



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 29/PUU-XX/2022

Concerning

Requirements for Age, Education, and Time Limits to Serve as State
Finance Manager in the Election of Members of the Audit Board of the
Republic of Indonesia (*Badan Pemeriksa Keuangan*)

- Petitioner** : **Boyamin and Marselinus Edwin Hardhian**
- Type of Case** : Examination of Law Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (Law 15/2006) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Examination of Article 13 letter f, letter i, and letter j of Law 15/2006 against Article 23E, Article 23F, Article 23G, Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3), and Article 31 paragraph (5) of the 1945 Constitution
- Verdict** : 1. To declare that the petition of Petitioner I as long as it relates to Article 13 letter i of the Law of the Republic of Indonesia Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 4654) is inadmissible;
2. To declare that the petition of Petitioner II as long as it relates to Article 13 letter f of the Law of the Republic of Indonesia Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 4654) is inadmissible;
3. To dismiss the petition of the Petitioners for the remainder.

Date of Decision : Monday, June 20, 2022

Overview of Decision :

Whereas the Petitioners are individual taxpayers of Indonesian citizens. Petitioner I is the Coordinator of the Indonesian Anti-Corruption Society (*Masyarakat Anti Korupsi Indonesia* or MAKI) and active in the efforts to eradicate corruption as well as a Financial Services Legal Consultant, so that he understands the practice of financial supervision. Petitioner II is the administrator of a non-governmental organization that makes the efforts in the context of law enforcement in general through various pre-trial application for criminal cases that are handled slowly by the law enforcers.

Whereas regarding the authority of the Court, since the Petitioners' petition is a review of the constitutionality of legal norms, *in casu* Article 13 letter f, letter I, and letter j of Law 15/2006 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing of the Petitioners, the Court is of the opinion that

Petitioner I has the legal standing to act as the Petitioner in the review of Article 13 letter f and letter j of Law 15/2006 and does not have the legal standing to act as the Petitioner in the review of Article 13 letter i of Law 15/2006. Meanwhile, Petitioner II has the legal standing to act as the Petitioner in the review of Article 13 letter i and letter j of Law 15/2006 and does not have the legal standing to act as the Petitioner in the review of Article 13 letter f of Law 15/2006.

Whereas because of the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance to ask for the statements from the parties as stated in Article 54 of the Constitutional Court Law.

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Whereas before considering the subject matter of the petitions of the Petitioners any further, the Court first examines whether the subject matter of the petitions of the Petitioners can be submitted for a review to the Court based on Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021, because the Court had previously issued a decision regarding the review of Article 13 letter j of Law 15 /2006 in the Decision of the Constitutional Court Number 106/PUU-XII/2014, dated November 4, 2015 which verdict states that the petition of the Petitioners are dismissed. In the Decision of the Constitutional Court Number 106/PUU-XII/2014, the Petitioners submitted a petition for the review of the norms of Article 13 letter j of Law 15/2006 against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. Meanwhile in the *a quo* petition, the Petitioners filed a petition for the review of the norms of Article 13 letter j of Law 15/2006 against Article 23E, Article 23F, Article 23G, Article 27 paragraph (1), Article 28D paragraph (1) and paragraph (3), as well as Article 31 paragraph (5) of the 1945 Constitution. Therefore even though there are similarities in the norms of the articles submitted for review between Case Number 106/PUU-XII/2014 and the *a quo* Petitioners' petition but the basis of review being put forward in the *a quo* petition is different. Therefore, the Court is of the opinion that the review of the norms of Article 13 letter j of Law 15/2006 in the *a quo* Petitioners' petition may be re-submitted to the Court.

Whereas regarding the issue of the norms of Article 13 letter f of Law 15/2006, the Court is of the opinion that educational requirement is one of the important requirements needed to be able to measure a person's competence to occupy a certain position. Meanwhile, the determination of the level and qualification of formal education is also intended so that the implementation of tasks in certain positions can be carried out professionally, especially in the effort to apply theoretical frameworks, analysis, and methodologies for carrying out the tasks. The determination of the level and qualification of formal education in a position has actually gone through an in-depth study process so that it is expected to produce maximum performance. The minimum educational requirement of S1 (bachelor level) or its equivalent for the prospective BPK Members as stipulated in the provisions of Article 13 letter f of Law 15/2006 is one of the efforts so that BPK members can carry out the task of examining the management and responsibilities of state finances as mandated in Article 23E of the 1945 Constitution in a professional manner. Therefore, the argument of Petitioner I in relation to Article 13 letter f of Law 15/2006 is in contrary to the 1945 Constitution as long as it is not interpreted as "smart and intelligent based on science and technology" is legally unjustifiable.

Whereas regarding the issue of norms of Article 13 letter i of Law 15/2006, the Court is of the opinion that determination of age as a requirement to be the member of BPK as regulated in the provisions of Article 13 letter i of Law 15/2006 in principal is intended to ensure that BPK members have emotional or psychological, as well as intellectual maturity, and are responsible, in addition to academic abilities. Furthermore, BPK members are expected to have prior experience in various fields related to the duties of their positions, including economics, law, and state administration before filling in the position as BPK members, so that the relevant members can carry out their duties in a professional manner. Moreover, this is because the duties and authorities of the BPK are very heavy and broad as stipulated in the provisions regarding the duties and authorities of the BPK in Chapter III of Law 15/2006. In addition to the

aforementioned legal considerations, regarding the determination of the age limit, the Court has repeatedly declared its opinion that this is a matter of open legal policy. Therefore, based on these considerations, it is relevant if the age limits as referred to in Article 13 letter i of Law 15/2006 is used as one of the requirements in the election of BPK members. Therefore, the argument of Petitioner II regarding Article 13 letter i of Law 15/2006 is in contrary to the 1945 Constitution as long as it is not interpreted as “mature based on science and technology” is legally unjustifiable.

Whereas regarding the issue of the norms of Article 13 letter j of Law 15/2006, the Court is of the opinion that the provisions of Article 13 letter j of Law 15/2006 were established with the aim of avoiding potential conflicts of interest and abuse of previously held powers that could be carried out by the elected BPK members if such members come from the state financial management officials. This may lead to the possibility of disruption of independence, integrity, and professionalism as the BPK members carrying out their duties and authorities. Therefore, there is a need for requirements that the candidates for BPK members are required to have resigned from their position as the state financial management officials at least 2 (two) years prior to become the candidates. This is also to break the chain of conflicts of interest between the relevant parties, namely between those who are examining and those being examined and to avoid abuse of authority. This is because such situation is possible when an elected BPK member uses his/her authority to evaluate the results of his/her past work before he/she becomes a member of the BPK. Therefore, it is very important to limit the time when a state financial management official can participate in the election of BPK members.

The provision regarding a period of “at least 2 (two) years” in Article 13 letter j of Law 15/2006 has been considered by the Court in the Decision of the Constitutional Court Number 106/PUU-XII/2014. So that the elected BPK members can only carry out financial audits on financial management conducted within 1 (one) year earlier. This shall prevent BPK members from self-examining the results of their work as financial management officials before they are elected as the BPK members.

Furthermore, in relation to the *petitum* of the Petitioners that petitioned for Article 13 letter j of Law 15/2006 be interpreted as “never committed any irregularities or criminal acts of corruption while serving as the State Financial Management Official”, in principal it has been accommodated in the provisions of Article 13 letter g of Law 15 /2006 which is not only attached to the candidates of BPK members who previously work as the state financial management officials but also to the candidates of BPK members who do not previously work as the state financial management officials. In other words, this requirement is attached to all candidates who wish to participate in the election of BPK members without exception.

Meanwhile, regarding the arguments of the Petitioners in relation to the existence of 2 (two) names that should not have been passed by the DPR RI (House of Representatives) to be put forward as candidates for the BPK members to take part in the fit and proper test stage because they do not meet the requirements as stipulated in Article 13 letter j of Law 15/2006. This is not a matter of the constitutionality of the norm but rather the implementation of the norm which is not within the authority of the Court to decide it. Therefore, the Petitioners' argument in relation to Article 13 letter j of Law 15/2006 is in contrary to the 1945 Constitution as long as it is not interpreted as “never committed any irregularities or criminal acts of corruption while serving as the State Financial Management Official” is legally unjustifiable.

Whereas based on all of the aforementioned legal considerations, the Court is of the opinion that in relation to Article 13 letter f, letter i, and letter j of Law 15/2006, it is evident that they have not caused any legal uncertainty and they did not prevent the citizens from getting equal opportunities in government, therefore they are not in contrary to Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution and therefore the arguments of Petitioner I and Petitioner II are legally unjustifiable. Meanwhile, regarding other matters, since they are irrelevant, they shall not be considered further by the Court.

Subsequently, the Court issued a decision which verdict is as follows:

1. To declare that the petition of Petitioner I as long as it relates to Article 13 letter i of the Law

of the Republic of Indonesia Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 4654) is inadmissible;

2. To declare that the petition of Petitioner II as long as it relates to Article 13 letter f of the Law of the Republic of Indonesia Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2006 Number 85, Supplement to the State Gazette of the Republic of Indonesia Number 4654) is inadmissible;
3. To dismiss the petition of the Petitioners for the remainder.