



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 23/PUU-XX/2022

Concerning

Determination of Dispute Resolution Forums in Standard Agreements

- Petition** : Zico Leonard Djagardo Simanjuntak
Type of Case : Examination of Law Number 8 of 1999 concerning Consumer Protection (Law 8/1999) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter : Article 18 paragraph (1) of Law 8/1999 is in contrary to Article 28D paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution.
Verdict : To dismiss the Petitioner's petition in its entirety.
Date of Decision : Wednesday, April 20, 2022.
Overview of Decision :

The petitioner is an individual Indonesian citizen as well as a user of online transportation services who have lost the opportunity to obtain justice and equal treatment to determine the forum for dispute resolution in relation to the use of online transportation services because of the stipulation of standard clauses on dispute resolution forums is unbalanced between the consumers and business actors.

Regarding the authority of the Court, since the Petitioner petition for an examination the constitutionality of the norms of the Law, *in casu* Article 18 paragraph (1) of Law 8/1999 against the 1945 Constitution, then based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of Judicial Powers Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has explained his constitutional rights which according to the Petitioner have been impaired by the promulgation of the norms of the law petitioned for review, namely Article 18 paragraph (1) of Law 8/1999. The assumption that the constitutional loss is specific and actual because the *a quo* article does not prohibit business actors if the standard clauses made by the business actors stipulate and/or regulate the efforts to resolve consumer disputes unilaterally without the approval and agreement of the consumer. This causes the Petitioner as a consumer to be unable to choose the legal jurisdiction in accordance with the Petitioner's wishes because it has been unilaterally determined by business actors, thus it violates the Petitioner's constitutional rights as guaranteed in the provisions of Article 28D paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution. Therefore, without intending to judge the concrete case experienced by the Petitioner, the Court is of the opinion that the presumption of the loss of constitutional rights described by the Petitioner has a causal relationship (*causal verband*) with the promulgation of the norms of the law being petitioned for review, if the Petitioner's petition is granted, the presumption of constitutional loss as described will not or will no longer occur. Therefore, the Court is of the opinion that, the Petitioner has the legal standing to file the *a quo* petition.

Whereas because the *a quo* petition is clear, the Court is of the opinion that there is no

urgency and relevance in requesting the statements from the parties as stipulated in Article 54 of the Constitutional Court Law.

In the subject matter of the petition, the Court is of the opinion that in the legal regime regarding engagement, all forms of agreement must comply with the general principles of agreement as regulated in the Civil Code (*KUH Perdata*), such as the principle of consensuality as regulated in Article 1320 of the Civil Code and the principle of consensuality as regulated in Article 1320 of the Civil Code and principle of freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code. Based on the principle of consensuality, the agreement shall be valid and has legal consequences since consensus is reached between the parties regarding the principal (essential) matters in the agreement. Meanwhile, based on the principle of freedom of contract, everyone may enter into an agreement in any form and content as long as it is not prohibited or in contrary to the legislation (law), decency or public order in accordance with Article 1337 of the Civil Code. In an agreement based on the principle of freedom of contract, the parties will formulate the provisions regarding their rights and obligations reciprocally. Therefore, as long as each party carries out their respective rights and obligations in accordance with the agreement, there will not be a problem. New problems shall arise when one party fails to carry out its obligations, and the other party feels that he has been harmed. The party who feels that he has been harmed can file a lawsuit in accordance with the dispute resolution forum that has been agreed upon in the agreement, both inside and outside of the court.

Furthermore, the Court has also considered that in a standard agreement, the consumers have the freedom to make an agreement or not to make an agreement and the freedom to choose with which party to make an agreement. When the consumer has agreed to enter into a standard agreement, the consumer shall be considered to have voluntarily agreed to the entire contents of the standard agreement. Voluntary is a part of the principle of freedom of contract, it is doctrinally understood, a standard agreement can be accepted as an agreement based on the fiction that there are the will and the trust (*fictie van wil en vertrouwen*) thereby increasing the confidence of the parties to bind themselves to the agreement. In this case, if the consumer accepts the agreement document, it means he voluntarily agrees to the contents of the agreement. Therefore, the choice to determine the dispute resolution forum as chosen in a standard agreement shall be part of the freedom of the business actors in making such agreements, while the consumers have the freedom to enter or not to enter into the standard agreement. In the event that the consumer has agreed to enter into a standard agreement that has determined the dispute resolution forum (choice of domicile), then the agreement shall be binding on the parties to obey and implement it. However, based on the applicable civil procedural law, the agreement regarding the choice of domicile is not absolute, but relative. The consumer as the plaintiff, if he wishes to, may file a lawsuit to the court (dispute resolution forum) which has been determined [*vide* Article 118 paragraph (4) *Herziene Inlandsche Reglement* (HIR)/Article 142 paragraph (4) *Rechtsreglement Buitengewesten* (RBg)], or the plaintiff may also file a lawsuit based on *the principle of actor sequitor forum rei*, which shall be submitted to the court at the place where the defendant domiciled [*vide* Article 118 paragraph (1) of HIR/Article 142 paragraph (1) of RBg]. Therefore, the plaintiff is free to choose the relative competence based on the domicile of choice or based on the residence of the defendant.

Furthermore, the Court also considered that the problem proposed by the Petitioner was more of a problem of implementing the norms experienced by the Petitioner in relation to the Petitioner as a consumer of online transportation services who is bound by a standard agreement that has been determined by the business actor (Grab Indonesia). When linked in the context of consumer protection law, the Court is of the opinion that as has been known as the doctrine of let the buyer beware, which means in a sale and purchase relationship, the consumer/buyer is obliged to be careful in every sale and purchase transaction. In the context of choice of law and choice of forum, the consumers can choose whether to subject to the dispute resolution forum in the standard agreement or to file a lawsuit in a court whose jurisdiction includes the residence of the defendant. The resolution of consumer disputes

between the parties based on ordinary agreements or standard agreements, the parties are allowed to choose the forums voluntarily as regulated by the provisions of Article 45 paragraph (2) of Law 8/1999, therefore the Petitioner's petition is in contrary to the *a quo* Article and therefore if the Court grants the Petitioner's petition, it could create legal uncertainty.

Therefore, the Court is of the opinion that the Petitioner's petition is entirely legally unjustifiable. Subsequently, the Court issued a decision which verdict states that the Petitioner's petition is entirely dismissed