



THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 92/PUU-XIII/2020

Concerning

**Judicial Commission's Authority in Proposing the Appointment of
Ad Hoc Judges in the Supreme Court**

Petitioner	: Burhanudin
Type of Case	: Review of Law Number 18 of 2011 concerning the Amendment to Law Number 22 of 2004 concerning the Judicial Commission (UU 18/2011) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter	: The phrase "and <i>ad hoc</i> judge" in Article 13 letter a of Law 18/2011 is in contrary to Article 24B paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution.
Verdict	: To dismiss the Petitioner's petition in its entirety.
Date of Decision	: Wednesday, November 24, 2021.
Overview of Decision :	

The Petitioner is an individual Indonesian citizen. The Petitioner has suffered a constitutional loss as stated in Article 28D paragraph (1) of the 1945 Constitution, furthermore, the Petitioner feels that the right to guarantee, protection, and fair legal certainty has been violated because the provisions in Article 13 letter a of Law 18/2011 have been interpreted in an *expressis verbis* way by the legislators by including the phrase "and *ad hoc* judge". This means, according to the Petitioner, the Judicial Commission is not an institution authorized to select *ad hoc* judges as stated in Article 24B paragraph (1) of the 1945 Constitution.

In relation to the authority of the Court, because the Petitioner is petitioned for a judicial review of the Law *in casu* Law 18/2011 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal position, the Court is of the opinion that, the Petitioner in explaining his legal position with respect to the phrase "and *ad hoc* judge" in Article 13 letter a of Law 18/2011, although the Petitioner described it briefly but the Court can understand it. In this case, the Petitioner declares himself to be an individual Indonesian citizen whose constitutional rights is potentially being impaired by the enactment of Article 13 letter a of Law 18/2011.. The Petitioner has also been able to explain the existence of a causal relationship (*causal verband*) between the assumption of potential constitutional losses that will be experienced and the application of the norm of the article petitioned for review. Therefore, regardless of whether or not the argument of the Petitioner's petition regarding the contradiction of the phrase "and *ad hoc* judge" is proven in the norm of Article 13 letter a of Law 18/2011 with Article 24B paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution which is petitioned for review in the *a quo* petition, The Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition;

Regarding the review of the constitutionality of Article 13 letter a of Law 18/2011 as argued by the Petitioners, the Court is of the opinion as follows:

1. Whereas a number of provisions in Law 22/2004 are stated to be in contrary to the 1945 Constitution and have no binding legal force. The provisions declared as unconstitutional, namely: Article 1 number 5 along the phrase "judge of the Constitutional Court", Article 20, Article 21, Article 22 paragraph (1) letter e, Article 22 paragraph (5), Article 23 paragraph (2), Article 23 paragraph (3), Article 23 paragraph (5), Article 24 paragraph (1), along the phrase "and/or the Constitutional Court"; Article 25 paragraph (3), along the phrase "and/or the Constitutional Court"; and Article 25 paragraph (4) along the phrase "and/or the Constitutional Court".
2. Whereas the Court has once ruled on the Petition Number 43/PUU-XIII/2015 which is related to the authority of the Judicial Commission, however, after carefully reading the legal considerations, the Decision of the Constitutional Court Number 43/PUU-XIII/2015 does state that the phrase "other authorities" in Article 24B paragraph (1) of the 1945 Constitution is solely in the context of maintaining and upholding the honour, nobility, dignity, and behaviour of judges, it cannot be extended to other interpretations. However, if placed in the context of the substance of the Decision of the Constitutional Court Number 43/PUU- XIII/2015, the legal considerations are more about the involvement of the Judicial Commission in the selection process of prospective judges in the judicial environment under the Supreme Court, especially the selection of prospective judges at the first level court. That is, the relevant legal considerations only limit the authority of the Judicial Commission in the selection process of prospective judges at the first level court and not in the selection of candidates for Supreme Court justices.
3. Whereas one of the reasons for the amendment of Law 22/2004 to Law 18/2011 is that the legislators have a legal political design against the Judicial Commission. With the legal politics of the relevant legislators, it does not differentiate between the Supreme Court Justices and *ad hoc* judges in the Supreme Court as far as the recruitment authority is concerned. This can be placed as a legal policy for legislators to meet the legal needs in the community in order to provide protection, guarantee, and fair legal certainty. Therefore, the *ad hoc* judge's recruitment authority at the Supreme Court is closely related to the efforts to maintain and uphold the honour, nobility of dignity, and the behaviour of judges for the sake of upholding the law and justice. Because, the existence of *ad hoc* judge at the Supreme Court is expected to be able to contribute to improving the quality of decisions in the Supreme Court through the special expertise possessed by *ad hoc* judges. Moreover, by tracking the duties, functions, and responsibilities of the case, there is no difference between the Supreme Court justices and the *ad hoc* Supreme Court justices in the Supreme Court.
4. Whereas constitutionally, the 1945 Constitution has determined that the design for filling in the Supreme Court judges as the highest judge positions in the Supreme Court is carried out by the Judicial Commission. By referring to the legal politics of the formation of Law 18/2011, especially by positioning *ad hoc* judges as judges in the Supreme Court, then the *ad hoc* judge selection process conducted by the Judicial Commission can still be justified in accordance with Article 24 paragraph (1) of the 1945 Constitution. In addition, the selection process carried out by an independent institution designed by the constitution does not conflict with the right to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

Whereas based on the entire description of the considerations above, according to the Court, the petition matter of the Petitioners has no legal basis. Accordingly, the Court subsequently issued a decision whose verdict is to dismiss the Petitioner's petition in its entirety.