



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 62/PUU-XIX/2021

Concerning

**Retirement Age Limits for *Bintara*, *Tamtama*, and *Perwira* Officers
in Indonesian National Army (*Tentara Nasional Indonesia*)**

- Petitioner** : Euis Kurniasih, et al
- Type of Case** : Examination of Law Number 34 of 2004 concerning Indonesian National Army (*Tentara Nasional Indonesia* or TNI) (Law 34/2004) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Examination of Article 53 and the phrase “*the maximum retirement age is 58 (fifty-eight) years for perwira and 53 (fifty-three) years for bintara and tamtama*” in Article 71 letter a of Law 34/2004 against the 1945 Constitution
- Verdict** : To dismiss the Petitioners’ petition in its entirety
- Date of Decision** : Tuesday, March 29, 2022
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who feel that their constitutional rights have been prejudiced with the promulgation of Article 53 and the phrase “*the maximum retirement age is 58 (fifty-eight) years for perwira and 53 (fifty-three) years for bintara and tamtama*” in Article 71 letter a of Law 34/2004. Whereas according to Petitioner I and Petitioner VI, the possibility of extending the retirement age of Petitioner I and Petitioner VI has been closed, whereas Petitioner I and Petitioner VI, apart from still being in their productive age, also have special skills. Whereas according to Petitioner II, the *a quo* article has prejudiced the constitutional rights of Petitioner II to obtain legal certainty and to develop himself in fighting for his rights collectively to build the society, nation and state, especially in terms of the welfare of TNI soldiers. Meanwhile, Petitioner III, Petitioner IV, and Petitioner V believe that this article has potentially prejudiced the right to obtain protection from the State, especially TNI as part of the Indonesian Nation.

Whereas regarding the authority of the Court, because the Petitioners petition for a review of the constitutionality of legal norms, material examination of the norms of Article 53 and the phrase “*the maximum retirement age is 58 (fifty-eight) years for perwira and 53 (fifty-three) years for bintara and tamtama*” in Article 71 letter a of Law 34/2004 against the 1945 Constitution, the Court has the authority to hear the *a quo* Petitioners’ petition.

Whereas regarding the legal standing of the Petitioners, according to the Court, Petitioner I and Petitioner VI have the legal standing to act as Petitioners in the *a quo* petition. Meanwhile, Petitioner II, Petitioner III, Petitioner IV, and Petitioner V have no legal standing to act as Petitioners in the *a quo* petition.

Regarding the argument of the Petitioners’ petition, whereas in relation to the TNI retirement age limit which according to the Petitioners’ argument needs to be equalized with the Police retirement age limit, the Court is of the opinion that this is an open legal policy that is within the authority of the legislators which can be changed at any time in accordance with

the demands of the development and is in accordance with the type and specifications as well as the qualifications of the position or it can also be changed through the means of legislative review. However, even though the determination of the TNI retirement age limit is an open legal policy for the legislators, the Court needs to reaffirm that the roles played by the two state instruments (TNI and Police) are indeed different, but both have an equal and strategic institutional position and are the main strength of the universal people's defense and security system as stated in Article 30 paragraph (2) of the 1945 Constitution.

Whereas by referring to the President's statement and the DPR's (House of Representatives) statement which was also confirmed by the Related Party's (TNI Commander) statement, the amendments to Law 34/2004 (including the provisions on the TNI retirement age limit) have been listed in the National Legislation Program List for the Second Amendment Bills of 2020- 2024 under the serial number 131 based on the Decree of the House of Representatives of the Republic of Indonesia Number: 8/DPR RI/II/2021-2022 concerning the National Legislation Program for the Priority Bills of 2022 and the National Legislation Program for the Third Amendment Bill of 2020-2024, dated December 7, 2021 [*vide* evidence PK-1] so that in order to provide legal certainty, the legislators should implement the relevant amendments to Law 34/2004 by prioritizing the discussion soon.

Whereas based on all of the aforementioned legal considerations, the Court is of an opinion that Article 53 and the phrase "*the maximum retirement age is 58 (fifty-eight) years for officers and 53 (fifty-three) years for bintara and tamtama*" in Article 71 letter a of Law 34/2004 is not in contrary to Article 27, Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution. Therefore, the Petitioners' petition is entirely legally unjustifiable.

Subsequently, the Court issued a decision which verdict states that the Petitioners' petition is entirely dismissed.

DISSENTING OPINION

Whereas regarding the *a quo* decision of the Constitutional Court, there are dissenting opinions from Constitutional Justice Aswanto, Constitutional Justice Suhartoyo, Constitutional Justice Wahiduddin Adams, and Constitutional Justice Enny Nurbaningsih.

In the *a quo* case decision, 4 (four) Constitutional Court Justices stated that the subject matter of the Petitioners' petition is legally unjustifiable, therefore the verdict stated that they dismiss the Petitioners' petition. Regarding the decision of the Constitutional Court, we, Constitutional Justice Aswanto, Constitutional Justice Suhartoyo, Constitutional Justice Wahiduddin Adams, and Constitutional Justice Enny Nurbaningsih have dissenting views or opinions for the following reasons:

Whereas regarding the issue of the retirement age for the level of *Bintara* and *Tamtama* of TNI soldiers, based on the facts revealed in the trial, it has become a part of the material for amendments to Law 34/2004 which has been included in the National Legislation Program of 2020-2024 [*vide* the President's Statement in the trial on Wednesday, February 23, 2022]. In fact, in the President's statement, it was clearly stated that the proposed bill of the amendment to Article 53 of Law 34/2004 is stated as "the soldiers carry out military service until the maximum age of 58 (fifty-eight) years." The bill of the amendment is also supported by the Academic Manuscript of amendments to Law 34/2004 which has included a plan to increase the retirement age of soldiers [*vide* Academic Manuscript of the Bill on the Amendments to Law 34/2004, page 34]. Furthermore, in the sub-chapter the Direction and Scope of Arrangements in the *a quo* Academic Texts on pages 59-60 explained the following:

1. To amend the provisions of Article 53, which originally stated that the Soldiers carry out the military service until the maximum age of 58 (fifty-eight) years for *perwira*, and 53 (fifty-three) years for *bintara* and *tamtama*. Into the Soldiers carry out the military service until the maximum age of 58 (fifty-eight) years.
2. To regulate the transitional provisions in relation to the service period of the army in Article 53. Therefore, the provisions of Article 71 shall be amended so that at the time this law comes into force, *Bintara* and *Tamtama* who are either 53 (fifty-three) years old or not yet 53 (fifty-three) years old, their service period in the army shall be enforced up to a maximum

age of 58 (fifty-eight) years.

The problem is whether the amendment to Law 34/2004 can be resolved in the 2020-2024 National Legislation Program period [*vide* DPR RI Decree Number: 8/DPR RI/II/2021-2022 concerning National Legislation Program for the Priority Bills of 2022 and the National Legislation Program for the Third Amendment Bills of 2020-2024]. This is by considering the fact that the proposed amendment to Law 34/2004 has not only been included in the current National Legislation Program, but has been proposed since the National Legislation Program of 2010 – 2014 [*vide* DPR RI Decree Number: 41 A/DPR RI/II/2009-2010 concerning Approval for Determination of the National Legislation Program of 2010 – 2014], which was resumed in the National Legislation Program of 2015-2019 [*vide* DPR RI Decree Number 19/DPR RI/II/2018-2019 concerning National Legislation Program for the Priority Bills of 2019 and the National Legislation Program for the Amendment Bills of 2015-2019], however, such amendments have not yet been prioritized for discussion. Therefore, by observing the process of discussing the amendments to Law 34/2004 which is uncertain, meanwhile Law 34/2004 has clearly given different treatment to the same matter, regarding the retirement age of *Bintara* and *Tamtama* in the National Police, therefore this article in principal is contrary to the provisions of Article 27 paragraph (1) of the 1945 Constitution and at the same time also is in contrary to the principle of fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

Whereas the Court in various decisions has also emphasized that the matter in relation to age is an open legal policy which is within the authority of the legislators, especially if the determination is related to the definitive mention of numbers. However, without definitively mentioning a certain number, the Court has decided on a case which essentially has a connection with the *a quo* case in the Decision of the Constitutional Court Number 6/PUU-XIV/2016, dated August 4, 2016, where in the legal considerations Sub-paragraph **[3.13.2]** the Court has stated:

[3.13.2] Whereas the *a quo* Law regulates the honourable dismissal of judges from the tax court (retirement age) which is 65 years, while the honourable dismissal of the high judges in the state administrative courts and general courts as well as religious courts are when they are 67 years old [*vide* Law No. 49 of 2009, Law Number 50 of 2009, and Law Number 51 of 2009]. The existence of the provisions governing the difference in treatment between judges of the tax court and judges in other judicial circles under the Supreme Court, has clearly given different treatment to the same matter, so that in principal it is in contrary to the provisions of Article 27 paragraph (1) of the 1945 Constitution and at the same time it is also in contrary to the principle of fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Court is of the opinion that the provisions for the honourable dismissal from the judge position for the judges at the tax court must be the same as the provisions governing the same for the appellate judges at the state administrative court.

Furthermore, in the *a quo* verdict, the Court issued a decision in the number 4 which:

State that the phrase “has reached the age of 65 (sixty five) years” in Article 13 paragraph (1) letter c of Law Number 14 of 2002 concerning the Tax Court (State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) is in contrary to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as the same with the age of honourable dismissal of the high judges at the state administrative high court;

Therefore, due to the unclear timing of the completion of the bill on the amendments to Law 34/2004, in our opinion, Constitutional Justice Aswanto, Constitutional Justice Suhartoyo, Constitutional Justice Wahiduddin Adams, and Constitutional Justice Enny Nurbaningsih, regarding the retirement age limit for *Bintara* and *Tamtama* are the same as the retirement age for the members of the National Police, this should be granted by the Court because it is legally justifiable. Therefore the phrase “the maximum retirement age is 58 (fifty-eight) years for *Perwira* and 53 (fifty-three) years for *Bintara* and *Tamtama*” in Article 53 and Article 71

letter a of Law 34/2004 is in contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as “the retirement age of TNI soldiers for *Bintara* and *Tamtama* are the same as the retirement age of the members of the Indonesian National Police”.

Whereas furthermore, regarding the Petitioner's argument which states that the phrase in the norm of Article 53 which states: “*the Soldiers carry out military service until the maximum age of 58 (fifty-eight) years for perwira*”, as well as the phrase in the norms of Article 71 letter a of Law 34/2004 which states: “*the maximum retirement age of 58 (fifty-eight) years for perwira shall only apply to TNI soldiers who, as of the date this law is promulgated, have not been declared retired from the TNI service,*” we also have dissenting opinions in relation to the legal standing of Petitioner I.

Whereas based on the legal facts in the trial, Petitioner I in the trial could not prove that he is a legal subject who has a special expertise to be used as an excuse to have the same retirement age as the police officers. Therefore, there is no reason for Petitioner I to be given a legal standing in submitting the constitutional review of the phrase in the norm of Article 53 which states: “*the Soldiers carry out military service until the maximum age of 58 (fifty-eight) years for perwira*”, as well as the phrase in the norms of Article 71 letter a of Law 34/2004.