



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 56/PUU-XX/2022**

Concerning

The Judicial Commission's Authority in Supervising the Constitutional Court

- Petitioner** : Dewi Nadya Maharani, et al
- Type of Case** : Examination of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Law 7/2022) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Examination of Article 27A paragraph (2) letter b of Law 7/2022 against Article 1 paragraph (3) and Article 28D Paragraph (1) of the 1945 Constitution.
- Verdict** : 1. To grant the Petitioner's petition in part.
2. To declare that Article 27A paragraph (2) letter b of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2020 Number 216, Supplement to the State Gazette of the Republic of Indonesia Number 6554) is in contrary to the 1945 Constitution and has no binding legal force as long as the phrase "*1 (one) member of the Judicial Commission*" is not construed as "*1 (person) from the element of community leader who has high integrity and understands the law and the constitution and is not a member of any political party*".
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Date of Decision : Monday, June 20, 2022

Overview of Decision :

The Petitioner is an individual Indonesian citizen who works as an advocate who in carrying out his profession is always in contact with the Constitutional Court.

Regarding the authority of the Court, since the Petitioners' petition is the review of Article 27A paragraph (2) letter b of Law 7/2022 against Article 1 paragraph (3) and Article 28D Paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioners' petition;

Regarding the legal standing of the Petitioner, which in principle argues that with the fact that the Judicial Commission is made one of the elements of the members of the Honorary Council of the Constitutional Court as regulated in the provisions of Article 27A paragraph (2) letter b of Law 7/2022, the Petitioner feels that such thing will hinder the implementation of the Petitioner's duties as an Advocate, as well as will lead to inconsistencies in the laws and regulations that apply to the Constitutional Court. These inconsistencies clearly injure the basic principle of a state of law that is embraced in the

constitution. Regarding the Petitioner's argument, the Court is of the opinion that the Petitioner, as an individual citizen who works as an advocate who is always in contact with any material things or any matters related to the Constitutional Court and who wishes the independence of the Constitutional Court in the case examination process is not being disturbed, has been able to specifically describe the causal relationship (*causal verband*) between the perceived loss of the petitioner's constitutional rights as a citizen who works as an advocate and the enactment of the norms of Article 27A paragraph (2) letter b of Law 7/2020. Therefore, the Court is of the opinion that the Petitioner has specifically explained the perceived loss of his constitutional rights that occurred with the promulgation of the norms of the law for which the review was petitioned. Therefore, the Petitioner has the legal standing to act as the Petitioner in the *a quo* application;

In relation to the subject matter of the Petitioner's petition, which in principle argues that Article 27A paragraph (2) letter b of Law 7/2020 does not reflect and embodies the existence of legal certainty as stipulated in Article 1 paragraph (3) *junto* Article 28D paragraph (1) of the 1945 Constitution because it involves the role of the Judicial Commission in the formation or membership of the Honorary Council of the Constitutional Court, even though the existence of the Constitutional Court does not intersect or relate to or depend on the Judicial Commission, therefore it is unconstitutional if the Judicial Commission still has a role or involvement in the Constitutional Court, *in casu* as a member of the Honorary Council of the Constitutional Court, the Court in principle considers the following:

- a. Whereas in relation to the Judicial Commission's authority to supervise Constitutional Justices, the Court has considered it in the Constitutional Court Decision Number 005/PUU-IV/2006, dated August 23, 2006, and also Decision Number 1-2/PUU-XII/2014 dated February 13, 2014.
- b. Whereas based on the two decisions, the Court is of the opinion that the presence of the Honorary Council members of the Constitutional Court, one of which is from the elements of the Judicial Commission as stated in Article 27A paragraph (2) letter b of Law 7/2020, this is not in line with the Court's considerations in the two Court decisions. This is because in the considerations of the decisions above, the Court has in principle, among other things, clearly emphasized that the Constitutional Court is an independent power so that in exercising its judicial authority, the court cannot be supervised by any other state institutions. In other words, the supervision of the Constitutional Justices carried out by the Judicial Commission is considered by the Court to be in contrary to the 1945 Constitution because the Constitutional Court as a judicial institution is unable to realize its independence and impartiality. The same shall be applied if the membership of the Honorary Council of the Constitutional Court still involves the Judicial Commission in assessing (supervising) the performance of the Constitutional Court Justices so that in the end it still places or makes the Constitutional Justices as objects of supervision by the Judicial Commission. In fact, the establishment of the Constitutional Court based on the 1945 Constitution is in order to ensure that the 1945 Constitution is implemented as well as possible, including in the context of constitutional relations between state institutions. Therefore, the Court, in carrying out its daily duties, can be free and independent without having any pressure from any party.
- c. Whereas based on the considerations above, the Court is of the opinion that the membership of the Honorary Council of the Constitutional Court no longer involves the Judicial Commission as stipulated in Article 27A paragraph (2) letter b of Law 7/2020. However, in order to avoid the vacancy in the membership of the Honorary Council of the Constitutional Court (*stagnant*) of one of the elements before the amendment is conducted by the legislators, the Court may determine that the element substituting the Judicial Commission shall be the element of community leader who has high integrity and understands the law and the constitution and is not a member of any political party, in order to guarantee a neutral and independent nature of the membership of the

Honorary Council of the Constitutional Court going forward. Therefore, with the substitution in the composition, the Court can immediately continue the preparation of the Constitutional Court Regulation regarding the Honorary Council of the Constitutional Court which is currently being drafted by the Court as ordered by Article 27A paragraph (7) of the *a quo* Law which states that in principal any further provisions regarding the composition, organization, and procedure for the trial of the Honorary Council of the Constitutional Court shall be regulated in a Constitutional Court regulation.

- d. Whereas based on the entire description of the considerations above, the Court is of the opinion that the Petitioner's argument is legally justifiable in part and the Court has issued a decision with the verdicts as follows:
1. To grant the Petitioner's petition in part.
 2. To declare that Article 27A paragraph (2) letter b of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2020 Number 216, Supplement to the State Gazette of the Republic of Indonesia Number 6554) is in contrary to the 1945 Constitution and has no binding legal force as long as the phrase "*1 (one) member of the Judicial Commission*" is not construed as "*1 (person) from the element of community leader who has high integrity and understands the law and the constitution and is not a member of any political party*".
 3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Whereas in relation to the *a quo* decision, there are dissenting opinions from Constitutional Justice Saldi Isra who in principle stated that if the Ethics Council or any other instruments with similar names would not be formed again in the future, the other best alternative would be to make MKMK a permanent instrument to replace the authority and daily duties of the Ethics Council, which have been known in supervising the constitutional judges on a daily basis. If the establishment of a permanent MKMK is carried out, then members of the Judicial Commission cannot become the members of such instrument. On the other hand, if the choice is to position the MKMK in the same function as the Ethics Council before the promulgation of Law 7/2020, the inclusion of the Judicial Commission element as a member shall be unconstitutional. That means, the construction of "*1 (one) member of the Judicial Commission to 1 (one) person from the element of community leader who has high integrity and understands the law and the constitution and is not a member of any political party*" without first explaining the *ad hoc* or permanent nature of such MKMK is unjustifiable. Moreover, the presence of 1 (one) MKMK member from an active constitutional judge has the potential to create new problems and traps in enforcing the Code of Ethics and the Code of Conduct for Constitutional Judges. In the absence of a clear and comprehensive explanation of the *ad hoc* or permanent nature of such MKMK as set out in Article 27A paragraph (2) of Law 7/2020, there is a potential to undermine the true meaning of Enforcement of the Code of Ethics and the Code of Conduct for Constitutional Judges.