



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 27/PUU-XX/2022

Concerning

Retirement Age Limit of Prosecutors

- Petitioner** : Fentje Eyfert Lowy et al
Type of Case : Examination of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (UU 11/2021) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Subject Matter : Examination of Article 12 letter c and Article 40A of Law 11/2021 against the 1945 Constitution.
Verdict : To declare that the Petitioners' petition is inadmissible.
Date of Decision : Wednesday, April 20, 2022
Overview of Decision :

Whereas the Petitioners are Indonesian citizens, the Petitioners are civil servants with functional positions of prosecutor at the Prosecutor's Office of the Republic of Indonesia who believe that they are being prejudiced by the amendment in the provisions regarding the retirement age for prosecutors.

Regarding the authority of the Court, since the Petitioners petition for an examination of the constitutionality of legal norms, *in casu* Law 11/2021 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 examine the *a quo* petition.

Regarding the legal standing of the Petitioners, the provisions of Article 12 letter c of Law 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as Law 16/2004) stipulates that the retirement age of prosecutors is 62 (sixty-two) years of age, however, the law on the Prosecutor's Office has been amended by Law Number 11 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as Law 11/2021). Based on Article 12 letter c and Article 40A of Law 11/2021 the retirement age for prosecutors has been reduced to 60 (sixty) years of age. Whereas according to the Petitioners, the Prosecutor's Office as an institution that carries out functions related to judicial power, the retirement age of the Prosecutors should not be different from other judicial officials, for example the retirement age of judges is 65 (sixty-five) years of age, as is the case with the Judges of the General Courts, Religious Courts and State Administrative Court. The reduction of the retirement age for prosecutors, according to the Petitioners, is in contrary to the provisions of Article 28I paragraph (2) of the 1945 Constitution. Whereas based on the constitutional rights and constitutional loss as described above, it is evident that the Petitioners have the legal standing to file the *a quo* petition.

Whereas the Court has examined the Petitioners' petition in the Preliminary trial on March 17, 2021. In that trial, the Panel Assembly in accordance with its obligations as

regulated in Article 39 paragraph (2) of the Constitutional Court Law has provided advice to the Petitioners to revise and clarify the matters relating to the legal standing, the subject matter of the petition, and the *petitum*.

Whereas the Panel of Judges has advised the Petitioners to consider what kind of *petitum* is appropriate for the Petitioners' petition, because the *petitum* in the Petitioners' petition contradict one another. On the one hand, the Petitioners petition for the Court to declare that the articles being petitioned for a review are in contrary to the 1945 Constitution and have no binding legal force. However, on the other hand, the Petitioners also petition for the articles being petitioned for a review be declared conditionally constitutional or conditionally unconstitutional [*vide* revision of petition of case Number 27/PUU-XX/2022, *petitum* of petition number 2, number 3, number 4, and number 5, page 38-39, as well as the Summary of the Court Hearings of Case Number 27/PUU-XX/2022, dated March 17, 2022, page 14].

Whereas the Petitioners have revised their petition and it was accepted by the Registrar of the Court on March 30, 2022, which then the points of revision in their petitioned was submitted in the preliminary examination trial with the agenda of examining the revision of the petition on April 7, 2022.

Whereas after further examination of the revision of the Petitioners' petition, in the *posita*, the Petitioners describe the reasons why the provisions of Article 12 letter c and Article 40A of Law 11/2021 must be declared as in contrary to the 1945 Constitution and petition for the Court to provide an interpretation of the article being petitioned for a review [*vide* the revision of the petition of case Number 27/PUU-XX/2022, page 29-30]. Likewise, in the *petitum* of the Petitioners' petition, although the Panel of Judges has given advice at the preliminary trial to consider the appropriate *petitum*, the Petitioners remain in their position. In this case, the Petitioners petition for the Court to declare that the provisions of Article 12 letter c and Article 40A of Law 11/2021 are in contrary to the 1945 Constitution and petition for the Court to provide an interpretation of the articles being petitioned for a review. This *petitum* has been re-confirmed to the Petitioners at the time of the preliminary examination trial with the agenda of examining the revision of the petition, and the Petitioners has stated that the *petitum* that the Petitioners wanted was the *Petitum* as contained in the revised petition which was read out by the Petitioners in the Trial [*vide* Summary of Court Hearings of Case Number 27/PUU-XX/2022, April 7, 2022, page 8-9].

Whereas regarding the *petitum* as stated in the revision of the Petitioners' petition, namely *Petitum* number 2, number 3, number 4 and number 5, the Court is of the opinion that these *petitum* are cumulative, therefore they have caused a confusion and ambiguity regarding what the Petitioners actually petitioned for. This is because, on the one hand, the Petitioners petition for the Court to declare that Article 12 letter c and Article 40A of Law 11/2021 are in contrary to the 1945 Constitution (unconstitutional), while on the other hand the Petitioners petition for the Court to declare that Article 12 letter c and Article 40A of Law 11/ 2021 are conditionally in contrary to the 1945 Constitution (conditionally unconstitutional). Based on these facts, it is impossible for the Court to grant two contradictory *petitum*, unless the Petitioners in their *petitum* of their petition, petitioned for an alternative, *quod non*. Therefore, if the *petitum* as petitioned by the Petitioners is granted, within the limits of reasonable reasoning, it will cause confusion in norms and therefore it can result in legal uncertainty.

Based on all of the aforementioned legal considerations, the Petitioners' petition has created ambiguity. Therefore, it is difficult for the Court to understand the intent of the *a quo* petition. Therefore, the Petitioners' petition is vague.

Based on the aforementioned considerations, the Court subsequently issued a decision which verdict states that the Petitioners' petition is inadmissible.