



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 22/PUU-XX/2022**

Concerning

Submission of Application for Counter-Memorandum of Appeal

- Petitioner** : Zico Leonard Djagardo Simanjuntak
- Case Type** : Examination of Law Number 20 of 1947 concerning the Regulation of the Judicial Retrial in Java and Madura (Law 20/1947) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 7 paragraph (1) of Law 20/1947 is in contrary Article 28D paragraph (1) and Article 28I paragraph (4) of the 1945 Constitution.
- Decision** : To dismiss the Petitioner's petition in its entirety.
- Date of Decision** : Wednesday, April 20th, 2022.
- Overview of Decision** :

The Petitioner is an Indonesian citizen whose constitutional rights are actually prejudiced by the promulgation of regulations concerning the Judicial Retrial in Java and Madura. The Petitioner is deprived of his human rights due to the lack of legal certainty regarding the deadline for submitting a counter-memorandum of appeal, which caused an inequality before the law between an applicant in appeal and a defendant in appeal;

Regarding the jurisdiction of the Court, since the Petitioner applied for a review of the Law, in this case Article 7 paragraph (1) of Law 20/1947, against the 1945 Constitution, the Court has the jurisdiction to hear and decide on the Petition in this case.

Regarding the legal standing of the Petitioner, since the Petitioner was able to explain the perceived damage to the Petitioner's constitutional rights which are guaranteed in the 1945 Constitution by the enactment of the norms in Article 7 paragraph (1) of Law 20/1947, which are requested in the petition to be reviewed, therefore, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the petition.

Whereas, considering that the petition in this case is clear, the Court is of the opinion that there is neither urgency nor need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

The Petitioner maintained that the provisions of Article 7 paragraph (1) of Law 20/1947 which does not regulate the time limit for the delivery and submission of the memorandum of appeal and the counter-memorandum of appeal to the appellate court have created a legal uncertainty. The obligation to provide the recognition, fulfilment, and protection of human rights is the responsibility of the government as stipulated in Article 28I paragraph (4) of the 1945 Constitution. The above-mentioned arrangement is not aligned with Article 7 paragraph (1) of Law 20/1947 because there is no explicit provision regarding the purpose of the 14-day period in the relevant clause, namely whether it is only a time period for declaring a memorandum of appeal or it is also applicable to the entire process of submission of documents for the purpose of proceedings at the High Court.

Regarding the petition of the Petitioner, the Court considers that normatively the provisions of the norm of Article 7 paragraph (1) of Law 20/1947 which stipulates that "A petition for a re-examination must be submitted by letter or verbally by the petitioner or his representative, who is duly authorized to submit the petition, to the Registrar of the District Court, which issued the decision, within fourteen days from the day after the declaration of the decision to the interested parties", only give the time limit for the applicant in appeal to submit a petition for re-examination (appeal) within 14 (fourteen) days from the next day after the decision is announced / notified to the parties. The time limit is given to ensure a legal certainty for the applicant in appeal, either the plaintiff or the defendant/co-defendant. Likewise, the provisions of Article 17 paragraph (1) of Law 20/1947 are linked to Article 233 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code and Article 123 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts, as lastly amended by Law Number 51 of 2009, also regulate only the time limit for submitting the petition for an appeal or re-examination. This means that, if after the announcement or notification of the decision of the first-instance court, there is no petition for appeal or re-examination, then the decision of the first-instance court shall become final and binding (*inkracht van gewijsde*).

Regarding the process of submitting an appeal as questioned by the Petitioner, there must be a time limit for submitting a memorandum of appeal for the applicant in appeal and a counter-memorandum of appeal for the defendant in appeal. It must not be separated from the characteristics of appeal cases which are basically cases that can still be examined by the high court or retrial court in terms of legal facts as well as practical aspects including the application of the law. This means that the high court as a retrial court has the jurisdiction to examine the legal facts and the application of the law without being subjected to any objection of the applicant in appeal to the decision of the first-instance court. Therefore, because the high court or retrial court still has the jurisdiction as the court of first instance (as *judex factie*), then it is a philosophical reason and *ratio legis* that the memorandum of appeal and counter-memorandum of appeal are not used as a formal requirement in filing an appeal. In other words, the high court as a retrial court, regardless of whether there is any memorandum or counter-memorandum of appeal, has the jurisdiction to examine existing legal facts in order to decide on the appeal being filed. Furthermore, the jurisdiction to examine legal facts as given to the high court or retrial court is a realization of the judicial system in Indonesia which adheres to a tiered system, which includes a supervisory function in decisions of higher courts over the decisions of lower courts.

Upon the legal consideration above, if the application for an appeal is subject to a time limitation for the submission of the memorandum of appeal and the counter-memorandum of appeal as maintained by the Petitioner, then this condition may legally result in the memorandum of appeal and the counter-memorandum of appeal becoming a formal requirement that must be satisfied by both the applicant in appeal and the defendant in appeal. This is because such a time limitation cannot be separated from the juridical implications that the case for which the appeal is requested will be deemed not to have met the formal requirement because it is subject to whether or not there is a memorandum of appeal and a counter-memorandum of appeal. Moreover, the time limitation for filing a memorandum of appeal and a counter-memorandum of appeal without any penalty for any delay beyond the specified time limit could actually create a legal uncertainty. In addition, to make the memorandum of appeal and the counter-memorandum of appeal as if they were a formal requirement in filing an appeal could modify the jurisdiction of the high court or retrial court and it could lose its characteristic as a court of *judex factie* and this is clearly contradictory with the philosophy and *ratio legis*.

Meanwhile, the Petitioner's argument regarding the absence of an appeal period, in this case the submission of a counter-memorandum of appeal, indicates the weakness of the current civil procedural law which is no longer able to keep up with the needs and developments of the era so that it is contradictory with the principle of quick and simple justice. With regard to the Petitioner's argument, the Court is of the opinion that an appeal without any formal requirement that it must be accompanied by a memorandum of appeal

and a counter-memorandum of appeal will actually speed up the completion of the process of submitting an appeal to the high court or retrial court. This is because the filing of an appeal can be immediately sent by the court of first instance to the court of appeal or retrial court without being subject to the condition of whether there is any memorandum of appeal and counter-memorandum of appeal. Therefore, this actually realizes the principle of a simple, fast, and low-cost trial, as emphasized in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Powers because the start of examination at the appeal level does not depend on the presence or absence of any memorandum of appeal and counter-memorandum of appeal. Accordingly, if the appeal hearing has been conducted, then the high court receives a memorandum of appeal and/or counter-memorandum of appeal, the memorandum of appeal and/or counter-memorandum of appeal will also be considered as long as the request for examination of appeal has not been decided on. Meanwhile, in respect of the problem suffered by the Petitioner and being part of the Petitioner's argument, namely the submission of a counter-memorandum of appeal from the defendant in appeal after 3 (three) months after the applicant in appeal filed an appeal, without the intention of examining the real case involving the Petitioner, the Court is in the opinion that as for the counter-memorandum of appeal, the high court where the appeal (re-examination) was submitted shall have the jurisdiction to examine or consider it. However, in regards the high court's examination on the submission of the counter-memorandum of appeal after 3 (three) months since the applicant in appeal submitted an appeal, as questioned by the Petitioner, it is a matter of implementing the norm and is not related to the unconstitutionality of the norm of Article 7 paragraph (1) of the Law of 20/1947.

Upon the above legal consideration, the Court is of the opinion that Article 7 paragraph (1) of Law 20/1947 has in fact provided a legal certainty, recognition, fulfilment, and protection of human rights and the constitutional rights of citizens, as stipulated in Article 28I paragraph (4) of the 1945 Constitution. Therefore, the Petitioners' argumentation is legally unjustifiable in its entirety.

Regarding the petition in this case, the Court issued a decision which in its verdict states that the Petitioner's petition is dismissed in its entirety.