



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 33/PUU-XX/2022

Concerning

**Disbursement of Old Age Security Benefits
in the Event that Workers Resign from Jobs**

- Petitioner** : Samiani
- Type of Case** : Examination of Law Number 40 of 2004 concerning the National Social Security System which has been partially amended by Law Number 11 of 2020 concerning Job Creation (Law 40/2004) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : The provisions of Article 35 paragraph (2) and Article 37 paragraph (1) of Law 40/2004 according to the Petitioners are in contrary to the 1945 Constitution because they do not accommodate the payment of old-age security benefits for workers who are terminated or resigning from their jobs.
- Verdict** : To dismiss the Petitioner's petition in its entirety.
- Date of Decision** : Thursday, July 7, 2022.

Overview of Decision :

Whereas the Petitioner is Samiani, namely an individual Indonesian citizen who works as a permanent employee at a private company and is a participant of BPJS Ketenagakerjaan (employment social security program). The Petitioner petition for a constitutional review of Article 35 paragraph (2) and Article 37 paragraph (1) of Law 40/2004 because these provisions resulted in the Petitioner, as a worker and participant of BPJS Ketenagakerjaan, being unable to receive/disburse the old-age security benefits when the Petitioner resigned from his job. This is because the provision only regulates the payment of old-age security benefits when the participant enters the retirement age, dies, or experiences permanent total disability.

Regarding the authority of the Court, since the Petitioner petition for an examination the constitutionality of legal norms, *in casu* Law 40/2004 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Court considers that the Petitioner has the legal standing to file the petition. Such a consideration is based on the evidence that the Petitioner is an Indonesian citizen, private worker, and BPJS Ketenagakerjaan participant. The Court also considers that the constitutional rights of the Petitioner are potentially prejudiced by Article 35 paragraph (2) and Article 37 paragraph (1) of Law 40/2004.

Whereas the Court is of the opinion that there is no urgency to ask for the statements from the parties as stated in Article 54 of the Constitutional Court Law.

Meanwhile, regarding the subject matter of the petition, the Court considers that the concept of Old Age Security Benefits in Law 40/2004 is basically employee savings with the

employers intended to help meet the needs of the workers and/or their families when the relevant worker is no longer working due to retirement, death, or permanent total disability.

However, the Court is of the opinion that the concept of the old-age savings can be deviated when the relevant worker is no longer working and is no longer productive due to the reasons beyond the workers' control (*force majeure*). In other words, the termination of work are happening for reasons other than retirement, permanent total disability, and/or death. One of the factors beyond the worker's control that results in the termination of the worker's productivity is the Covid-19 pandemic.

In the Court's observation, the matter that is disputed by the Petitioner in his petition has already been regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2022 concerning Procedures and Requirements for the Payment of Old Age Security Benefits, dated April 26, 2022. Therefore, the Court is of the opinion that it is not necessary to expand the meaning of Article 35 paragraph (2) *junto* Article 37 paragraph (1) of Law 40/2004.

Based on these legal considerations, the Court issued a decision which verdict states that the Petitioner's petition is entirely dismissed.