



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASE NUMBER 84/PUU-XVIII/2020

Concerning

Provisions for Execution of Mortgage Rights do not hinder the Rights of the Heirs over

Inheritance

- Petitioner** : **Hj. Rosmanidar**
- Case** : Judicial Review Number 4 of 1996 concerning Mortgage on Land and Objects Associated with Land (Law 4/1996) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Case of Lawsuit** : Article 6 of Law 4/1996 which regulates the right of creditors to execute mortgage objects, according to the Petitioners, hinders inheritance rights and is therefore contrary to the 1945 Constitution
- Injunction** : Rejected the petitioner's petition
- Date of Decision** : Thursday, January 14, 2021.
- Decision overview** :

The Petitioner is an Indonesian citizen. The Petitioner is one of the heirs of the late H Mardi Can, in which during his lifetime, H Mardi Can was a debtor of a credit agreement with mortgage rights.

Regarding the authority of the Court, as the Petitioner's petition regarding the review of Law Number 4 of 1996 concerning Mortgage on Land and Objects Related to Land (UU 4/1996), the Court has the authority to hear a quo petition.

Regarding the legal position of the Petitioner, the Petitioner feels disadvantaged because the land that was pledged by his late husband H. Mardi Can was actually auctioned by the creditor without the knowledge of the Petitioner and the heirs of the debtor H. Mardi Can. Therefore, the Court is of the opinion that the Petitioner as the wife (heir) of the debtor has the legal position to act as the Petitioner in a quo case.

The Petitioner filed a petition for review of the constitutionality of Article 6 of Law 4/1996. Article 6 a quo regulates the right of the creditor holding the mortgage to execute the object of the mortgage when the debtor is unable to pay off his credit or debt. According to the Petitioner, the provision prevents the Petitioner's right as heir to obtain an inheritance in the form of land which is the object of the mortgage.

Against such a petition, the Court is of the opinion that the execution of the object of mortgage, when the debtor is unable to repay the debt, is not contrary to the 1945 Constitution. According to the Court, such rights provide legal certainty and legal protection for creditors that their receivables will be repaid by the debtor.

Regarding the inheritance, the Court is of the opinion that the execution of mortgage rights does not impede and in fact, it is not related to the transfer of rights between the testator and the heirs. In the event that the object of the mortgage is at the same time the status of inheritance, then the inheritance of the object is the same as the inheritance of the debt

guaranteed by him to the heirs. The transfer of inheritance from the heir to the heirs is a package with the transfer of debts/obligations of the heir to the heirs.

Related to inheritance of this debt/obligation, the Court is of the opinion that the Petitioner may choose to submit to the provisions in the Civil Code or to the provisions in the Compilation of Islamic Law. The two provisions regulate the inheritance of debt differently and of course have different consequences.

In the event that the Petitioners consider that Law 4/1996 is incomplete because it does not regulate the mechanism for inheritance of mortgage objects, according to the Court, this does not necessarily make Article 6 of Law 4/1996 contradictory to the 1945 Constitution. The Court is of the opinion that a more comprehensive regulation is needed, by the State, regarding the execution of the object of mortgage when at the same time such object changes ownership due to inheritance.

According to such legal considerations, the Court is of the opinion that the Petitioners' petition has no legal basis. Therefore, in its decision, the Court rejected the Petitioner's application