



**THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

SUMMARY OF DECISION

ON CASE NUMBER 5/PUU-XVIII/2020

Concerning

Suretyship Business Line in Insurance

- Petitioner** : **General Insurance Association of Indonesia (AAUI)**
- Case** : Judicial Review Number 40 of 2014 on Insurance (Law 40/2014) Against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Case of Lawsuit** : Testing Article 5 paragraph (1) Law 40/2014 and UUD 1945 Article 28D paragraph (1)
- Injunction** : The Petitioner's Case is not admissible
- Date of Decision** : Wednesday, 25 November 2020
- Decision Overview** :

The Petitioner is the General Insurance Association of Indonesia (AAUI) which is a legal entity of association which members are companies engage in insurance (Private Legal Entity) and constitutionally burdened by the provisions under Article 5 paragraph (1) Law 40 of 2014 on Insurance (Law 40/2014) because the norm does not expressly stated suretyship, whereas suretyship business line had been issued from the first place by insurers.

That in relation to the Constitutional Court (the Court) authority, for the case challenged the constitutionality of Law 40/2014, the Court is competent to decide the case.

That on the legal standing, the Petitioner is a private legal entity that under the Deed Number 02 the Resolution of Congress of the General Insurance Association of Indonesia on Amendment to Bylaws, dated 4 December 2018, it stated that the party entitled to act for and on the behalf of AAUI under Article 14 and authorized to make appearance before the court on the behalf of AAUI Organization under Article 18 paragraph 2 is the Board of Head Office and shall at least comprised of one Chair, one Deputy, one Treasury, and one Executive Director. Herein the Petitioner is represented by the Chair of the Board of AAUI Head Office, the Deputy, the Treasury of the Board of AAUI Head Office, and the Executive Director of the Board of AAUI Head Office. After which, the Petitioner claimed it is constitutionally burdened because the suretyship in practice has been provided for a long time but it does not expressly stated included under Article 5 paragraph (1) Law 40/2014, thereby violated the just legal principles and created damage or potentially created damage not only against the Petitioner's members, but also any other companies which engage in suretyship business line. Even threatened the suretyship business line that has been going on for decades, which had benefited national development. For the Petitioner had presented its position in the association by enclosing the provisions which stated the party entitled to represent the association to act both within the court or otherwise, according to the Court, the Petitioner had proved that the Petitioner is a legal subject entitled to submit the requisition and the Petitioner had explained the causality between the alleged potential constitutionally burdened and the challenged articles. Thereby notwithstanding to whether it is proved or otherwise the Petitioner's argument which challenge the norms of Law 40/2014 herein, the Court adjudicated, the Petitioner has the legal standing to act as the Petitioner in the case.

That because the Court is competent to decide on the Petitioner's case and the Petitioner has the legal standing to act as the Petitioner herein, and after carefully read the Petitioner's requisition and the adduced evidence, both document evidence and experts opinion as well as statements testified by the Petitioner's witnesses, and the Petitioner's concluding argument, statements by the House of Representatives, statements and concluding remarks by the President, statements and concluding remarks by the Parties Concerned, and the Court's experts opinion, thereafter the Court considered the Petitioner's arguments.

That in relation to the suretyship business line or surety bond, according to the Court it is make a point to have consistent perception between the suretyship or surety bond according to which the legal facts obtained before the court, that suretyship is a generic term of a business line, whereas surety bond is its product. Whereas the definition of suretyship is "general insurance business line which secure the Principal's capability to perform obligations under master agreement between the Principal and Obligee". Thereby an Insurance Institution comprised of three parties, they are the Surety, Principal, and Obligee, and the different from insurance is, at the heart of insurance are two parties namely the Insured and the Insurer. However, this not necessarily be interpreted insurer shall not provide suretyship or surety bond business line, because empirically in Indonesia actually insurers which provided suretyship or surety bond business line their number is many and it really shows insurer provide a business line with a slight difference to its core business, even though the bottom line of suretyship or surety bond is a business line of general insurance company.

In relation to the constitutionality of Article 5 paragraph (1) Law 40/2014, in fact general insurance company had never been prevented from this practice of suretyship business line, whereas in relation to the laws which govern the suretyship or surety bond business line as referred to under Law 1 of 2016 on Insurance (Law 1/2016) it is not under Law 40/2014. This clearly inextricable

from the scope of suretyship or surety bond business line that even though it is a product of insurance company, nevertheless the substance is guarantee services. Thereby the case on which it is expressed under a provision does not immediately pose constitutionality as with the case which challenged the norm of the article which govern suretyship or surety bond business line related matters. On the ground, if it is governed under Law 40/2014 yet in fact the substance is not about the type of insurance but it is related to guarantee services, whereas if it is governed under Law 1/2016 yet in fact the substance is a part of insurance product. Moreover, for any insurance company which will engage suretyship or surety bond business line they should not be prevented by the provisions, despite the fact the Petitioner argued it is constitutionally burdened thereby. However, it is difficult for the Court to conclude that there is a constitutionality matter with respect to the norm under Article 5 Law 40/2014. In other words, if seen from the party which engage in suretyship or surety bond business line which is insurance company it is not a mistake if the provisions on suretyship or surety bond is included in Law 1/2016, because the concept of suretyship or surety bond itself in general is similar to the concept of guarantee, therefore it is not possible the provisions is included in Law 40/2014.

That in relation to the provisions under the norm Article 5 paragraph (1) Law 40/2014 on the phrase “according to the needs of the society” it is the provisions which needs to be accommodated and maintained to adjust with the insurance industry development in the society, that if it is defined “including surety business line” as with the Petitioner’s case, it will provide legal confusion for insurance companies to expand their business and limit any possibility to expand into other business lines than suretyship. Moreover, without a broader sense of the phrase “according to the needs of the society” as requested by the Petitioner, what the Petitioner really wanted is actually had been accommodated in Law 1/2016. On the ground that suretyship can be found under Law

1/2016 it is unnecessary to govern it under Law 40/2014, thus no case on suretyship regulation. From this point the Petitioner 'case which challenged the constitutionality of the norm under Article 5 paragraph (1) Law 40/2014 is unfounded.

In relation to the Petitioner's arguments on the norm under Article 61 Law 1/2016, even though it is not stated by the Petitioner in its petition, however because it is argued in its petition and in the substance it is the bottom line the Petitioner deemed that the norm of the article prevented insurance company to engage in suretyship business line. Thereby the Court needs to answer the Petitioner's argument, that is, after careful review what the Petitioner's really concerned is because insurance company which is not an institution which provide guarantee shall be qualified as an institution which provide guarantee if it intends to engage the business as referred to under Article 1 paragraph 1 *juncto* Article 4 paragraph (1) Law 1/2016. Whereas the suretyship business line (in this matter surety bond) as referred to under Article 4 paragraph (2) Law 1/2016 may be engaged by any insurance company in synergy with the provisions under Article 5 paragraph (1) Law 40/2015 which govern expansion of insurance business. This is in view of suretyship business line as referred to under Article 4 paragraph (2) Law 1/2016 did not required qualification as an institution which provide guarantee as referred to under Article 1 paragraph 1 Law 1/2016. Whereas Article 5 paragraph (1) Law 40/2014 is the provision which govern insurance company to engage in services which provided guarantee shall be in compliance to Law 1/2016 in relation to the period as determined under Article 61 paragraph (1) Law 1/2016. Thereby, according to the Court, the Petitioner's concern is unnecessary in consideration of the suretyship business is a business which core business is a service which provide guarantee as a business line that could be engaged by insurance company. Furthermore, as the implementation of Article 5 paragraph (3) Law 40/2014, the Financial Services Authority had issued Financial Services Authority Regulation

Number 69/POJK.05/2016 on Insurance Company Business, Sharia Insurance Company, Reinsurance company and Sharia Reinsurance Company which allowed insurance company to engage in suretyship business line, this in compliance to the provisions under Article 61 Law 1/2016. Thereby the insurance company which engage in suretyship business line is not a subject to criminal sanction despite the Petitioner's concern.

In consideration of the foregoing judgement, the Court decided to announce that the Petitioner's case is inadmissible.