



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 51/PUU-XX/2022**

Concerning

**Storage in a Certain Quantity and Time of Staple Necessities and/or Important Goods
in Conditions of Scarcity of Goods, Price Volatility and/or Trade Traffic Obstacles**

- Petitioner** : **Muhammad Hassan Basri**
- Type of Case** : Judicial review of Law Number 7 of 2014 concerning Trade (Law 7/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 29 paragraph (1) of Law 7/2014 is in contrary to Article 27 paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioner's petitioner entirely
- Date of Decision** : Monday, October 31, 2022

Overview of Decision :

Whereas the Petitioner is an individual Indonesian citizen who works as a fried chicken trader in Probolinggo. In carrying out his daily work, the Petitioner is very dependent on the availability and economical price of cooking oil, so that the availability of cooking oil on the market because distributors store these goods or if the price of cooking oil is too high, such conditions will affect the purchasing power of the Petitioner and the selling price of his merchandise. Therefore, the Petitioner feels that his constitutional rights in the form of the rights to work and to obtain livelihood that are worthy of humanity as well as the rights to fair legal recognition, guarantees, protection and certainty have been violated by the application of the phrase "in a certain amount and at a certain time" in Article 29 paragraph (1) of Law Number 7 of 2014 concerning Trade.

Whereas in relation to the authority of the Court, because the Petitioner's petition is a petition to examine the constitutionality of norms of the law, *in casu* Article 29 paragraph (1) of Law Number 7 of 2014 concerning Trade (Law 7/2014) against the 1945 Constitution of the Republic of Indonesia, the Court shall have the authority to adjudicate the *a quo* petition.

Whereas regarding the legal standing, the Petitioner has been able to explain the existence of constitutional rights he has and also the presumption of loss as a result of the enactment of the legal norms being petitioned for review. The presumption that the loss of constitutional rights is specific, factual and potential in nature, so that if the petition is granted by the Court then the presumption that such loss of constitutional rights shall no longer occur or at least shall not occur. Therefore, regardless of whether or not there is any constitutionality issue in the norms as argued by the Petitioner, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* Petition.

Whereas one of the focuses in realizing the objectives of the establishment of Law 7/2014 is to control the availability of staple goods and/or essential goods in the territory of the Unitary State of the Republic of Indonesia in sufficient quantity, good quality, and affordable prices by the Government and Regional Governments, and even under certain conditions the Government shall determine the steps to fulfil availability, price stabilization,

and distribution of staple goods and/or essential goods. This is closely related to the nature of consumer protection for all Indonesian people. The efforts to improve the people's welfare have an equal position with efforts to protect consumers from things that may reduce the level of consumer welfare itself.

Whereas the Court is of the opinion that in considering the establishment of the phrase "within a certain amount and time" in Article 29 paragraph (1) of Law 7/2014, the provisions of the *a quo* norms should be read as a whole in one unit that shall also cover Article 29 paragraph (1), paragraph (2), and paragraph (3) of Law 7/2014 including the Elucidation and any criminal provisions governing it. It turns out that the establishment of the norms of Article 29 paragraph (1) of Law 7/2014 was intended to avoid the practice of hoarding staple goods and/or essential goods which would make it difficult for the consumers to obtain the goods so that it shall affect the lives of many people. Because the emphasis of Article 29 of Law 7/2014 is to avoid the practice of hoarding, it is necessary to first understand the difference in the meaning between the word "storing" as referred to in Article 29 paragraph (1) of Law 7/2014 and the meaning of the word "hoarding" which is the basis for the norms in the *a quo* Article;

Regarding these two meanings, according to the Indonesian Language Dictionary (*Kamus Besar Bahasa Indonesia*), the word "storing" comes from the word store, which means to put it in a safe place so it will not be damaged, lost, and so on. While the word "hoarding" comes from the word hoard which means a pile of something. The meaning of the word hoarding is (1) the process, method, act of hoarding; collection of goods; (2) a place to hoard. Based on the meaning of these two words, it can be understood that the activity of storing goods places more emphasis on treating goods properly so that these goods remain in safe, good condition and shall not be damaged or lost. While the activity of hoarding means more to the collection or storage of goods in large quantities;

In the context of trade of staple goods and/or essential goods, there is a fundamental difference between storage and hoarding. Storage is an activity of storing staple goods and/or essential goods by business actors to be used as raw materials or auxiliary materials in the production process or also as supply materials for distribution. Hoarding is an activity of storing staple goods and/or important goods with the intention of speculation to obtain profits that exceed the reasonable profits, especially in the event of scarcity of goods, price volatility and/or trade traffic obstacles. Hoarding is carried out by exceeding the stock or supply for 3 (three) months based on average needs or sales under normal conditions, in various ways including by manipulating data and/or information regarding staple goods and/or essential goods;

Based on the meaning of the word "storing" and the word "hoarding" as explained above, it can be understood that there is a need for qualification limits in relation to the conditions when a business actor shall be termed as storing goods and when he shall be termed as hoarding goods. The Court is of the opinion that the proper qualifications to distinguish these two activities shall be through the differences in terms of the quantity of goods and the provision of time limits. In terms of the quantity of goods, it is necessary to limit the amount of staple goods and/or essential goods that can be categorized as reasonable limits for storage with the aim of facilitating daily trading activities as well as supporting materials for the continuation of the production process, so that if the quantity of this item has exceeded the specified limit, it can be categorized as the occurrence of hoarding. Meanwhile, in terms of time limits, it is necessary to limit how long a staple goods and/or essential goods can be stored by business actors so that the time limit shall not interfere with the amount of circulation of such staple goods and/or essential goods in the market and shall not disturb the continuity of the production process. Furthermore, in relation to how many goods and how long a staple goods and/or essential goods can be stored so that it is not categorized as a form of hoarding which constitutes an act of economic crime and is punishable crime, the Court is of the opinion that this matter must be handed over to the relevant institution for technical arrangements, such institution shall be in charge of each commodity that is included in the criteria of staple goods and/or essential goods. This is because the durability, especially in terms of storage of each commodity of staple goods

and/or essential goods, is different, and the relevant agency shall understand this situation best;

Whereas it is necessary for the Court to emphasize that Law 7/2014 was formed to accommodate a broad scope, because there are various types of commodities in trade. Therefore, Law 7/2014 cannot regulate everything in great detail because if it is regulated in detail it shall actually reduce the flexibility of regulated commodity variants. With the aim of being able to cover many things, the regulation of norms in Law 7/2014 must be made more general, while the implementation shall be regulated in the legal products derived by it. Likewise, the provisions of the phrase "within a certain amount and time" in Article 29 paragraph (1) must be seen as a general regulation of various types of goods that are determined as staple goods and/or essential goods, in which each commodity of staple goods and/or essential goods have different characteristics from one another. Therefore, the definition of "a certain amount and time" for the storage of staple goods and/or essential goods is a substance that must be regulated in implementing regulations for Law 7/2014;

Whereas if the Court accommodates the Petitioner's petition to eliminate the phrase "within a certain amount and time" in Article 29 paragraph (1) of Law 7/2014 then all forms of storage of staple goods and/or essential goods in condition of scarcity of goods, price volatility and/or trade traffic obstacles shall be prohibited without any exception. Such a thing shall actually cause chaos in society and shall cause legal uncertainty because there are no clear criteria for when a storage can be said to be a form of hoarding and can be subject to criminal sanctions;

However, the implementation of these norms has the potential to cause problems in the implementation stage, therefore it is necessary for the Court to emphasize the importance of strict supervision of storage and distribution, especially of staple goods and/or essential goods in conditions of scarcity of goods, price volatility and/or trade traffic obstacles. Such supervision is necessary because in general there are still loopholes for the business actors and law enforcers to abuse the provisions of the *a quo* Article. Therefore, there is a need for supervision by the law enforcers with integrity by involving the participation of the community, especially in this case, the task force, as specified in the *a quo* Law;

Subsequently, the Court passed down a decision which verdict is to dismiss the Petitioner's petition entirely.