



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 96/PUU-XVIII/2020**

Concerning

**Transitional Provisions concerning the Minimum Age of Constitutional
Justices and the Term of Office of the Chief Justice/Deputy Chief
Justice of the Constitutional Court**

- Petitioner** : **Priyanto**
- Type of Case** : Examination of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 (Law 7/2020) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 87 item a of Law 7/2020 is, in the opinion of the Petitioner, contradictory with the 1945 Constitution because it is multi-interpretative. Meanwhile, Article 87 item b of Law 7/2020 is contradictory with the 1945 Constitution because as a transitional provision it violates/negates the provisions in the body of Law 7/2020. These two provisions hinder the constitutional rights of the Petitioner to become a constitutional judge and a chairperson/deputy chairperson of the Constitutional Court.
- Verdict** : 1. To grant the Petitioner's petition in part;
2. To declare that Article 87 item a of the Law of the Republic of Indonesia 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 contradictory with the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
3. To order the incorporation of this decision into the State Gazette of the Republic of Indonesia as necessary;
4. To dismiss the Petitioner's petition for the other and remaining parts.
- Date of Decision** : Monday, June 20, 2022.

Overview of Decision :

The Petitioner is Priyanto, an Indonesian citizen as a tax payer and an advocate. The Petitioner requested a constitutional review of Article 87 item a and item b of Law 7/2020 because the provisions prevented the Petitioner from filing/nominating himself as a constitutional judge and then as a chairperson/deputy chairperson of the Constitutional Court.

According is in the opinion that Article 4 paragraph (3) of Law 7/2020 expressly stipulates that "The Chairperson and the Deputy Chairperson of the Constitutional Court are elected from and by members of the constitutional justices for 5 (five) years from the date of appointment of the Chairperson and the Deputy Chairperson of the Constitutional Court", but the provision concerning the requirement to be "elected from and by the members of the

constitutional justices” is prejudiced by the provision of Article 87 item a of Law 7/2020 because the matter is set forth in such other way that creates a contradiction between both provisions.

In addition, the phrase in Article 87 item a of Law 7/2020 which stipulates that "until their term of office expires pursuant to the provisions of this law" has given rise to multiple interpretations because it can be interpreted as their position as a constitutional judge or their position as a chairperson and deputy chairperson.

As for the minimum age for constitutional justices, the Petitioner is in the opinion that Article 15 of Law 7/2020 has governed the requirements for becoming a constitutional judge, one of which is a minimum age of 55 (fifty-five) years. However, Article 87 item b of Law 7/2020 as a transitional provision determines that constitutional justices who were then serving shall be deemed to have met the minimum age requirement even though certain constitutional judge(s) currently in office have not met the required minimum age of 55 (fifty-five) years old. This situation causes the lack of re-election to replace the said constitutional judge(s), thus eliminating the opportunity for the Petitioner to participate in the process of electing a constitutional judge.

Regarding the authority of the Court, since the Petitioner's petition is a petition to examine the constitutionality of legal norms, which in this case is Law 7/2020, against Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, then the Court has the authority to hear the petition in this case.

Regarding the legal standing of the Petitioner, the Court considers that the Petitioner has a legal standing because he could prove that he has fulfilled the requirements to nominate himself as a constitutional judge so that he has the potential to become a constitutional judge and therefore has the potential to become a chairperson/deputy chairperson of the Constitutional Court.

Regarding the subject matter of the petition, the Court is of the view that the change of the age requirement in Article 15 of Law 7/2020 is a policy chosen by legislators, who initially determined that the minimum age of judges shall 47 (forty-seven) years old and then changed it into 55 (fifty-five) years old. Such choice of policy is neither prohibited nor contradictory with the 1945 Constitution. Likewise, the removal of the provision regarding the periodization of the office of constitutional justices is not contradictory with the 1945 Constitution and is also not prohibited.

From the perspective of systematic interpretation, Article 87 item b of Law 7/2020 is a "bridge" that transforms an old concept into a new concept. The old concept is the periodization of judges' office, while the new concept is the disapplication of periodization in respect of judges' office. Such a fundamental change of concept eventually affected constitutional justices who are currently in office. Therefore, in order to ensure that the new regulation can be enforced properly without prejudice to anyone who has complied with the old law, a transitional provision is needed.

The Court did not find any defects in will or intent in relation to the provision of Article 87 item b in conjunction with Article 15 of Law 7/2020 which may result in the provision in question violates the 1945 Constitution. The Petitioner raised that multiple interpretations exist because it seems as if Article 87 item b of Law 7/2020 negates the provision of Article 15 of Law 7/2020 concerning the minimum age of 55 (fifty-five) years old as required for constitutional justices, and thus any constitutional judge who had not reached the age of 55 (fifty-five) years old – by the time Law 7/2020 was enacted – was unfairly benefited. According to the Court, with a reference to the statements made by the legislators, in respect of any constitutional judge who had not reached the age of 55 (fifty-five) years old by the time Law 7/2020 was enacted, the legislators still desired them to continue serving as a constitutional judge because the relevant constitutional judge had reached the age required by the old law, which became the basis for their appointment.

Whereas after the original intent of the legislators in the formation of Law 7/2020 became clear to the Court, the Court is of the opinion that the provision of Article 87 item b of Law 7/2020 is not contradictory with Article 28D paragraph (1) of the 1945 Constitution.

According to the Court, the language of Article 87 item b of Law 7/2020 must be seen solely as a transitional connecting rule to ensure that the new rule could apply in harmony with the old rule.

With regard to Article 87 item a of Law 7/2020, the Court is of the opinion that it gave rise to an ambiguity because of the use of the phrase "term of office". The phrase "term of office" as mentioned in Law 7/2020 is actually used in two contexts, namely the term of office as a Constitutional Court Justice and the term of office as the Chairperson or the Deputy Chairperson of the Constitutional Court. The lack of clarity in the meaning/context of "term of office" as referred to by Article 87 item a of Law 7/2020 has created a legal uncertainty and therefore it is contradictor with the 1945 Constitution.

In addition, the provision of Article 87 item a of Law 7/2020 is not aligned with the mandate of Article 24C paragraph (4) of the 1945 Constitution which expressly stipulates that the Chairperson and the Deputy Chairperson of the Constitutional Court are elected from and by constitutional justices. The Chairperson and the Deputy Chairperson of the Constitutional Court cannot immediately take office without going through the process of an election from and by the constitutional justices. Therefore, the process of electing the Chairperson and the Deputy Chairperson of the Constitutional Court must refer back to the main essence of the mandate of Article 24C paragraph (4) of the 1945 Constitution.

Upon the foregoing legal consideration, the Court is of the opinion that the Petitioner's argument regarding Article 87 item a of Law 7/2020 is legally justifiable. However, so as not to cause issues/administrative implications on the decision in this case, the Chairperson and the Deputy Chairperson of the Constitutional Court who are currently in office are declared to remain validly in office until the election of the Chairperson and the Deputy Chairperson as mandated by Article 24C paragraph (4) of the 1945 Constitution. Such an election must be made within 9 (nine) months after this decision is announced.

Based on all of the above legal considerations, the Court rendered the following rulings:

1. To grant the Petitioner's petition in part;
2. To declare that Article 87 item a of Law of the Republic of Indonesia 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 contradictory with the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
3. To order the incorporation of this decision into the State Gazette of the Republic of Indonesia as necessary;
4. To dismiss the Petitioner's petition for the other and remaining part.

DISSENTING OPINION AND CONCURRING OPINION

With regard to the Constitutional Court Decision in this case, there are dissenting opinions and concurring opinions on the review of Article 87 item a and item b of Law 7/2020, namely:

A. Concurring Opinion and Dissenting Opinion of Constitutional Justice Arief Hidayat and Constitutional Justice Manahan MP Sitompul

With regard to Article 87 item a of Law 7/2020 (Constitutional Court Law), Constitutional Justice Arief Hidayat and Constitutional Justice Manahan MP Sitompul have concurring opinions, Meanwhile, with regard to Article 87 item b of Law 7/2020 Constitutional Justice Arief Hidayat and Constitutional Justice Manahan MP Sitompul have dissenting opinions;

Whereas in the context of legislation theory, Article 87 item a and item b of the Constitutional Court Law are included in Chapter VII concerning Transitional Provisions. Essentially transitional provisions have the function of preventing certain parties from being prejudiced by an amendment to a law. The language of transitional provisions is formulated with an aim that all legal relationships or legal actions that have existed, or are currently in

place, and the process of which has not completed pursuant to the old law are not prejudiced by the enactment of the new law. The matter must be regulated fairly and proportionally so not to prejudice, even beneficial to the affected parties as a consequence of the new law.

This is intended to protect the constitutional rights of affected parties as a result of the change of law. Likewise, Article 87 items a and b of the Constitutional Court Law was designed to guarantee a fair legal certainty for the Chairperson/the Deputy Chairperson and constitutional justices who are currently in office so that either the Chairperson, the Deputy Chairperson or constitutional justices were not prejudiced and may even be benefited from the enactment of the new provisions contained in the Constitutional Court Law.

Concurring Opinion

Therefore, the extension of the term of office of the Chairperson/Vice-Chairperson of the Constitutional Court cannot automatically apply in accordance with the norms of the Law in question because the constitutional norm clearly stipulates that the Chairperson/Vice Chairperson must be elected from and by the constitutional justices so that the extension cannot be directly applied by the provision of the law in question. The direct extension by the law of the term of office of the Chairperson/Deputy Chairperson of the Constitutional Court has negated the role and authority of the constitutional justices in the election of the Chairperson/Deputy Chairperson of the Constitutional Court. Accordingly, the Chairperson/Deputy Chairperson whose term of office expires after the enactment of the law in question may continue their term of office as the Chairperson/Deputy Chairperson of the Constitutional Court as long as an election has been made from and by the constitutional justices.

Dissenting Opinion

Therefore, in order not to negate the role and authority of the three nominating bodies, any constitutional judge who does not meet the requirement shall obtain a confirmation from the nominating bodies to continue their tenure as a constitutional judge as stipulated in the provision. When a nominating body gives the confirmation as requested of the Court, the nominating body may take the following stance: (1) The judge in question may continue their term of office in accordance with the provisions of the Law in question; or (2) To refuse the extension of the term of office of the constitutional judge because it does not meet the requirements under the provision of the Law in question. However, the principle adopted by the Transitional Provisions is to protect persons affected by the change of regulation from any damage. This applies as long as it does not conflict with the 1945 Constitution as the supreme law of the land.

Whereas in consideration of the matters in Paragraph [6.4] above, specifically for the Petitioner's petition in respect of Article 87 item b of Law 7/2020 (the Constitutional Court Law), the provision must be declared conditionally unconstitutional as long as it is not interpreted as follows, "*Any constitutional judge who is in office by the time this Law is enacted shall be deemed to meet the requirements under this Law and shall end their term of office at the age of 70 (seventy) years old as long as their entire term of office does not exceed 15 (fifteen) years after receiving a confirmation from the nominating body namely the Supreme Court or the House of Representatives or the President*".

B. Dissenting Opinion of Constitutional Justice Wahiduddin Adams

My dissenting opinion regarding the constitutionality of Article 87 item b of the Law in question is divided into 3 (three) corridors, namely: 1). the material essence of the transitional provisions; 2). interpretation of the relevant norms; and 3). constitutionality issues in the relevant norms.

1. Material Essence of Transitional Terms

Whereas the parties affected by change of laws and regulations may be required to follow the new laws and regulations as long as it is "not detrimental". However, regardless of that, transitional provisions in the laws and regulations shall not in any case be intentionally created to give a privilege to a legal entity.

The highest limit that can be reasonably set by way of transitional provisions of the laws and regulations is to ensure that the parties affected by the change of laws and regulations are "not prejudiced" instead of "benefited" or given a certain privilege.

2. Interpretation of the Language of the Relevant Norms

Whereas for the foregoing reason, in my opinion the relevant norm is essentially a material of the law that intentionally violates the ethics in the relationship between "State Agencies referred to in the Constitution". Meanwhile, we can still recall that the Court has, or at least I have, often made the best effort to safeguard this issue through several past decisions, particularly those decisions which are essentially intended to give the legislators an opportunity to make an or several improvements of law by way of amendment or replacement of the law.

3. The Issue of Constitutionality in the Relevant Norms

Whereas I have to differ from the Court's consideration that: "... *The law in question excludes all constitutional justices ... grants a legal status to all Constitutional Justices...*", because in fact this is different from the reality wherein there are 2 (two) Constitutional Justices whose terms of appointment, tenure, and/or retirement ages still meet the requirements under either the old law or the new law. Furthermore, I also disagree with the Court's consideration which states as follows: "... *Article 87 item b is a 'bridging/connecting' norm in the context of enforcing the provision of Article 15 of the Law in question...*" because I believe that Article 87 item b of the Law appears more as a material norm which actually gives a privilege to most of the current Constitutional Justices instead of serving as a transitional provision which is generally intended to ensure that the parties affected by the change of laws and regulations (in this case: most of the current Constitutional Justices) is simply "not prejudiced".

Whereas for the foregoing reason, I also have to differ from the consideration of the Court that it is necessary to take a legal action in the form of a confirmation from the agencies nominating the Constitutional Justices currently in office on the basis of 3 (three) main arguments, namely because: 1). the legal action in the form of confirmation is not recognized by the constitutional system of the Republic of Indonesia pursuant to either the 1945 Constitution of the Republic of Indonesia or various laws and regulations; 2). the legal action in the form of confirmation may prejudice the authority of the Court and the principle of independence of judicial power, the supremacy of the constitution, and the rule of law; and 3). Won't such legal action in the form of confirmation trigger the creation of an understanding or even an affirmation that the Constitutional Justices were actually the representation of each nominating agency (in this case: the Supreme Court, the House of Representatives, and/or the President)?

Whereas I also believe that as Article 87 item b of the Law in question is declared to be contradictory with the 1945 Constitution of the Republic of Indonesia and to have no binding legal force, the affected parties (in this case: most of the current Constitutional Justices) are "not completely prejudiced" in any manner but simply they are not given any "inappropriate privilege". Therefore, in order to prevent any "inappropriate privilege", the statesmanship of a Constitutional Justice is being tested because a true statesman shall always consider the circumstances and the fate of future generations instead of just getting lost in a momentary interest and desire.

Whereas in the entire proceedings of the judicial review of the law in question (both formally and materially), I have made the best effort to maintain justice to myself and my fellow Constitutional Justices in accordance with the teachings of my religion. I believe that the God's command to always maintain justice including towards oneself and one's relatives is also contained in the scriptures of other religions although perhaps in a slightly different narrative. I'm really having a hard time and barely able to build another argument that can (perhaps) maintain this togetherness because the means and the spirit (intent) of the legislators in various matters, particularly Article 87 item b, of the law in question apparently and explicitly caused the violation of several constitutional principles of the 1945 Constitution of the Republic of Indonesia, especially the principle of the rule of law pursuant to Article 1

paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the principle of independence of judicial power pursuant to Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. My stance and dissenting opinion are solely based on my true and sincere love for this togetherness and most importantly: for realizing the continuity of the rule of law and the constitution in Indonesia.

Whereas, for the foregoing reasons, from the beginning the legislators should have established norms for the transitional provision which are better than those contained in Article 87 item b of the Law in question. Moreover, the Court has also granted the petition to the extent that it relates to the constitutionality of Article 87 item a. Although its constitutional ground is different from that of Article 87 letter b, I believe that both of them are essentially similar because they are both stipulated in the Chapter concerning Transitional Provisions which seems to have been made in a hasty and reckless manner from the outset and it can reasonably be seen as giving a "privilege" to most of the current Constitutional Justices rather than simply ensuring that they are "not prejudiced" in accordance with the basic objectives and principles of a transitional provision in a law.

Whereas, for the foregoing reasons, in my opinion the Court should **GRANT** the Petitioner's petition by declaring that Article 87 item b of the law in question is contradictory with the 1945 Constitution of the Republic of Indonesia and has no binding legal force.

C. Concurring Opinion of Constitutional Justice Saldi Isra

Whereas, in respect of the Court's Decision in this case, I, Constitutional Justice Saldi Isra, have a concurring opinion on Article 87 item b of Law 7/2020. In this case, with all of its gradations, some people in the public or the community consider that the norms of Article 87 item b of Law 7/2020 benefits certain constitutional justices who were appointed pursuant to the previous law. Based on a reasonable reasoning, such assumption can be confronted with a general principle when there is a transitional period or the transition from an old law to a new law, namely that "the implementation of the new law must not prejudice the parties affected by the change of laws and regulations".

Whereas, with regard to the above matter, a more elaborative explanation is needed, what if the implementation of the change or the transitional provision as matter of fact is not detrimental but on the contrary, it is considered beneficial for the affected parties? There are several grounds or ways to understand such implementation.

Firstly, the formulation of the regulation or norm considered as beneficial may simply be deemed to have satisfied the principle that "the implementation of a new law must not prejudice the parties affected by the change of law". In a more general sense, the stipulation is also contained in the legal principle of *lex favor reo (a more favourable clause)*, namely that in the event of any change of law, the law that is favourable to the parties affected by the change in question can be adopted. In this regard, theoretically the principle of *lex favor reo (a more favourable clause)* is a general legal principle which means that: if there is any change of law, the less cumbersome rule is applied for any person affected by the change of law.

Secondly, to the extent that the formulation of the transitional rule or norm is purely part of the consideration of the legislators as an effort to achieve the legal politics of the change of the law in question and is not an "order" or a "will" of those affected by it, it is justifiable. Moreover, in the system and process of forming laws in Indonesia, as stipulated in Article 20 of the 1945 Constitution, the parties affected by the implementation of a transitional provision (in this case Article 87 letter b) is not part of a state agency that was involved or took part in discussions regarding the law. In practice, since the beginning of its formation, the Constitutional Court, more specifically the constitutional justices, have actually avoided from being involved in law-making processes, including in the process of formation of the Constitutional Court Law.

Thirdly, from a constitutional perspective, with regard to the age, term of office, and periodization of the tenure of a constitutional justice, it is not explicitly regulated in the 1945 Constitution. Unlike the filling of positions of the chairperson and the deputy chairperson of the Constitutional Court, Article 24C paragraph (4) of the 1945 Constitution

explicitly states that these positions shall be elected from and by constitutional justices. Therefore, if a law which governs the filling of the position of the chairperson and the deputy chairperson stipulates otherwise, this will certainly cause a serious constitutional issue.

Fourthly, as stated in the Decision of the Constitutional Court Number 53/PUU-XIV/2016, with regard to the “grouping of offices” of the constitutional justices, particularly in relation to the age limit, the term of office, and the periodization of tenure, is within the authority of the legislators (open legal policy). This is permitted as long as it does not violate the limitation of the principle of open legal policy, including the principle of reasonableness. Since the determination is the authority of the legislators, its enactment is also the authority of the legislators. Accordingly, if the Court examines the implementation of the transitional norm, this means that the Constitutional Court re-examines the substance of the Constitutional Court Decision Number 53/PUU-XIV/2016.

Whereas some members of the public consider that the latest amendment to the Constitutional Court will prejudice the independence and autonomy of these constitutional justices in examining, adjudicating, and deciding cases. Such a view is not correct. The constitutional justices, in particular myself, will continue to uphold our integrity and professionalism in examining constitutional cases within the jurisdiction of the Court. This matter could be seen at least since this Constitutional Court Law was promulgated until the verdict in this case is announced today. Therefore, the public can continue monitoring and assessing the attitudes, actions, and behaviour of each constitutional judge during their term of office, especially in examining, adjudicating, and deciding cases.

Whereas because some persons in the public or the community consider that the norm of Article 87 item b of Law 7/2020 gives a privilege to certain constitutional justices, the Constitutional Court should find a balance between the judges who are deemed to be benefited and the three state agencies (the President, the House of Representatives, and the Supreme Court) that are given the power to nominate the constitutional justices. In this case, I agree with the consideration in the Judgment in this case that it is necessary to take a legal action in the form of confirmation from the state agencies which nominated the constitutional judges who are currently in office. As further confirmed in the Judgment in this case, the confirmation means that the constitutional judges through the Constitutional Court submit a notification regarding the continuation of their term of office without any periodization to the nominating agencies (the House of Representatives, the President, and the Supreme Court).

D. Concurring Opinion and Dissenting Opinion of Constitutional Justice Suhartoyo in the judicial review in Case Number 96/PUU-XVIII/2020

Whereas, in addition to the legal consideration that I put forward in the previous decision on the formal review, in the material review I am of the opinion that the evidence regarding the legal standing of the Petitioner and the subject matter of the petition cannot be separated and must also be assessed simultaneously. Furthermore, with regard to the subject matter or substance of the norms that were changed and then challenged by the Petitioner, namely Petition Number 96/PUU-VIII/2020 which challenged the constitutionality of the norm of Article 87 item b and item a of Law 7/2020, it relates to position of the Constitutional Justices, then in this matter I also share the same opinion, namely because these matters relate to the grouping of positions of the Constitutional Judges, either the requirements, procedures for nomination/appointment, terms of office, retirement age, periodization, and the term of office of the deputy/chairperson including the procedure for their nomination. Therefore, in my opinion these matters cannot be separated from my opinion in making the examination and conclusion in the formal review. This is because the essence of the amendment to Law 7/2020 is the main elements that were followed up by the legislators using an open cumulative system due to a decision of the Constitutional Court.

Whereas no separation can be made between the process of formation/change and the substance or subject matter of the law to the extent that it relates to matters in respect of the position of judges. Therefore, in my opinion, since the subject matter of the petition in these cases filed by the Petitioner is still closely related to the pattern of the position of judges, then the change in the subject matter of Law 7/2020 becomes an integral part and its integrity must still be protected from issues aimed at assessing the constitutionality of the norms of the said change. Furthermore, in the context that the legislators made a change of law as a response to or as a result of the decision of the Constitutional Court and by using an open cumulative instrument, in this case the legislators can be seen as using its "privilege" in a specific and limited manner, in amending the law in question, because only the substance of certain laws can be made/changed through such an open cumulative system (see Article 23 of Law 12/2011). Therefore, if any person considers that the change of the law in this case contains a defect in will as it is not in accordance with what has been decided by the Constitutional Court in responding to the amendment, then such an opinion/view should be raised to the legislators for the purpose of a legislative review. Meanwhile, if any parts of the substance are not relevant with the pattern of the position of judges, and they are included in the amendment to the law in question, then if there is any question on its constitutionality, it can be raised to be reviewed by the Constitutional Court.

Whereas, upon the foregoing legal considerations, I also share the same opinion as the one in the formal review in a previous decision, although in the opinion of the other Constitution Justices, the legal standing of the Petitioner can be considered, on the subject matter of the petition I made a conclusion that the Petitioner's petition in this case is legally unjustifiable and the Constitutional Court should dismiss the Petitioner's petition in its entirety.

Whereas upon the foregoing legal considerations, I came to the final conclusion that to the extent of the petition granted by the Constitutional Court in its verdict, namely Article 87 item a of Law 7/2020, I express a dissenting opinion on either the legal consideration or the verdict. Meanwhile, in respect of the portion of the decision of the Constitutional Court which in its verdict dismisses the petition of the Petitioner, namely Article 87 item b of Law 7/2020, I agree with its verdict but express a concurring opinion on the legal consideration.

Concurring Opinion of Justice Daniel Yusmic P. Foekh

Whereas, with respect to the petition for the judicial review of the norm of Article 87 item b of Law 7/2020, I agree with the opinion of the majority of the constitutional justices. However, specifically on the provision contained in Article 87 item a of Law 7/2020, which stipulates as follows: "*The constitutional judge who is currently serving as the Chairperson or the Deputy Chairperson of the Constitutional Court shall continue to serve as the*

Chairperson or the Deputy Chairperson of the Constitutional Court until their term of office expires pursuant to the provisions of this law;" I have a concurring opinion as follows:

Whereas, the norm of Article 87 item a of the Constitutional Court Law is part of the transitional provision based on Annex II paragraph C.4 sub- paragraph 127 of Law Number 12 of 2011 concerning the Formation of Legislations as amended by Law Number 15 of 2019 concerning Amendment to Law Number 12 of 2011 concerning the Formation of Legislations emphasizes that transitional provisions contain an adjustment of any existing arrangement of legal actions or legal relationships based on the old law to the new law, which is aimed at:

- a. avoiding the occurrence of a legal vacuum;
- b. guaranteeing the legal certainty;
- c. providing a legal protection for parties affected by change of laws; and
- d. governing transitional or temporary matters.

Therefore, the transitional provisions (*overgangsbepalingen*) is necessary to avoid a legal vacuum (*rechtsvacuum*), guarantee the legal certainty (*rechtszekerheid*), and provide a legal protection (*rechtsbescherming*) for parties who are affected by the change of regulations and are transitional in nature for the purpose of an adjustment to the new law. Furthermore, the Court in the Decision of the Constitutional Court Number 009/PUU-IV/2006 dated July 12th, 2006, and the Decision of the Constitutional Court Number 121/PUU-VII/2009 dated March 9th, 2011, which was essentially a reminder that a transitional provision which contains an adjustment of a law existing when the new law comes into force is intended to ensure that such law can be enforced effectively without causing any legal issue.

Whereas, in relation to the current Chairperson and Deputy Chairperson of the Constitutional Court, in order to avoid multiple interpretations, the phrase "until their term of office expires pursuant to the provision of this law" in Article 87 item a of Law 7/2020, it must be seen that in respect of the Chairperson and the Deputy Chairperson of the Constitutional Court who are currently in office pursuant to Article 4 paragraph (3) of Law 8/2011 for 2 (two) years and 6 (six) months, as a consequence of the enactment of the transitional provision, namely Article 87 item a of Law 7/2020, the terms of office of the current Chairperson and Deputy Chairperson of the Constitutional Court shall be extended for a maximum period of 2 (two) years and 6 (six) months so that the total terms of office shall be 5 (five) years.

Whereas, based on the above legal consideration, the Petitioner's petition with regard to the norm of Article 87 item a of Law 7/2020 in particular the phrase "until their term of office expires in accordance with this law" is legally justifiable in part to the extent that it is not interpreted that the Chairperson and Deputy Chairperson of the Constitutional Court as elected pursuant to Article 4 paragraph (3) of Law 8/2011 shall remain in office as the Chairperson or the Deputy Chairperson of the Constitutional Court until the expiry of their terms of office, which is not more than 5 (five) years in aggregate.

E. Dissenting Opinion of Constitutional Justice Anwar Usman

Whereas norms in the formation of a legislation is a system that complements each other. There should not be a norm in the formation of a law that actually negates other norms. If this happens, it can be concluded that the formation of the legislation is beyond or not in accordance with the rules for a proper formation of laws and regulations. Likewise, with respect to the position of a transitional provision of a law, it does not have the function of negating a norm in the main provisions of the said law but only to safeguard the transitional process of the enactment of a law so that it is aligned with the needs and continuity, from the enactment of the old law into the new law.

With regard to two provisions raised by the Petitioner, namely Article 87 item a and Article 87 item b of Law 7/2020, the Petitioner's petition to examine the provision of Article 87 item b of Law 7/2020 will be considered first in accordance with the order and systematics of the petition submitted by the Petitioner.

Therefore, the function of the transitional provision section in the formation of a Law, as stipulated in Sub-paragraph 127 of the Annex of Law Number 12 of 2011 as lastly amended by Law Number 15 of 2019 concerning the Formation of Legislations, is to:

- a. Avoid the occurrence of a legal vacuum;
- b. Ensure the legal certainty;
- c. Provide a legal protection for parties affected by the change of laws; and
- d. Arrange for transitional or temporary matters.

Therefore, it is clear that the transitional provision must not negate the main provision which already contains a clear and detailed rule.

In this context, the requirement for a Constitutional Justice to have the minimum age of 55 years old has been clearly and explicitly regulated (*expressis verbis*) in the provision of Article 15 paragraph (2) item d in conjunction with Article 23 paragraph (1) item c of Law No. 7/2020. For that reason, the transitional provision of Article 87 item b has clearly and obviously negated the provision of Article 15 paragraph (2) letter d in conjunction with Article 23 paragraph (1) item c of Law no. 7/2020.

Whereas, upon the foregoing consideration, the Petitioner's petition in relation to Article 87 item b of Law 7/2020, which requests that the Constitutional Court declares the provision of Article 87 item b of Law 7/2020 is conditionally unconstitutional to the extent that it is not interpreted as follows, "*Any Constitutional Justices who are currently in office must be 55 (fifty-five) years old*" so that Article 87 item b of Law 7/2020 shall read in its entirety as follows: "*Any Constitutional Justices who are in office by the time this Law is enacted shall continue their positions if they have satisfied the provision of Article 15 of this Law and shall end their duties at the age of 70 (seventy) years old as long as their entire terms of office do not exceed 15 (fifteen) years.*", is legally justifiable, and therefore it must be granted.

Whereas, with regard to the petition for the review of Article 87 item a of Law No. 7/2020 concerning the term of office of the Chairperson and the Deputy Chairperson of the Constitutional Court, considering that the position in question is part of the right to vote and be elected of the Constitutional Justices, then it is appropriate and reasonable if the question is addressed to the right holders, namely the Constitutional Justices. Although it is understandable that the legislators wish to keep the process of transition of the leadership in the Constitutional Court runs well and smoothly, such desire must be considered by the right holders. Meanwhile, the terms of office of the Chairperson and the Deputy Chairperson are 5 (five) years and they can be re-elected for another term as stipulated in the provision of Article 4 paragraph (3) and Article 4 paragraph (3a) of Law 7/2020, which can be implemented after the process of election of the Chairperson and the Deputy Chairperson of the Constitutional Court by 9 (nine) Constitutional Justices who satisfy the requirements to become Constitutional Justices as stipulated in the provision of Article 15 paragraph (2) item d in conjunction with Article 23 paragraph (1) item c of Law no. 7/2020. Therefore, the process of transition of the leadership in the Constitutional Court can run well and smoothly, without prejudice to the right to vote and be elected owned by nine Constitutional Justices,

namely 9 constitutional justices who satisfy the requirements set forth in the transitional provision of Article 87 item b of Law 7/2020 above.

Whereas, upon the foregoing consideration, the Petitioner's petition in relation to Article 87 item a of Law 7/2020 can be conditionally granted to the extent that it is interpreted that *"Any Constitutional Justices who are currently serving as the Chairperson and the Deputy Chairperson of the Constitutional Court shall continue to serve as the Chairperson or the Deputy Chairperson of the Constitutional Court until a new Chairperson or Deputy Chairperson of the Constitutional Court is elected by nine Constitutional Justices, who have satisfy the requirements for Constitutional Justices as stipulated in Article 15 paragraph (2) item d in conjunction with Article 23 paragraph (1) item c of Law No. 7/2020"*.