



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASES NUMBER 80 / PUU-XVII / 2019

Concerning

Requirements Appointment of Deputy Minister

Petitioner : Bayu Segara, SH and Novan Lailathul Rizky

Case : Review of Law Number 39 of 2008 concerning the Ministry of State (Law 39/2008) on the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Case of Lawsuit : Article 10 of Law 39/2008 contradicts Article 1 paragraph (3), Article 17 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution.

Injunction : Declare the petition of the Petitioners cannot be accepted.

Date of Decision : Thursday, 27 August 2020

Decision Overview :

The Petitioners are Indonesian citizens, the Petitioners I is the chairperson of the Law

and Constitutional Studies Forum (FKHK) and Petitioner II is a student of the Faculty of Law, Sahid University Jakarta.

Whereas the Petitioners tested the constitutionality of the norms of Law Number 39 of 2008 concerning State Ministries (hereinafter referred to as Law 39/2008), so that the Court has the authority to petition a quo.

Whereas regarding the legal standing of the Petitioners, after having examined the legal position of the Petitioners in relation to the subject matter of the petition, the Court will therefore consider the legal position of the Petitioners together with the subject of the petition. Thus, regardless of reasonwhether or not the a quo petition is, the prima facie Petitioners have the legal standing to file the a quo petition;

Whereas before further consideration of the aforementioned constitutional issues, Article 10 Law 39/2008 has been submitted for review to the Court in Case Number 79 / PUU-IX / 2011 and was decided on June 5, 2012. Since a petition for review has been submitted, the Court will first consider whether the a quo petition meets the criteria as the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 42 paragraph (2) of the Constitutional Court Regulation Number 06 / PMK / 2005, so that the a quo norm can be re-examined.

Whereas in the petition for Case Number 79 / PUU-IX / 2011 the basis for the examination is Article 17 and Article 28D paragraph (3) of the 1945 Constitution, while the basis for testing in the a quo petition is Article 1 paragraph (3), Article 17 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. Furthermore, the constitutional reasons in the case petition Number 79 / PUU-IX / 2011 is about the existence and enforcement of Article 10 of Law 39/2008 and its explanation which closes the rights of Indonesian citizens who are not career officials or civil servants to obtain equal rights and opportunities in government, especially become deputy minister, while the constitutional reasons are in the petition *a quo* is enforcement constitutionalism based on considerations in the Constitutional Court Decision Number 97 / PUU-XI / 2013 and the Constitutional Court Decision Number 1-

2 / PUU-XII / 2014. Whereas there are differences in the basis for testing and constitutional reasons in the petition for Case Number 79 / PUU-IX / 2011 with the a quo petition, regardless of whether the a quo petition is legally grounded or not, formally the a quo petition is based on the provisions of Article 60 paragraph (2) of the Law. The Constitutional Court and Article 42 paragraph (2) of the Constitutional Court Regulation Number 06 / PMK / 2005 can be filed again.

Whereas after the Court studied carefully the reasons for the petition, the Petitioners stated that the Court's legal considerations in Paragraph [3.12] of the Constitutional Court Decision Number 79 / PUU-IX / 2011 were not wrong (vide petition page 14, point 8). However, the Petitioners interpret that when referring to the opinion of the Court in other Constitutional Court decisions, Article 10 of Law 39/2008 contradicts the 1945 Constitution.

Against the Petitioners' argument above, the Court is of the opinion that the Petitioners are inconsistent. On the one hand, the Petitioners acknowledge and justify the Court's legal considerations against the norms tested, while on the other hand the Petitioners ask the Court to reconsider the legal considerations because of the Court's legal considerations in the Constitutional Court Decision Number 97 / PUU-XI / 2013, dated May 19, 2014, in Paragraph [3.12.5], page 58, which cites the legal considerations of the Court in the Constitutional Court Decision Number 1- 2 / PUU-XII / 2014, dated February 13, 2014, Paragraph [3.20] second paragraph.

According to the Court, there is no contradiction with the considerations The Court in its decision Number 79 / PUU-IX / 2011 in particular Paragraphs [3.12.2] and Paragraphs [3.13] which basically emphasizes that in order to carry out the objectives of the state as set forth in the Fourth Paragraph of the Preamble of the 1945 Constitution, even though a state institution is not explicitly stated In the 1945 Constitution, this can be justified as long as it does not contradict the 1945 Constitution. Because the appointment of deputy ministers can be carried out by the President regardless of whether it is regulated or not regulated in Law 39/2008, because the President who appoints the deputy minister is the holder of

governmental power according to the Constitution. 1945 [vide Article 4 paragraph (1) of the 1945 Constitution].

Court affirmed that the issue of the constitutionality of the norm of Article 10 of Law 39/2008 has been resolved and there are no new reasons that can change the Court's position. Therefore, the Petitioners' arguments regarding the unconstitutionality of Article 10 of Law 39/2008 are no longer relevant to be considered.

However, it is important for the Court to emphasize the matter the facts put forward by the Petitioners regarding the absence of a prohibition on concurrent deputy ministerial positions which resulted in a deputy minister being able to concurrently be a commissioner or director in a state or private company. Regarding this fact, even though the deputy minister assists the minister in leading the implementation of ministerial duties, because the appointment and dismissal of deputy ministers is the prerogative of the President as is the appointment and dismissal of ministers, the deputy minister must also be positioned as an official in accordance with the status given to the minister. With this status, all the prohibitions on concurrent positions that apply to ministers as regulated in Article 23 of Law 39/2008 also apply to deputy ministers.

That after considering the main petition above and before arriving at a conclusion regarding the a quo petition, the Court first considered the legal standing of the Petitioners. Regarding the Petitioners' legal position, the Court did not find any evidence that could support the reasons for the loss of Petitioners' I as an Indonesian citizen who also serves as the General Chair of the Law and Constitutional Study Forum (FKHK), especially evidence relating to studies or activities that have been carried out directly related to the post of minister and / or deputy minister as part of constitutional studies. Therefore, according to the Court, Petitioner I cannot act as a Petitioner in the a quo petition. Meanwhile, Petitioner II, as a student activist or as a voter in the election, cannot explain his perceived constitutional impairment by the enactment of the norms of Article 10 of Law 39/2008, so that there is no causal relationship between the perceived loss described by Petitioner II and the norm

petitioned for examination both actual and potential. Therefore,

Considering whereas based on the description of legal considerations above, the Petitioners do not have the legal position to file the a quo petition. Even if the Petitioners have the legal position to apply for Article review

10 Law 39/2008, quod non, the Petitioners' petition is legally groundless for the whole.

Based on considerations above, the Court subsequently issued a decision stating that the Petitioners' petition could not be accepted.