



JUDGMENT

Number 15/PUU-XIV/2016

FOR JUSTICE BASED ON THE ONE AND ONLY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Trying a constitutional case at first and last instance, makes decisions in a case of Examination of the Law Number 1 of 2004 regarding State Treasury to the Constitution of the Republic of Indonesia of 1945, submitted by:

Name : Drs. Burhan Manurung, MA.

Occupation : Retired Person of Civil Service
Apparatus ASN/Civil Servant of the
Ministry of Trade

Address : Jalan Pinus I Blok A-214 Perumahan
Harapan Jaya RT/RW 005/010 Harapan
Jaya, Bekasi

Hereinafter referred to as ----- the Petitioner;

[1.2] Upon perusal of the Petitioner's petition;

Upon hearing of the Petitioner's statement;

Upon hearing and perusal of the President's statement;

Upon hearing and perusal of statement from any Party related to PT Taspen (Persero);

Upon examination of documents/written evidences from the Petitioner;

Upon perusal of the conclusions of the Petitioner, President, and any Party related to PT Taspen (Persero).

2. SUBJECT OF CASE

[2.1] Considering that the Petitioner has submitted petition dated 28 December 2015 received by the Office of Court Clerk of the Constitutional Court (hereinafter referred to as the Office of Court Clerk) on 28 December 2015 based on the Deed of Receipt of Petition Files Number 323/PAN.MK/2015 and recorded in the Book of Constitutional Case Registration on 17 February 2016 under Number 15/PUU-XIV/2016, as corrected and received in the Office of Court Clerk on 7 March 2016, essentially describing as follows:

I. Court Authorities

a. That pursuant to Article 24C paragraph (1) a) of the Constitution of the Republic of Indonesia of 1945 (1945 Constitution), Article 10 paragraph (1) a) of the Law Number 24 of 2003 regarding Constitutional Court as amended by the Law Number 8 of 2011 regarding Amendment to Law Number 24 of 2003 regarding Constitutional Court (MK Law), and Article 29 paragraph (1) a) of the Law Number 48

of 2009 regarding Justice Power (Law 48/2009), specifying as follows:

Article 24C paragraph (1) of 1945 Constitution:

"Constitutional Court is authorized to try any case at first and last instance the judgment of which is final to examine law to the Constitution of the Republic of Indonesia of 1945 (1945 Constitution)."

Article 10 paragraph (1) a) of MK Law:

"Constitutional Court is authorized to try any case at first and last instance the judgment of which is final:

a. to examine law to the Constitution of the Republic of Indonesia of 1945;"

Article 29 paragraph (1) a) of Law 48/2009:

"Constitutional Court is authorized to try any case at first and last instance the judgment of which is final:

a. to examine law to the Constitution of the Republic of Indonesia of 1945;"

b. That the Petitioner's petition a quo is a petition for examination on the constitutionality of the Law Number 1 of 2004 regarding State Treasury (State Treasury Law) to 1945 Constitution. Accordingly, the Constitutional Court is authorized to try the petition a quo.

II. PETITIONER'S LEGAL STANDING

Pursuant to MK Law, the Petitioner is a party who deems that his constitutional right and or power are harmed upon effect

of the Law. The meaning of constitutional right is any right stipulated in 1945 Constitution.

1. That the Petitioner is an Indonesia National whose constitutional right, in his capacity as the retired person of Civil Service Apparatus/Civil Servant (ASN/PNS) of the Ministry of Trade, is harmed upon effect of Article 40 paragraph (1) of the State Treasury Law (exhibit P-2) with respect to pension insurance and old age insurance for ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus (exhibit P-3), further elucidated as follows:

a. That when this petition is filed, the Petitioner's constitutional right has been harmed upon effect of Article 40 paragraph (1) of the State Treasury Law, *"Claim Right over debt borne to state/region shall expire after 5 (five) years since the debt has fallen due, unless specified otherwise by the law."* Upon effect of Article 40 paragraph (1) thereof, the Petitioner's constitutional right is harmed, where in this case, the Petitioner and the Petitioner's family can not receive pension entirely from PT Taspen for 2 (two) years 5 (five) months, and 3 (three) times 13th remuneration within 3 (three) years. The Petitioner should receive the pension for 97 (ninety seven) months or 7 (seven) year 5 (five) months, along with 8 (eight)

times 13th remuneration. Total amount not yet paid by PT Taspen is for 32 (thirty two) months.

- b. That the Petitioner has been treated same as the Third Party pursuant to Article 40 paragraph (1) thereof, entitled to claim to the state. Actually Article 40 paragraph (1) thereof is intended for the settlement of debt of the state/region arising from Article 38 and Article 39 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) thereof. Application of Article 40 paragraph (1) thereof to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus (ASN Law) has harmed the Petitioner and the Petitioner's family due to failing to receive entirely Pension Insurance and Old Age Insurance. That PT Taspen has ignored any legal facts by not paying the monthly pension for 29 (twenty nine) months and 3 (three) times 13th remuneration so totaling 32 (thirty two) months, namely 1 March 2008 - 1 July 2010 period for reason of expiry after 5 (five) years without claim following due date.
- c. That pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of ASN Law, PT Taspen should pay entirely the Petitioner's pension insurance and old age insurance, but PT Taspen pay the pension insurance and the old age insurance only pursuant to Article 40 paragraph (1) thereof. This has harmed the Petitioner

and the Petitioner's family. That the effect of Article 40 paragraph (1) hereof is contrary to the principles of legal justice due to the misplacement and mistreatment of Civil Service Apparatus/Civil Servant (ASN/PNS) as Third Party. That PT Taspen has made mistake by applying the pension insurance and old age insurance of ASN/PNS pursuant to Article 38 and Article 39 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) of State Treasury Law. Meanwhile, Government Regulation regarding the Procedures of Execution of Article 38 paragraph (4) and Article 39 paragraph (4) thereof have not yet existed. Accordingly, the object of effect of Article 40 paragraph (1) thereof is not clear and ambiguous. That the effect of Article 40 paragraph (1) thereof causes the constitutional loss of ASN/PNS. That consequently, Article 40 paragraph (1) thereof indicates that any bureaucratic issues and retirement decision process are the powers of ASN/PNS. That the effect of Article 40 paragraph (1) thereof is not fair and is highly contrary to 1945 Constitution. That the procedures and mechanism of salary/pension payment to ASN/PNS may be explained as follows:

Minister of Finance functions to pay the salaries of active ASN/PNS through *Kantor Pelayanan Perbendaharaan Negara* (KPPN) / State Treasury Office and the pension

insurance and old age insurance of ASN/PNS shall be paid by PT Taspen after KPPN has issued *Surat Keterangan Penghentian Pembayaran* (SKPP) / Payment Termination Letter on behalf of relevant ASN/PNS. Based on this mechanism, PT Taspen should pay pension insurance and old age insurance after the date of issuance of SKPP. SKPP on behalf of the Petitioner was issued by KPPN on 23 June 2015 (exhibit P-4). PT Taspen didn't pay fully the Petitioner's pension insurance and old age insurance, and this is contrary to 1945 Constitution.

- d. That the Petitioner has questioned, and submitted objection in writing to, PT Taspen (exhibit P-5) with respect to constitutional loss suffered by the Petitioner for interpretation and effect of Article 40 paragraph (1) thereof, but no written response has been received. The Petitioner has explained that the pension fund and the old age insurance are not the domain of Article 40 paragraph (1) thereof.
- e. That pursuant to Article 40 paragraph (1) thereof, claim right over debt borne to state/region shall expire after 5 (five) years since the debt has fallen due, unless specified otherwise by the law. Such application and function of claim right which falls due on ASN/PNS is not clear in Law. ASN/PNS can not receive pension insurance and old age insurance from PT Taspen

by showing Retirement Decision only. ASN/PNS may obtain the pension insurance and the old age insurance after the Minister of Finance has issued Payment Termination Letter (SKPP). Issuance of SKPP is not the power of ASN/PNS and is beyond his control. Due to this mechanism, Article 40 paragraph (1) thereof is contrary to 1945 Constitution.

- f. That PT Taspen in paying the pension insurance and old age insurance of ASN/PNS is only based on SKPP and pursuant to Article 40 paragraph (1) thereof. PT Taspen should not apply Article 40 paragraph (1) to the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of ASN Law. When claim right means SKPP from the date of its issuance and receipt by relevant ASN/PNS, it still conforms to Law, but PT Taspen applies otherwise.
- g. That PT Taspen by applying Article 40 paragraph (1) causes the Petitioner's constitutional loss, due to the long duration of retirement age, the date of retirement with the date of issuance of SKPP for 7 (seven) years 5 (five) months. This may occur and PT Taspen should not apply this to punish the Petitioner. Bureaucratic procedures in each Working Unit are the authority of relevant agency. PT Taspen should play role to protect ASN/PNS from any bureaucratic problems by consistently

paying pension insurance and old age insurance fully according to the rights of relevant ASN/PNS. The Petitioner should have been discharged honorably from his occupation as PNS with pension right from the Ministry of Trade as of 1 March 2008. This conforms to proposal letter from the Working Unit of the Directorate General of Domestic Trade of the Ministry of Trade Number 63/PDN.1.3/1/2008, dated 17 January 2008, in the matter of retirement proposal in the name of Drs. Burhan Manurung, MA (exhibit P-6).

- h. That the Decision of Honorable Discharge from his occupation as PNS with Pension Right has never been issued by the Institution Head / the Minister of Trade. Due to such condition the Petitioner only waits when the Decision of Honorable Discharge from his occupation as PNS with pension right will be issued by the Institution Head/the Minister of Trade. Until now, the Decision of Honorable Discharge from his occupation as PNS with Pension Right has never been granted to the Petitioner. Copy of Proposal Letter for Honorable Discharge from his occupation as PNS with Pension Right to Mister President has never been provided by the Institution Head/the Minister of Trade. The Institution Head / the Minister of Trade even deactivated the Petitioner by issuing the Decree of the Minister of Trade Number 11/IIID-14/SK/II/2008 regarding Civil

Servant Deactivation toward Retirement on 25 January 2008 (exhibit P-7). Such deactivation is very inelegant and has no clear legal ground. Why ASN/PNS must be severely punished. What's wrong?

- i. That the Petitioner as legal object remains waiting under the status of deactivation. Under unclear employment status due to no decision from the Institution Head, the Petitioner has questioned the Institution Head and asked for the clear status of employment of the Petitioner. As long as such Deactivation Letter has never been revoked and he is not declared to have been discharged honorably from his occupation as PNS, the Petitioner is still deemed to be a non-active ASN/PNS. The Petitioner has many times applied for evaluation and revocation of the Deactivation Letter or transfer of duty to any other government agency, or retirement. However, no proper response and conclusion is made. This results in unclear employment status of the Petitioner and makes difficulty for further employment process of the Petitioner. For resolution of such problem, the Petitioner has also made appeal to former President RI Mister DR. H. SUSILO BAMBANG YUDHOYONO and to incumbent President RI Mister JOKO WIDODO (exhibit P-8). This is very important for submission by the Petitioner in front of the Honorable Panel of Judges of the

Constitutional Court and before the Honorable Chairman of the Constitutional Court, for viewing more clearly any existing facts, that ASN/PNS has no power either for his fate or his rights in the form of pension insurance and old age pension. ASN/PNS obviously has no claim right.

- j. That the Petitioner's constitutional rights are highly harmed by the effect of Article 40 paragraph (1) of the State Treasury Law UU. The Petitioner can not do anything as the Petitioner is the object of law. Due to the aforesaid legal facts, the effect of Article 40 paragraph (1) of the State Treasury Law is CONTRARY to 1945 Constitution as specified in Article 27 paragraph (2) thereof, *"Each citizen shall be entitled to job and decent livelihood for humanity"*, Article 28D paragraph (2) thereof, *"Each person shall be entitled to job and decent wage and fair treatment in employment"*, and Article 34 paragraph (2) thereof, *"State shall develop social security system to all people and empower weak and poor people according to human dignity"*.
2. That the Petitioner's constitutional right is harmed as indicated by not receiving entirely pension insurance and old age insurance from PT Taspen upon effect of Article 40 paragraph (1) of the State Treasury Law to the pension insurance and the old age insurance pursuant to Article 21

paragraph (c) and Article 91 paragraph (3) of the Civil Service Apparatus Law.

- a. That based on 1945 Constitution, Article 27 paragraph (2), *"Each citizen shall be entitled to job and decent livelihood for humanity"*, and Article 28D paragraph (2), *"Each person shall be entitled to job and decent wage and fair treatment in employment"*, and paragraph (3), *"Each citizen shall be entitled to have same opportunity in government"*, and Article 34 paragraph (2), *"State shall develop social security system to all people and empower weak and poor people according to human dignity"*.
- b. That the Petitioner's constitutional right and power are harmed upon effect of Article 40 paragraph (1) of the State Treasury Law, where the Petitioner's right is deemed to have expired, and therefore, the Petitioner requests the willingness of the Honorable Panel of Judges of the Constitutional Court to conduct material examination .
- c. The Petitioner currently suffers loss due to the effect of Article 40 paragraph (1) of the State Treasury Law resulting in failure to receive entirely the Petitioner's pension insurance and old age insurance during 1 March 2008 - July 2010 period, in this case, 29 (twenty nine) months along with 3 (three) times 13th remuneration within 3 (three) years. It is totally 32

(thirty two) months, but it should be 97 (ninety seven) months. PT Taspen has paid the insurance for accumulative 5 five years only, namely 60 (sixty) times monthly payment and 5 (five) times 13th remuneration, where there are still 32 (thirty two) months more not yet paid by PT Taspen (exhibit P-9).

- d. That the officer of PT Taspen recognizes and declares orally that the Petitioner is not the first ASN/PNS whose constitutional right is harmed upon effect of Article 40 paragraph (1) of the State Treasury Law. There have been any other Civil Service Apparatuses/Civil Servants whose constitutional rights are harmed following the effect of Article 40 paragraph (1) of the State Treasury Law. There are any other facts according to the officer of KPPN Jakarta VI that there are many ASN/PNS (Civil Service Apparatuses/Civil Servants) whose constitutional rights to be potentially harmed because KPPN experiences difficulty to issue SKPP, whereas the Civil Service Apparatuses/Civil Servants have exceeded pension age more than 5 (five) years. ASN/PNS whose constitutional right will be potentially harmed will occur and increase more due to the delay of SKPP issuance. The delay of SKPP issuance causes the delay of SKPP submission to PT Taspen, and this may result in expiry leading to the failure of PT Taspen to pay entirely the pension insurance and old

age insurance of ASN/PNS and it only pays the insurance for accumulative 5 (five) years only due to limitation by Article 40 paragraph (1) of the State Treasury Law. ASN/PNS can not do anything because ASN/PNS has no power as the subject of law, but he is actually the object of law. Upon effect of Article 40 paragraph (1), ASN/PNS is convicted and has no proper legal protection pursuant to Article 21 paragraph (d) and Article 91 paragraph (3) of the Civil Service Apparatus Law.

- e. That Article 40 paragraph (1) of the State Treasury Law treat ASN/PNS as the subject of law, and may represent himself to take legal action, in this case, having claim right. This is very contrary to the essence of ASN/PNS having no power in the process of honorable discharge from occupation as PNS (Civil Servant) with pension right, SKPP issuance, and pension payment. ASN/PNS only abide by the policy of institution head and external agency (Minister of Finance). ASN/PNS experiences constitutional loss as he can only questions in his heart only. State Treasury Law fails to give solution, and on the other hand the Civil Service Apparatus Law doesn't mandate the existence of claim right of ASN/PNS, over pension insurance and old age insurance. Pursuant to Article 21 paragraph (d) regarding protection and Article 91 paragraph (3) regarding pension insurance and old age insurance, PNS

(Civil Servant) is entitled to sustainable protection in the form of old age income as right and appreciation to PNS dedication. Pursuant to Article 21 and Article 91 of the Law 5/2014, Article 40 paragraph (1) of the State Treasury Law is contrary to 1945 Constitution.

f. That upon approval of this petition, the constitutional loss t of ASN/PNS may be assured not to occur again.

3. That the Petitioner's constitutional right is harmed upon effect of Article 40 paragraph (1) of the State Treasury Law. Pursuant to Article 21 of the Civil Service Apparatus Law, PNS (Civil Servant) shall be entitled to obtain: a. salary, benefit, and facilities, namely; b. leave; c. pension insurance and old age insurance; d. protection, and e. competency development. Pursuant to Article 91 paragraph (3) thereof, the pension insurance and old age insurance of PNS is provided to protect sustainably old age income, as right and appreciation to PNS dedication (exhibit P-3). Pursuant to Article 21 paragraph (c) thereof, ASN/PNS shall be entitled to obtain, not to claim. Upon effect of the State Treasury Law, PNS not yet receiving pension insurance after 5 (five) years from pension age, will be only entitled to receive the insurance for accumulative 5 (five) years and thereafter. This may occur as the State Treasury Law treats autonomous ASN/PNS as the subject of law and to have claim right so that it is contrary to the norms of ASN/PNS as state

servant. Article 40 paragraph (1) of the State Treasury Law also limits ASN/PNS because it disobeys ASN/PNS protection pursuant to Article 21 paragraph (d) and Article 91 paragraph (3) of the State Service Apparatus Law. Accordingly, the constitutional right of ASN/PNS is harmed as he fails to obtain his right in accordance with the norms of 1945 Constitution.

4. That based on the above description, upon effect of Article 40 paragraph (1) of the State Treasury Law, according to the Petitioner there is any harm of the Petitioner's constitutional right.

Thereby, the Petitioner fulfills the requirements of legal standing to submit *a quo*.

III. PETITION REASONS (*POSITA*)

Material Examination

1. That Article 40 paragraph (1) of the State Treasury Law is contrary to 1945 Constitution, Article 27 paragraph (2), namely Article 28D paragraph (2), and Article 34 paragraph (2) thereof. Article 40 paragraph (1) of the State Treasury Law is contrary to the norms of 1945 Constitution.
2. Formal Examination Grounds.
Petitioner doesn't submit formal examination.
3. Petitioner's Postulates and Argumentations.

- a. That Article 40 paragraph (1) thereof is applied to state/region debt management pursuant to Article 38 and Article 39 thereof. Definition of state/region debt is not clear in this Article what the form of legal action is. Government Regulation regarding the procedures of debt management pursuant to Article 38 paragraph (4) and Article 39 paragraph (4) thereof is not clear. Accordingly, the application of Article 40 paragraph (1) thereof to Article 38 and Article 39 thereof is not clear. The application of Article 40 paragraph (1) of the State Treasury Law to Article 21 paragraph (c) and Article 91 paragraph (3) of the Civil Service Apparatus Law is contrary to 1945 Constitution.
- b. That Article 40 paragraph (1) thereof emphasizes the mechanism of state/region debt settlement performed by the Minister of Finance/legal attorney, and governor/regent/mayor. Any substance related to the pension insurance and old age insurance of ASN/PNS is neither written nor implied. The application of Article 40 paragraph (1) to pension insurance and old age insurance is incorrect and unilaterally interpreted and multi-interpreted, finally leading to the harm of constitutional right of ASN/PNS.
- c. That the application of Article 40 paragraph (1) thereof to the pension insurance and old age insurance and protection of ASN/PNS is unilaterally interpreted

not pursuant to legal norms, justice, and has no clear legal ground, only based on unilateral interpretation under unclear legal ground, multi-interpreted according to organizational interest only, and this is an oppression by the strong on to the weak one, and obviously contrary to 1945 Constitution.

- d. That 1945 Constitution guarantees the protection of citizen, but Article 40 paragraph (1) of State Treasury Law event deletes the constitutional right of ASN/PNS. Pursuant to the officer of PT Taspen, the Petitioner is not the first ASN/PNS whose constitutional right is harmed by the effect of Article 40 paragraph (1) thereof, but previously there has been any ASN/PNS whose constitutional right is harmed. In other fact, according to the data of KPPN Jakarta VI there is any ASN/PNS who has been more than 10 (ten) years of retirement but until now KPPN is still difficult to issue SKPP in the name of the relevant ASN/PNS due to bureaucratic problems beyond the control of the relevant ASN/PNS. If Article 40 paragraph (1) of the State Treasury Law is continuously applied, then there will be increasingly many ASN/PNS (Civil Service Apparatuses/Civil Servants) whose constitutional rights will be harmed. Article 40 paragraph (1) thereof specifies the settlement of debt over claim right. The claim right of ASN/PNS pursuant to relevant Article is

not clear what the meaning is. Claim right is, for example, analogized as Decision regarding Retirement, but PT Taspen doesn't have to pay pension insurance and old age insurance only by the issuance of Retirement Decision without SKPP. If SKPP is the main reason of claim right, then ASN/PNS can not do anything because the issuance of SKPP is the authority of the Minister of Finance. Accordingly, the application of Article 40 paragraph (1) thereof to pension insurance and old age insurance is increasingly unclear and ambiguous, and contrary to 1945 Constitution.

- e. That the execution of legal norm must create legal certainty to the subject of law and the object of law and increase legal awareness, and remain to give solution over the application of the law as a whole and the creation of legal protection. Article 40 paragraph (1) specifies any legal actions that result in rights and obligations between employer and government/governor/regent/mayor. This is required to make the parties has the certainty of timeframe in realizing their claim rights, and on the other hand, the government, governor/regent/mayor who are claimed can prepare APBN/APBD (State Budget/Region Budget), as both parties are the subjects of law. This is in line with Article 40 paragraph (1) and Article 38 and Article 39 thereof. However, the effect of Article 40

paragraph (1) thereof to Article 21 paragraph (c) and Article 91 paragraph (3) of the Civil Service Apparatus Law is a mistake and wrong application. Law should create legal certainty and legal protection over the existence of ASN/PNS. Article 21 paragraph (d) and Article 91 paragraph (3) of the Civil Service Apparatus Law also mandates the existence of protection to ASN/PNS.

- f. That ASN/PNS is not the subject of law that may take legal action according to his will as referred to in Article 38, Article 39, and Article 40 paragraph (1) thereof. ASN/PNS who is the object of law can only wait further fate where in the highest level can only convey his hope, but can do nothing further. Factually, until now the Petitioner has never received Honorable Discharge Letter as PNS with Pension Right from Institution Head/the Minister of Trade in spite of any proposal submitted by the Working Unit of the Directorate General of Domestic Trade. Application for issuance and grant of the Honorable Discharge Letter as PNS with Pension Right has been many times submitted, but no proper response and solution is made. What ASN/PNS should do? The Petitioner Status as a Deactivated ASN/PNS is never revoked, so that the Petitioner's unclear employment status has occurred for 29 (twenty nine) months along with his rights never

obtained from PT Taspen. *Keppres* (Presidential Decree) regarding Honorable Discharge from occupation as PNS with Pension Right was just issued in July 2010 (exhibit P-10). When the issuance date of *Keppres* is deemed to be a due date for claim right, the date has not reached five years until the issuance of SKPP in June 2015. Accordingly, the application of Article 40 paragraph (1) thereof to Article 21 paragraph (c) and Article 91 paragraph (3) thereof shall be null and void.

- g. That the honorable discharge from occupation as PNS with pension right, SKPP issuance, pension insurance and old age insurance payment are not the powers of ASN/PNS and beyond ASN/PNS ability. Delay of SKPP issuance by the Minister of Finance/KPPN should not result in the constitutional loss of ASN/PNS. ASN/PNS should never be the victim of bureaucracy beyond his control. ASN/PNS should be absolutely protected over any issues of procedures that are not his powers, pursuant to Article 21 paragraph (d) and Article 91 paragraph (3) of Civil Service Apparatus Law. Accordingly, the effect of Article 40 paragraph (1) of the State Treasury Law very harms the constitutional rights of ASN/PNS. Article 40 paragraph (1) of the State Treasury Law should exclude the pension insurance and old age insurance of ASN/PNS.

- h. That the effect of the State Treasury Law makes the constitutional rights of ASN/PNS be harmed due to the negligence and weakness of bureaucratic procedures obviously not the powers of ASN/PNS. The Law doesn't give solution to any issues arising and make any parties difficult to decide policy as the formulation and preparation of the Law are intended to settle the state/region debt to private company, so that its nature doesn't give protection and is not comprehensive due to conflict with any other Law and contrary to 1945 Constitution.
- i. That the position of ASN/PNS according to Civil Service Apparatus Law is neither placed nor explained accordingly in the effect of the State Treasury Law so that Article 40 paragraph (1) thereof is declared invalid and to have no force of law binding to the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Civil Service Apparatus Law.
- j. In witness whereof the foregoing are any postulates and facts that can be submitted by the Petitioner to the Honorable Panel of Judges of the Constitutional Court and to the Honorable Chairman of the Constitutional Court for consideration and approval of the Petitioner's petition.

IV. PETITUM (Relief sought)

That based on all of the aforesaid postulates and the attached exhibits, the Petitioner hereby petitions the Honorable Panel of Judges of the Constitutional Court and the Honorable Chairman of the Constitutional Court for decision making as follows:

Material Examination

1. To approve the Petitioner's petition in its entirety.
2. To declare that the contents of any paragraphs and/or articles, particularly Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury are contrary to the Constitution of the Republic of Indonesia of 1945.
3. To declare that the contents of any paragraphs and/or articles, particularly Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury have no force of law binding to the Law Number 5 of 2014 regarding Civil Service Apparatus.
4. To order the inclusion of this Judgment into the State Gazette of the Republic of Indonesia.

Or conditionally constitutional

1. To approve the Petitioner's petition in its entirety.
2. Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury is declared contrary to the Constitution of the Republic of Indonesia of 1945 on conditional basis (conditionally constitutional) insofar as it is interpreted to be applicable to the pension

insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.

3. Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury is declared to have no force of law binding to the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.
4. Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury is declared non-contradictory with the Constitution of the Republic of Indonesia of 1945 on conditional basis (conditionally unconstitutional) insofar as it is not interpreted applicable to the pension insurance and old age pension of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.
5. Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury is declared to have no force of law binding to the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.

6. To declare that Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury is not applicable to the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.
7. To order PT Taspen to settle all of the rights of ASN/PNS pursuant to Article 21 paragraph (c) and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus.
8. To order inclusion of this Judgment into the State Gazette of the Republic of Indonesia as it should be.

If the Constitutional Court has different opinion, please make decisions as fairly as possible (*ex aequo et bono*).

[2.2] Considering that to confirm the Petitioner's arguments, the Petitioner has submitted evidential items/documents marked Exhibit P-1 until Exhibit P-10, as follows:

1. Exhibit : Photocopy of the Constitution of the
P-1 Republic of Indonesia of 1945;
2. Exhibit : Photocopy of the Law Number 1 of 2004
P-2 regarding State Treasury;
3. Exhibit : Photocopy of Law Number 5 of 2014 regarding
P-3 Civil Service Apparatus;
4. Exhibit : Photocopy of *Surat Keterangan Penghentian*

- P-4 *Pembayaran* (SKPP) / Payment Termination Letter from *Kantor Pelayanan Perbendaharaan Negara* (KPPN) / State Treasury Office, the Ministry of Finance;
5. Exhibit : Photocopy of Petitioner's Petition for
P-5 Objection to PT Taspen dated 17 September 2015;
6. Exhibit : Photocopy of Proposal Letter for Honorable
P-6 Discharge from occupation as PNS with Pension Right from the Working Unit of the Directorate General of Domestic Trade dated 17 January 2008;
7. Exhibit : Photocopy of the Decree of the Minister of
P-7 Trade Number 11/IIID-14/SK/II/2008 regarding the Deactivation of Civil Servant Toward Retirement, dated 25 January 2008;
8. Exhibit : Photocopy of the Petitioner's Petitions to
P-8 Mister President RI and to Institution Head/the Minister of Trade;
9. Exhibit : Photocopy of Insurance Payment Information,
P-9 Monthly Pension, and Accumulative Payment for 5 (five) times 13th remuneration from PT Taspen;
10. Exhibit : Photocopy of Presidential Decree Number 38/K
P-10 of 2010 dated 9 July 2010 regarding

Honorable Discharge from occupation as PNS with Pension Right in the name of the Petitioner;

[2.3] Considering that with respect to the Petitioner's petition, President in court session on 19 April 2016 conveyed oral statement and written statement received in the Office of Court Clerk on 27 April 2016 describing the following:

I. SUBJECT OF PETITION

1. That the Petitioner is an Indonesian citizen being a retired Civil Service Apparatus (ASN)/Civil Servant (PNS) of the Ministry of Trade whose constitutional right is feelingly harmed upon effect of the provision of Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury (State Treasury Law) over the pension insurance and old age insurance of ASN/PNS pursuant to Article 21 c and Article 91 paragraph (3) of the Law Number 5 of 2014 regarding Civil Service Apparatus (Civil Service Apparatus Law).
2. That the Petitioner postulates that his constitutional right is harmed upon effect of the provision of Article 40 paragraph (1) of the State Treasury Law that causes the Petitioner failure to receive pension fully from PT Taspen (Persero) for 32 (thirty two) months, as according to the Petitioner's opinion, a *quo* provision indicates that the

same is a bureaucratic issue and retirement process should be the power of ASN/PNS so that the effect is unfair and contrary to Article 27 paragraph (2), Article 28D paragraph (2), and Article 34 paragraph (2) of 1945 Constitution.

3. That the Petitioner also postulates that the capacity of ASN (Civil Service Apparatus) pursuant to Civil Service Apparatus Law is not positioned and not explained properly in applying the State Treasury Law, so that Article 40 paragraph (1) of the State Treasury Law should be declared invalid and to have no force of law binding to the pension insurance and old age insurance of ASN pursuant to Article 21 c) and Article 91 paragraph (3) of the Civil Service Apparatus Law.

Accordingly, the application of a *quo* Article to Article 21 c) and Article 91 paragraph (3) of the Civil Service Apparatus Law has harmed the Petitioner and his family due to his failure to receive fully the Pension Insurance and the Old Age Insurance, so that it is contrary to Article 27 paragraph (2), Article 28D paragraph (2), and Article 34 paragraph (2) of 1945 Constitution.

II. REGARDING PETITIONER'S LEGAL STANDING

In relation to the Petitioner's legal standing, Government conveys the following:

1. With respect to the Petitioner's arguments, the Petitioner explained that his constitutional right is harmed due to the effect of a *quo Article* that causes failure to claim the Petitioner's pension insurance, and according to Government, the said Petitioner's arguments **are completely groundless** because such harm deemed by the Petitioner is not the consequence of the effect of provision of Article 40 paragraph (1) of the State Treasury Law, but due to technical and administrative issues. Therefore, between the Petitioner's harm and the effect of provision of a *quo Article* have no causality at all (*causal verband*) as qualified in the provision of Article 51 paragraph (1) of the Law Number 24 of 2003 regarding Constitutional Court, as amended by the Law Number 8 of 2011 (Constitutional Court Law).
2. If true (*quad non*), with respect to harm suffered by the Petitioner, the Petitioner should submit his problems to judicial institute competent to try any technical and administrative cases, not submit them to Constitutional Court having authority to examine any norms of Law to 1945 Constitution.

Based on the above description, such harm suffered by the Petitioner can not be qualified as constitutional loss, because the Government has opinion that the Petitioner in his petition **fails to fulfill qualification** as a party having a legal standing where the Petitioner's loss has no causality

(causal verband) to the effect of provision of Article 40 paragraph (1) of the State Treasury Law, so that it will be appropriate if the Honorable Chairman/Panel of Judges of the Constitutional Court wisely **declared that the Petitioner's petition is unacceptable** (*niet ontvankelijke verklaard*).

However, the Government fully delegates the Honorable Chairman/Panel of Judges of the Constitutional Court to consider and assess whether the Petitioner has legal standing or not, as set forth in Article 51 paragraph (1) of the Constitutional Court Law, or based on the previous decisions of the Constitutional Court.

Nevertheless, the Government consistently conveyed its statement with respect to material petitioned by the Petitioner, as follows:

III. GOVERNMENT STATEMENT WITH RESPECT TO MATERIAL PETITIONED BY PETITIONER

Before the Government conveys statement related to material petitioned for examination by the Petitioner, the Government first conveyed the Philosophical Grounds of the State Treasury Law, as follows:

That the administration of state to achieve the purpose of state results in the rights and obligations of state that needs management within a state's financial management system. State's financial management as referred to in the Constitution of the Republic of Indonesia of 1945 should be

performed professionally, openly, and responsibly for a maximum welfare of the people, realized in State Budget (APBN) and Region Budget (APBD).

As legal grounds for the state's financial management, Law Number 17 of 2003 regarding State Finance has been enacted which law describes further the principal rule that has been set forth in 1945 Constitution into the general principles of State's financial management. Pursuant to the provisions of Article 29 of the Law Number 17 of 2003 regarding State Finance, for the purpose of management and accountability of the State Finance specified in APBN (State Budget) and APBD (Region Budget), it is necessary to specify the rule of law of the state's financial administration. Therefore, Law Number 1 of 2004 regarding State treasury is ratified.

The State Treasury Law is intended to provide legal grounds in the field of state's financial administration. The State Treasury Law specifies that the State Treasury is a management and accountability of state finance, including investment and properties separated, as set forth in APBN (State Budget) and APBD (Region Budget). Based on such definition, the State Treasury Law governs the scope and general principles of state treasury, the authorities of state treasury officer, the execution of state/region budget, state/region money management, state/region receivables and payables management, state/region-owned investment and property management, APBN/APBD administration and accountability, government's

internal control, state/region loss solution, and the financial management of public service body.

In line with any provisions set forth in Law Number 17 of 2003 regarding State Finance, the Minister of Finance as assistant to President in the field of finance is essentially a Chief Financial Officer (CFO) of the Government of the Republic of Indonesia, whereas each minister/institution head is essentially a Chief Operational Officer (COO) for a certain field of government affairs. Based on such principles, the Ministry of Finance is authorized and responsible for the management of state assets and liabilities on national basis, whereas state ministries/institutions are authorized and responsible for the administration of government affairs according to their respective duties and functions.

The consequence of duty distribution between the Minister of Finance and any other ministers is reflected in the execution of budget. To increase accountability and guarantee the realization of check and balance in the process of budget execution, it is necessary to make firm separation between administrative authority holder and treasury authority holder. Administrative authority performance is delegated to each state ministry/institution, whereas treasury authority performance is delegated to the Ministry of Finance. The administrative authority includes engagement or any other actions that result in the occurrence of state receipts and expenditures, claim examination and imposition submitted to

state ministry/institution in relation to realization of the engagement, and payment order or receipt collection arising from budget execution. On the other hand, the Minister of Finance as State's General Treasurer and any other official appointed as the Representative of the State's General Treasurer is not just a cashier in charge of state receipts and expenditures without any right to appraise the authenticity of the receipts and expenditures.

In relation to the Petitioner's arguments in his petition basically postulating that his constitutional right is harmed due to the effect of a *quo* provision making the Petitioner's pension insurance and old age insurance uncollectible, the Government conveyed its statements as follows:

1. That the State Treasury Law is issued to provide legal grounds in the field of state's financial administration. The State Treasury Law specifies that the State Treasury is a state's financial management and accountability, including separated investment and properties set forth in APBN (State Budget) and APBD (Region Budget). According to such definition, the State Treasury Law governs, among others, the authorities of state treasury officer, the execution of state/region budget, state/region money management, state/region receivables and payables management, APBN/APBD administration and accountability, state/region loss solution and any others.

2. That pursuant to the provision of Article 1 item 8 of the State Treasury Law, the meaning of State Debt is *"an amount of money payable by Central Government and/or being the liabilities of Central Government which can be valued in money pursuant to the prevailing laws and regulations, agreement, or based on other valid reason"*. In addition, pursuant to the provision of Article 1 item 9 of the State Treasury Law, the definition of Region Debt is *"an amount of money payable by Local Government and/or being the liabilities of Local Government which can be valued in money pursuant to the prevailing laws and regulations, agreement, or based on other valid reasons"*.
3. Based on the definition of State Debt and Region Debt as mentioned above, the State/Region Debt includes an amount of money or liabilities which can be valued in money arising from the prevailing laws and regulations. In relation to the definition of State Debt, the pension insurance and old age insurance of ASN/PNS is obviously a State Debt, particularly a State Debt in the form of liabilities arising from Law Number 8 of 1974 regarding the Principles of Personnel Affairs as amended by Law Number 43 of 1999 regarding Amendment to Law Number 8 of 1974 regarding the Principles of Personnel Affairs, further revoked and replaced by Civil Service Apparatus Law.

4. In relation the Petitioner's arguments postulating that the Petitioner is harmed due to the effect of provision of Article 40 paragraph (1) of the State Treasury Law causing the failure of the Petitioner to receive fully the pension insurance/pension fund from PT Taspen (Persero) for reason that the Petitioner's claim right is deemed to have expired (5) years from the existence of claim right), the Government can explain as follows:

- a. Claim Right as referred to in the provision of Article 40 paragraph (1) of the State Treasury Law is the transfer of right over intangible goods to third party pursuant to the prevailing laws and regulations. Subsequently, the provision specifies that Claim Right over the State/Region Debt will expire after the debt has fallen due for 5 (five) years.
- b. Therefore, with respect to loss postulated by the Petitioner, according to Government the loss is caused by technical and administrative issues that must be proved actually to judicial institution in charge of technical and administrative issues of the Petitioner, not as the consequence of execution of the provision of Article 40 paragraph (1) of the State Treasury Law so that the Petitioner loss is not the issue of constitutionality.
- c. In relation to the Petitioner's understanding regarding expiry as referred to in Article 40 paragraph (1) of

the State Treasury Law, according to Government's opinion the Petitioner's claim right will principally expire after debt has fallen due for 5 (five) years, in this case, upon receipt by the person concerned of Retirement Decision and upon issuance by Ministry/Institution Work Unit and validation by KPPN of SKPP. Furthermore, the issuance of SKPP is intended that any employee who moves may remain to receive his salary paid by Work Unit in new workplace, or remain to receive pension paid by PT Taspen (Persero) in case of any employee approaching retirement age. SKPP doesn't only state the detail of last month salary that has been paid, but also states the employee's debt to the state (if any). Accordingly, in order to obtain old age insurance and pension insurance, ASN/PNS should not only receive Retirement Decision, but must also obtain first *Surat Keterangan Penghentian Pembayaran* (SKPP)/Payment Termination Letter issued by Ministry/Institution Work Unit and validated by KPPN.

Thereby based on the above description, according to Government's opinion, obviously the Petitioner's principal issues in his petition are not the consequence of effect of the provision of Article 40 paragraph (1) of the State Treasury Law, and the Petitioner's principal issues should not be submitted to Constitutional Court. In other words, the provision of Article 40 paragraph (1) of the State

Administration Law is not contrary to 1945 Constitution as postulated by the Petitioner.

IV. PETITUM (Relief Sought)

Based on the aforesaid explanation and argumentation, Government hereby requests the Honorable Chairman/Panel of Judges of the Constitutional Court who examines, tries, and decides the examination (constitutional review) of the State Treasury Law to 1945 Constitution to make decisions, as follows:

1. To declare that the Petitioner has no *Legal Standing*;
2. To reject the Petitioner's petition (*void*) in its entirety or at least declare that the Petitioner's petition is unacceptable (*niet ontvankelijke verklaard*);
3. To accept the President's Statement in its entirety; and
4. To declare that the provision of Article 40 paragraph (1) of the State Treasury Law is not contrary to Article 27 paragraph (2), Article 28D paragraph (2), and Article 34 paragraph (2) of 1945 Constitution.

[2.4] Considering that the House of Representatives was not present at court session on 19 April 2016, but conveyed written statement received in the Office of Court Clerk on 22 July 2016 that has exceeded the deadline of submission of the written statement, namely on 27 April 2016 coinciding with the

deadline of conclusion submission. Accordingly, the Court doesn't consider further the written statement;

[2.5] Considering that PT Taspen (Persero)-Related Party conveyed oral statement and written statement in court session on 19 April 2016, expressing the following:

1. PT TASPEN (PERSERO) is a State-Owned Enterprise (BUMN) in the form of PERSERO (Limited Liability Company) incorporated pursuant to Government Regulation Number 26 of 1981 regarding the Change of Public Company engaged in Savings Fund and Civil Servant Insurance into Limited Liability Company (PERSERO). It has Vision: *"To be the Most Trusted Manager for Pension Fund and Old Age Savings (THT) and Other Social Insurance."* Mission: *"To Realize Better Benefit and Service for Customers and Other Stakeholders on Professional and Accountable Basis, Based on Integrity and High Ethics."* As BUMN and public service institution, PT TASPEN (PERSERO) has obtained some awards from Government, among other, award from President as Ranking-I for BUMN Category for Information Openness of Public Body 2015.
2. That by virtue of Government Regulation Number 25 of 1981 regarding Social Insurance for Civil Servants as amended by Government Regulation Number 20 of 2013 regarding Amendment to Government Regulation Number 25 of 1981 regarding Social Insurance for Civil Servants, PT TASPEN (PERSERO) is mandated to administer Social Insurance for Civil Servants

covering Pension Program pursuant to Law Number 11 of 1969 and Old Age Savings (THT) Program. Subsequently, as the follow-up of the Law Number 5 of 2014 regarding Civil Service Apparatus, as of 1 July 2015 PT TASPEN (PERSERO) has been mandated to administer Job Accident Insurance Program and Life Insurance for Civil Service Apparatuses as referred to in Government Regulation Number 70 of 2015 regarding Job Accident Insurance and Life Insurance for Civil Service Apparatuses.

3. As the realization of Vision and Mission, PT TASPEN (PERSERO) has committed and always commits to provide Delighted Customer Services. In line with the foregoing, PT TASPEN (PERSERO) has applied and always applies *Sistem Manajemen Mutu* (SMM) / quality management system for core business process, in this case, 1 hour maximum claim service with accurate data support. The implementation of Delighted Customer Services is consistently based on the prevailing laws and regulations, good corporate governance and observes the principles of: Accurate Person, Accurate Amount, Accurate Time, Accurate Place and Accurate Administration (5A) and the values of TASPEN, namely Having Integrity, Professional, Innovative, Competitive and Growing, so that any services provided are always accountable, transparent, and informative.
4. That payment mechanism and pension fund scheme are fully financed by State Budget (APBN). Therefore, PT TASPEN

(PERSERO) in making pension payment to pension recipients including retired Civil Servants (PNS), is based on Law Number 11 of 1969, Law Number 17 of 2003, Law Number 1 of 2004, Government Regulation Number 25 of 1981 as amended by Government Regulation Number 20 of 2013, Regulation of Minister of Finance Number 82/PMK.02/2015, Regulation of Director General of Treasury Number PER-19/PB/2015 and Regulation of Board of Directors Number PD-12/DIR/2012. In relation to the foregoing, PT TASPEN (PERSERO) in making the realization of first pension payment for 60 (sixty) months as of 1 March 2008 until 3 July 2015 and 13th pension to **THE PETITIONER** via Bank transfer, has conformed to the prevailing laws and regulations and policy determined by government.

5. Requirements, amount, and procedures of payment for Old Age Savings (THT) are set forth in Government Regulation Number 25 of 1981 as amended by Government Regulation Number 20 of 2013, Decree of Minister of Finance Number 478/KMK.06/2002 as amended by Decree of Minister of Finance Number 500/KMK.06/2004 and Regulation of Board of Directors Number PD-12/DIR/2012. The above regulations and decrees also confirm that the THT fund scheme is fully financed from PT TASPEN (PERSERO) fund. In relation to the foregoing, PT TASPEN (PERSERO) in making the realization of payment for Old Age Savings (THT) to **THE PETITIONER**, computes the term of premium from appointment as candidate for Civil Servant

on 01 March 1976 until 29 February 2008 on which the Civil Servant was discharged and last income, in this case, basic salary plus allowance for wife/husband and allowance for child, paid via Bank transfer, which payment has conformed to the prevailing laws and regulations and policy determined by government.

6. That accordingly, PT TASPEN (PERSERO) in making the realization of payment for first pension, 13th pension and THT to **THE PETITIONER** as described above complies with the prevailing laws and regulations and refers to the principles of good corporate governance, namely Transparency, Accountability, Responsibility, Independency, and Fairness.

[2.6] Considering that the Petitioner, President, and PT Taspen (Persero)-Related Party have submitted written conclusion received by the Office of Court Clerk on 22 April 2016 and 27 April 2016 respectively, principally stating that the parties consistently remain in their respective opinion;

[2.7] Considering that to shorten the description of this judgment, anything occurring at court session is sufficiently indicated in the Minutes of Court Session, constituting an inseparable unit of this judgment;

3. LEGAL CONSIDERATION

Court Authorities

[3.1] Considering that pursuant to Article 24C paragraph (1) of the Constitution of the Republic of Indonesia of 1945 (hereinafter referred to as 1945 Constitution), Article 10 paragraph (1) a) of Law Number 24 of 2003 regarding Constitutional Court as amended by Law Number 8 of 2011 regarding Amendment to Law Number 24 of 2003 regarding Constitutional Court (State Gazette of Republic of Indonesia of 2011 Number 70, Supplement to State Gazette of Republic of Indonesia Number 5226, hereinafter referred to as Constitutional Court Law), and Article 29 paragraph (1) a) of Law Number 48 of 2009 regarding Justice Power (State Gazette of Republic of Indonesia of the Year 2009 under Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076), Constitutional Court is authorized to try at first and last instance the judgment of which is final to examine Law to 1945 Constitution;

[3.2] Considering that as the Petitioner's petition is the examination of constitutionality of Law *in casu* Article 40 paragraph (1) of Law Number 1 of 2004 regarding State Treasury (State Gazette of the Republic of Indonesia of the Year 2004, under Number 5, Supplement to State Gazette of the Republic of

Indonesia Number 4355, hereinafter referred to as the State Treasury Law) to 1945 Constitution, then the Constitutional Court is authorized to try the Petitioner's petition;

Petitioner's Legal Standing

[3.3] Considering that pursuant to Article 51 paragraph (1) of the Constitutional Court Law along with its Elucidation, ones who may submit petition for examination of Law to 1945 Constitution is those considering that their constitutional rights and/or powers granted by 1945 Constitution are harmed by the effect of a Law, namely:

- a. individual person of Indonesian citizen (including group of people with same interest);
- b. customary law community insofar as the law still exists and conforms to community development and the principles of the Unitary State of Republic of Indonesia, specified in Law;
- c. public or private legal entity;
- d. state institution;

Accordingly, the Petitioner in the examination of Law to 1945 Constitution must explain and prove first:

- a. his capacity as Petitioner as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. any harms in his constitutional right and/or powers granted by 1945 Constitution due to the effect of Law to which examination is petitioned;

[3.4] Considering that since the Judgment of Constitutional Court Number 006/PUU-III/2005 dated 31 May 2005 and the Judgment of Constitutional Court Number 11/PUU-V/2007 dated 20 September 2007, and subsequent judgments, the Constitutional Court has opinion that any harms in constitutional rights and/or powers as referred to in Article 51 paragraph (1) of the Constitutional Court Law must fulfill five requirements, namely:

- a. the existence of the Petitioner's constitutional right and/or power granted by 1945 Constitution;
- b. the constitutional right and/or power are deemed by the Petitioner to have been harmed upon effect of Law to which examination is petitioned;
- c. such constitutional loss must be specific and actual or at least will potentially occur on the basis of fair reasoning;
- d. the existence of causality (causal verband) between the loss and the effect of Law to which examination is petitioned;
- e. the existence of possibility that upon approval of the petition then the constitutional loss as postulated will not or no more occur;

[3.5] Considering that based on description as referred to in paragraph **[3.3]** and paragraph **[3.4]** above, the Constitutional

Court will further consider the Petitioner's legal standing, as follows:

[3.5.1] That principally, the Petitioner as an individual person of Indonesian citizen being a retired Civil Service Apparatus/Civil Servant (ASN/PNS) feels that his constitutional right have been harmed upon effect of Article 40 paragraph (1) of the State Treasury Law that causes failure to claim entirely pension insurance and old age insurance being the Petitioner's right as a retired PNS/ASN by reason of expiry after 5 (five) years of due date. According to the Petitioner's opinion, a *quo* Article may not be applied to the Petitioner because it is not same as Third Party who has claim right to the state;

[3.5.2] That pursuant to Article 51 paragraph (1) of the Constitutional Court, and the Constitutional Court's judgments regarding legal standing, and the arguments of Petitioner who feels to have been harmed upon effect of Article 40 paragraph (1) of the State Treasury Law that causes unfairness and ignores legal protection, then according to Constitutional Court, the Petitioner has constitutional right that is harmed by the effect of Law to which examination is petitioned. Such harm is specific and actual and there is any causality (causal verband) between the harm and the effect of norms of Law to which examination is petitioned, so that there is any

possibility that if petition is approved then constitutional loss as postulated will not occur. Accordingly, according to Constitutional Court the Petitioner has legal standing to submit a *quo* petition;

[3.6] Considering that as the Constitutional Court is authorized to try a *quo* petition, and the Petitioner has legal standing to submit a *quo* petition then the Court will further consider the subject of the petition;

Subject of Petition

[3.7] Considering that the subject of the Petitioner's petition is an examination of constitutionality of Article 40 paragraph (1) of the State Treasury Law specifying that, "*Claim Right over debt borne to state/region shall expire after 5 (five) years since the debt has fallen due, unless specified otherwise by the law*" to Article 27 paragraph (2), Article 28D paragraph (2), and Article 34 paragraph (2) of 1945 Constitution under any reasons principally described as follows:

1. That Article 40 paragraph (1) of the State Treasury Law is applied to the management of state/region debt pursuant to Article 38 and Article 39 of the State Treasury Law, whereas the definition of state/region debt in a *quo* Article is not clear what kind of legal action;

2. That Article 40 paragraph (1) of the State Treasury Law emphasizes the mechanism of state/region debt settlement executed by the Ministry of Finance/Legal Attorney, and Governor/Regent/Mayor, whereas those related to pension insurance and old age insurance are neither written nor implied in a *quo* Article, so that the application of a *quo* Article to pension insurance and old age insurance is a unilateral interpretation and multi-interpretation that harm the constitutional right of ASN/PNS;
3. That "claim right" referred to in Article 40 paragraph (1) of the State Treasury Law is not clear what its meaning and if "the claim right" is analogized as Retirement Decision, but PT Taspen doesn't have to pay pension insurance and old age insurance only by the issuance of Retirement Decision without SKPP whereas If SKPP is the main reason of claim right, then ASN/PNS can not do anything because the issuance of SKPP is the authority of the Minister of Finance and accordingly, the delay of SKPP issuance should not result in the Petitioner's constitutional loss;
4. That Article 40 paragraph (1) of the State Treasury Law is necessary to give both parties certain deadline to realize claim rights, and on the other hand Government/Governor/Regent/Mayor to whom claim is submitted may prepare APBD/APBN (State Budget/Region Budget), meaning that both parties are the subjects of law, whereas ASN/PNS

(Civil Service Apparatus/Civil Servant) is a subject of law that can not take legal action according to his will pursuant to Article 38, Article 39, and Article 40 paragraph (1) of the State treasury Law. Accordingly, it is incorrect and wrong to apply *a quo* Article;

5. That the effect of Article 40 paragraph (1) of the State Treasury Law prevents ASN/PNS to receive pension so that it is obviously contrary to Article 27 paragraph (2), Article 28D paragraph (2), Article 34 paragraph (2) of 1945 Constitution as the Petitioner has no decent livelihood and doesn't obtain decent wage and is not treated fairly in employment;

[3.8] Considering that after the Constitutional Court has examined thoroughly the petition and evidential items/documents submitted by the Petitioner, President's statement, PT Taspen (Persero)-Related Party's statement, completely contained in the Subject of Case, and the Petitioner's, President's, and PT Taspen (Persero)-Related Party's written conclusion, the Court further consider as follows:

[3.8.1] That the claim right over debt borne to state/region as referred to in Article 40 paragraph (1) of the State Treasury Law is related to regulation of deadline or expiry with respect to state debt made by official empowered on

behalf of the Minister of Finance as referred to in Article 38 of the State Treasury Law and with respect to region debt made by governor, regent, or mayor as referred to in Article 39 of the State Treasury Law. Accordingly, the substance of Article 40 paragraph (1) of the State Treasury Law regulates the expiry of claim right after 5 (five) years related to debt, either that borne to central government or borne to local government. In certain limits, according to Constitutional Court such regulation is required in order to obtain legal certainty in state's/region's financial management.

[3.8.2] That if associated with the Petitioner's petition then there will be any question that whether the pension insurance and old age insurance of ASN/PNS are further included in the definition of state debt. With respect to the question, Article 21 of the Law Number 5 of 2014 regarding Civil Service Apparatus (Civil Service Apparatus Law) specifies that "PNS (Civil Servant) shall be entitled to: a. salary, benefits, and facilities; b. leave; c. pension insurance and old age insurance; d. protection; and e. competency development". Accordingly, pension insurance and old age insurance are the rights of ASN/PNS (Civil Service Apparatus/Civil Servant) that cause liability for state to fulfill. Meanwhile, Article 1 item 8 and item 9 of the State Treasury Law specify that:

"8. State Debt is an amount of money requiring Central Government to pay and/or being the liability of Central

Government that can be valued in money pursuant to the prevailing laws and regulations, agreement, or based on any other valid reasons.

9. Region Debt is an amount of money requiring Local Government to pay and/or being the liability of Local Government that can be valued in money pursuant to the prevailing laws and regulations, agreement, or based on any other valid reasons."

Accordingly, pursuant to State Treasury Law, pension insurance and old age pension are categorized into the definition of state debt. In fact, Article 91 paragraph (3) and paragraph (4) of the Civil Service Apparatus specifies that:

"(3) The pension insurance of PNS (Civil Servant) and the old age insurance of PNS shall be provided to protect old age income sustainability, as right and appreciation for PNS dedication.

- (4) The pension insurance and old age insurance of PNS as referred to in paragraph (1) hereof shall include those provided in national social security program."

Therefore, pension insurance and old age insurance are actually not a state debt but a right that must be guaranteed by state. Pursuant to Civil Service Apparatus Law, state must seriously observe and execute the mandate of sustainable protection as referred to in Article 91 paragraph (3) of the Civil Service Apparatus Law. Moreover, sustainable protection means those entitled to pension insurance and old age

insurance shall not be subject to time reduction to receive pension insurance and old age insurance. In addition, Article 91 paragraph (3) of the Civil Service Apparatus Law expressly specifies the same not only as right but also as appreciation from state for dedication provided by relevant ASN (Civil Service Apparatus). Accordingly, insofar as related to pension insurance and old age insurance, the provision of expiry as set forth in Article 40 paragraph (1) of the State Treasury Law shall not be applied.

Consideration that Article 40 paragraph (1) of the State Treasury Law associated with Article 91 paragraph (3) of the Civil Service Apparatus Law is required, so that it is a must, in order to guarantee the fulfillment of right over recognition, guarantee, and fair legal protection as referred to in Article 28D paragraph (1) of 1945 Constitution. If the existence of Article 40 paragraph (1) of the State Treasury Law is not associated with the existence of Article 91 paragraph (3) of the Civil Service Apparatus Law then disharmony will occur among the Laws leading to legal uncertainty. However, in one side, pension insurance and old age insurance are expressly specified in Article 91 paragraph (3) of the Civil Service Apparatus Law as rights which sustainability should be guaranteed, but on the other side, specified by Article 40 paragraph (1) of the State Treasury Law as state debt which claim right is subject to the effect of expiry.

Such meaning according to Constitutional Court is also in line with the requirement to fulfill the provision of Article 28D paragraph (2) of 1945 Constitution specifying that each person is entitled to decent wage and fair treatment in employment which enforcement and protection of such rights shall be guaranteed, regulated and set forth in laws and regulations [vide Article 28I paragraph (5) of 1945 Constitution].

Furthermore, in view of legal history development, the provision of pension insurance and old age insurance for ASN/PNS has been actually mentioned implicitly in laws and regulations specifying and related to the pension of ASN/PNS, among others, in Law Number 11 of 1969 regarding the Pension of Retired Civil Servant and the Pension of Widow/Widower of the Retired Civil Servant and Law Number 8 of 1974 regarding the Principles of Personnel Affairs as amended by the Law Number 43 of 1999 regarding Amendment to Law Number 8 of 1974 regarding the Principles of Personnel Affairs. Article 1 of the Law Number 11 of 1969 regarding the Pension of Retired Civil Servant and the Pension of Widow/Widower of Retired Civil Servant specifies that the pension is provided as old age insurance and appreciation for the services of civil servant for years working in Government Agency. Furthermore, Article 10 of Law Number 8 of 1974 regarding the Principles of Personnel Affairs as amended by Law Number 43 of 1999 regarding Amendment to Law Number 8 of 1974 regarding the

Principles of Personnel Affairs confirms that "Each Civil Servant who has fulfilled any specified requirements shall be entitled to pension". Elucidation of the Article explains that "Pension is the old age insurance and serves as remuneration to Civil Servant who has dedicated himself/herself for years to the state. Substantially, it is the obligation of each person to attempt to insure his/her old age, and therefore, each Civil Servant shall be obliged to be a customer of social insurance body established by Government. Pension is not only the old age insurance, but also serves as remuneration, and therefore, Government gives contribution to Civil Servants. The pension premium of Civil Servants and the Government contribution are collected and managed by social insurance body". Based on such arrangements, pension insurance and old age insurance are the personnel rights that must be granted to retired ASN/PNS who has fulfilled any requirements specified in laws and regulations, without limitation by deadline (expiry) in their payment.

Moreover, the Constitutional Court is also required to consider that any rights over pension and old age insurance arising, among others, from ASN/PNS (Civil Service Apparatus/Civil servant) who has reached pension age [vide Article 91 paragraph (2) c) of the Civil Service Apparatus Law], administratively proved through Retirement Decision and Payment Termination Letter (SKPP) issued by relevant Ministry/Institution Work Unit and submitted by State Treasury

Office (KPPN). In the implementation of pension payment, as conveyed by President's representative in his statement before the Court, because categorized as state debt then expiry as specified in Article 40 paragraph (1) of the State Treasury Law will be applied. Problem will arise if the issuance of SKPP has exceeded 5 (five) years as referred to in Article 40 paragraph (1) of the State Treasury Law, making the pension being a state debt expired, so that pension is paid only for a maximum of 5 (five) years. In case of the foregoing, the Court has opinion that it will be unfair when only ASN/PNS is responsible therefor, because active role should be also required to institution or agency where the ASN/PNS has served, particularly in relation to the issuance of SKPP serving as the basis of payment of pension allowance and old age allowance by PT Taspen (Persero).

[3.9] Considering that based on the above entire legal consideration, the Constitutional Court has opinion that the arguments of the Petitioner's petition are partially reasonable pursuant to law.

4. CONCLUSION

Based on examination on facts and laws as described above, the Constitutional Court concluded that:

[4.1] The Court is authorized to try *a quo* petition;

[4.2] The Petitioner has legal standing to submit a *quo* petition;

[4.3] The subject of the Petitioner's petition is partially reasonable pursuant to law.

Based on the Constitution of the Republic of Indonesia of 1945, Law Number 24 of 2003 regarding Constitutional Court as amended by Law Number 8 of 2011 regarding Amendment to Law Number 24 of 2003 regarding Constitutional Court (State Gazette of the Republic of Indonesia of the Year 2011 under Number 70, Supplement to State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 regarding Justice Power (State Gazette of the Republic of Indonesia of the Year 2009 under Number 157, Supplement to State Gazette Number 5076);

5. VERDICTS

Hereby Adjudicates,

1. To approve the Petitioner's petition in its part;
2. To declare that Article 40 paragraph (1) of the Law Number 1 of 2004 regarding State Treasury (State Gazette of the Republic of Indonesia of the Year 2004 under Number 5, Supplement to State Gazette of the Republic of Indonesia

Number 4355) is contrary to the Constitution of the Republic of Indonesia of 1945 and has no force of law insofar as applied to pension insurance and old age insurance;

3. To reject the Petitioner's petition for others and remaining one;
4. To order inclusion of this judgment into State Gazette of the Republic of Indonesia as required;

In witness whereof, judged in Judge Consultation Meeting attended by nine Constitutional Judges, namely Arief Hidayat, as Chairman also acting as Member, Anwar Usman, Wahiduddin Adams, Suhartoyo, I Dewa Gede Palguna, Aswanto, Manahan MP Sitompul, Maria Farida Indrati, and Saldi Isra, respectively acting as Members, on **Tuesday, the twenty sixth day of September, two thousand and seventeen**, stated in the Plenary Session of the Constitutional Court opened publicly on **Thursday, the twenty eighth day of September, two thousand and seventeen**, and finished **at 09.28 WIB (Western Indonesia Time)**, by nine Constitutional Judges, namely Arief Hidayat as Chairman also acting as Member, Anwar Usman, Wahiduddin Adams, Suhartoyo, I Dewa Gede Palguna, Aswanto, Manahan MP Sitompul, Maria Farida Indrati, and Saldi Isra, respectively acting as Members, accompanied by Syukri Asy'ari as Substitute Court Clerk, in the presence of the Petitioner, President or his

representative, House of Representative or its representative,
and any relevant Parties.

CHAIRMAN,

Signed

Arief Hidayat

MEMBERS,

Signed

Anwar Usman

Signed

Wahiduddin Adams

Signed

Suhartoyo

Signed

I Dewa Gede Palguna

Signed

Aswanto

Signed

Manahan M.P Sitompul

Signed

Maria Farida Indrati

Signed

Saldi Isra

SUBSTITUTE COURT CLERK,

Signed

Syukri Asy'ari