



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 50/PUU-XX/2022**

Concerning

Similarities in Brands

- Petitioner** : Djunatan Prambudi
- Type of Case** : Examination of Law Number 20 of 2016 concerning Brands and Geographical Indications (Law 20/2016) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Examination of Article 21 paragraph (1) of Law 20/2016 against Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To declare that the Petitioner's petition is inadmissible;
- Date of Decision** : Tuesday, May 31, 2022

Overview of Decision :

Whereas the Petitioner is an individual Indonesian citizen who has the constitutional rights as regulated in the 1945 Constitution. Such constitutional rights are potentially being prejudiced by the promulgation of the article for which a review is petitioned by the Petitioner.

Whereas regarding the authority of the Court, since the Petitioner's petition is a review of the constitutionality of legal norms, *in casu* Article 21 paragraph (1) of Law 20/2016 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioner.

Whereas although the Court has the authority to hear the *a quo* petition, however, before considering the legal standing and the subject matter of the Petitioner's petition, the Court deems it necessary to consider several important matters regarding the Petitioner's petition.

Whereas based on the provisions of Article 39 of the Constitutional Court Law and Article 41 paragraph (3) of the Regulation of the Constitutional Court Number 2 of 2021 concerning Proceedings in Judicial Review Cases (PMK 2/2021), the Court is obliged to provide advice to the Petitioner to complete and/or revise the petition. The Preliminary Examination Hearing was held on 26 April 2022 and was attended by the grantee of the power of attorney, namely Leonardo Siahaan and Fransiscus Arian Sinaga, S.H. without the presence of the grantor of the power of attorney. In the *a quo* hearing, the Panel of Judges has advised the grantee of the power of attorney to revise the power of attorney and their petition. Because, in the power of attorney dated March 8, 2022, the grantor of the power of attorney only gives power to the grantee on a limited basis, namely only giving the authority to submit the petition for a review, to summon experts, and to draw conclusions. Meanwhile, in the subject matter of the petition, the Panel of Judges has advised to make revisions, especially in the *petitum* so that it shall be made in accordance with the *posita*, which is limited to the phrases that are considered shall prejudice the constitutional rights of the Petitioner so that there is no conflict between the *posita* and the *petitum*.

Whereas the Petitioner submitted a revised petition dated March 8, 2022 but did not submit a revised power of attorney. Furthermore, at the Preliminary Examination Hearing with the agenda for the Revision of the Petition, on May 17, 2022, which was also attended

by only the grantee of the power of attorney, without the presence of the grantor of the power of attorney, the Court has asked for clarification from the grantee of the power of attorney regarding the revision of such power of attorney. During the hearing, the grantee of the power of attorney explained that the petition had been revised, including the power of attorney as advised by the Panel of Judges at the Preliminary Examination Hearing on April 26, 2022, but the revised power of attorney had not been submitted to the Court. Regarding such matter, the Court asks the grantee of the power of attorney to read and show the revised power of attorney as referred to in the online trial. Furthermore, after the grantee of the power of attorney showed the intended revised power of attorney, upon closer examination it turned out that the intended special power of attorney had not been duly stamped and had not been signed by both parties, namely the grantor and the grantee of the power of attorney.

Whereas based on the description of the legal facts above, the Court is of the opinion that the presence of the grantee of the power of attorney at the hearing in the Court is not based on a power of attorney that fulfils the requirements of the legislation, in particular as stipulated in Article 7 paragraph (2) of PMK 2/2021. This is because the power of attorney shown in the online hearing has not yet been duly stamped and has no signature of the parties, namely the grantor of the power of attorney and the grantee of the power of attorney as a formal requirement for the legality of the power of attorney. Likewise, if the Court refers to the initial power of attorney that has not been revised, namely the power of attorney dated March 8, 2022, as is the legal fact, it has turned out that the initial power of attorney only gave limited power to the grantee of the power of attorney, namely, it only gave the authority to make petition for examination, to summon experts, and to draw conclusions without giving other powers, in particular to attend the trial and to submit the petition of the Petitioner. Therefore, the grantee of power of attorney does not have the authority to represent the interests of the grantor of the power of attorney in the hearing for the *a quo* case Number 50/PUU-XX/2022.

Whereas even if the grantee of the power of attorney has the authority to represent the interests of the grantor of the power of attorney in the hearing for the case Number 50/PUU-XX/2022, *quod non*, after the Court examined the *petitum* in the Petitioner's petition, it turned out that the *petitum* submitted in the revised petition contained ambiguity, namely cumulative contradictory nature, because in Petition number 2, the Petitioner petition for the Court to declare that Article 21 paragraph (1) of Law 20/2016 is in contrary to the 1945 Constitution, while in *petitum* number 3 the Petitioner petition for the Court to give interpretation to the phrase "the Petition shall be dismissed if the Brand has similarities in principle or in its entirety" in Article 21 paragraph (1) of Law 20/2016 conditionally (conditionally constitutional) to be "the Petition shall be dismissed if the Brand has similarities in principle or in its entirety by viewing the brand as a unified whole and does not view the brand in parts or break the brand word by word". Regarding the *petitum*, the Court is of the opinion that on the one hand, the Petitioners petitioned that Article 21 paragraph (1) of Law 20/2016 is in contrary to the 1945 Constitution and have no binding legal force, but on the other hand, they petition for the Court to give interpretation to Article 21 paragraph (1) Law 20/2016 conditionally (conditionally constitutional). Therefore, based on these legal facts, the Court may not grant the two contradictory petitions, unless the Petitioner in his *petitum* petition for an alternative.

Whereas based on all the aforementioned legal considerations, although the Court has the authority to hear the Petitioner's petition, however, because the grantee of the power of attorney does not have the authority to represent the interests of the grantor of the power of attorney in the hearing for the *a quo* case Number 50/PUU-XX/2022 and even if the power of attorney fulfils the formal requirements, *quod non*, it is evident that the Petitioner's petition is unclear (vague), so that the Court shall not consider the legal standing and subject matter of the petition of the Petitioner and other matters any further.

Subsequently, the Court issued a decision which verdict states that the petition of the Petitioner is inadmissible.