constitution which is reaffirmed in Article 10 paragraph (1) of the Constitutional Court Law. So that the decision of the Constitutional Court is a decision that permanent legal force and binding on all parties since the decision was pronounced, especially in this case the legislators. According to the Court, the act of disobeying the decision was 'disobedience to the decision of the Constitutional Court which is also a form of defiance of the constitution'. This has resulted in legal uncertainty that has been issued by the Constitutional Court. Another consequence is the occurrence of a constitutionalism justice delay which is based on the values of the Indonesian constitution. Another legal consequence that can be caused is disobedience against the decision of the Constitutional Court which can lead to rivalry between state institutions which is shown by the House of Representative and the President through the formation of laws that are issued as ignoring the decisions of the Constitutional Court. Therefore, such a situation can certainly lead to instability of the rule of law, especially the enforcement of constitutional values as stated in

the 1945 Constitution. Moreover, disobedience to the decision of the Constitutional Court is a disregard for the 1945 Constitution. If the decision of the Constitutional Court is due to reasons that are contemporary in nature so that it is no longer appropriate to be accommodated/fulfilled or cannot be implemented by the legislators or other parties, as long as the reason relates to the constitutionality of a norm, not merely technical and pragmatic reasons, then such a decision of the Constitutional Court may be submitted for re-examination for a 'review' of the decision of the Constitutional Court and not intentionally interpreting the decision and then disobeying it.

That the act of legislators who interprets differently from the intent of the Constitutional Court Decision Number 32/PUU-XI/2013 is a wrong action moreover, factually the act of legislators who do not implement the decisions of the Constitutional Court which has executive power is a form of disobedience to the law. Moreover, legislators consciously interpret otherwise which degrades the mandate of Article 33 paragraph (1) of the 1945 Constitution which has been considered by the Court in the Constitutional Court Decision Number 32/PUU-XI/2013. The reason for the legislators when forming Law 40/2014 was not a constitutional reason but a pragmatic-technical reason. The legislators should make laws regarding Joint Business Insurance to be advanced and developed so that they can compete with company insurance and cooperative insurance as in other countries. The strengthening of the existence of Joint Venture Insurance also reflects the determination of the state in maintaining the cultural heritage and the spirit of togetherness (legacy) in developing the economy which is still relevant and needed which is the main characteristic of the philosophy of the Indonesian nation.

Whereas based on the entire description above, according to the Court, the petition of the Petitioners regarding the provisions of Article 6 paragraph (3) of Law 40/2014 is contrary to the 1945 Constitution with legal grounds, which is replacing the phrase which originally read

"regulated in a Government Regulation" to "regulated by law", so that the full provisions of Article 6 paragraph (3) of Law 40/2014 reads, "Further provisions regarding joint venture legal entities as referred to in paragraph (2) shall be regulated by law". The change in norms is intended solely so that it does not conflict with the 1945 Constitution, in particular Article 33 paragraph (1) which has been considered by the Court in the Decision of the Constitutional Court Number 32/PUU-XI/2013. Therefore, it is an unconstitutional act if the legislator interprets differently or differs from what has been decided by the Court. To complete the formation of the Law on Joint Business Insurance as stated above, the Court believes that a maximum period of two years is required since this decision is pronounced. Two years is sufficient time for the legislators (DPR and the President) to finalize the Law on Joint Business Insurance (Mutual Insurance).

Based on the considerations above, the Court subsequently issued a decision which was as follows:

1. Granting the petition of the Petitioners;
 - 1.1 Declare phrase “...**regulated in Government Regulation**” in Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), contradicts to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force;
 - 1.2 Declare phrase “...**regulated in Government Regulation**” in Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), changed so that it becomes regulated by Law, so that in full

Article 6 paragraph (3) of Law Number 40 of 2014 concerning Insurance (State Gazette of the Republic of Indonesia of 2014 Number 337, Supplement to the State Gazette of the Republic of Indonesia Number 5618), becomes "**Further provisions regarding joint venture legal entities as referred to in paragraph (2) shall be regulated by Law**".

1.3 Order the House of Representative of the Republic of Indonesia and the President to finalize the Law on Joint Business Insurance within a maximum of two years after this decision is pronounced.

2. Ordering the publication of this Decision in the State Gazette Republic of Indonesia as it should be.

Dissenting Opinion

Regarding this Court's decision, there are two Constitutional Justices, namely Constitutional Justice Enny Nurbaningsih and Constitutional Justice Wahiduddin Adams, who have dissenting opinions as follows:

Whereas the Petitioners cannot describe what the actual loss of constitutional rights experienced by the Petitioners is with the enactment of the norms of Article 6 paragraph (3) of Law 40/2014 so that there is no causal relationship (*causal verband*) between the losses of the Petitioners and the application of the norms of the *a quo* article. Therefore, the Court should have stated that the Petitioners do not have legal standing to apply for a review of the norms of Article 6 paragraph (3) of Law 40/2014.

Whereas even if the Petitioners had legal standing, *quod non*, there would also be no issue of the constitutionality of the norms of Article 6 paragraph (3) of Law 40/2014 because Article 6 paragraph (1) of Law 40/2014 stipulates that the form of legal entity that administers

the insurance business is a limited liability company, cooperative, and joint efforts. The joint venture legal entity referred to is a joint venture that existed at the time Law 40/2014 was enacted which was confirmed by the *a quo* Law as a joint venture legal entity. Until the *a quo* Law was enacted, there was only one joint venture legal entity, namely AJB Bumiputera 1912. The *a quo* law has apparently not only confirmed AJB Bumiputera 1912 as a joint venture legal entity but also outlines the governance of insurance providers by joint venture legal entities, the *a quo* law explains that the legal entity form is encouraged to take the form of a cooperative with consideration of the clarity of governance and the principle of joint business based on the principle of kinship. Therefore, the makers of Law 40/2014 in principle have implemented the Constitutional Court Decision Number 32/PUU-XI/2013 although it is not regulated in a separate law. Moreover, Law 40/2014 not only confirms the status of a joint venture legal entity but also regulates its governance, which for further regulation is stipulated in PP 87/2019.