



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 107/PUU-XX/2022**

Concerning

Authority of the Supreme Court in Making Supreme Court Regulations

Petitioner	: Karminah
Type of Case	: Judicial review of Law Number 14 of 1985 concerning the Supreme Court (Law 14/1985) and Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court (Law 5/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial review of Article 79 of Law 14/1985 and Article 31 paragraph (1) of Law 5/2004 against the Fourth Paragraph of the Preamble of the 1945 Constitution, the fifth precept of Pancasila, Article 28H paragraph (4) and Article 28D paragraph (1) of the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition entirely
Date of Decision	: Tuesday, December 20, 2022
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who is currently holding a trial at the Semarang Religious Court regarding the petition for an execution.

In relation to the authority of the Court, because the Petitioner's petition is a review over Article 79 of Law 14/1985 and Article 31 paragraph (1) of Law 5/2004 against the 1945 Constitution, the Court has the authority to adjudicate the Petitioner's petition;

In relation to the legal standing of the Petitioner, in principal, the Petitioner argues that the norms of Article 79 of Law 14/1985 and Article 31 paragraph (1) of Law 5/2004 have decreased (reduced) the constitutional rights of the Petitioner to recognition, guarantee, protection and fair legal certainty and the same treatment before the law that must be protected in the case of a petition for execution at the Semarang Religious Court, in the form of payment of an amount of money that has reached the execution level, however the implementation of auction is postponed by the Deputy Chairperson of the Semarang Religious Court with Discretion in the form of a Decision (Stay of Execution) under the reason that there is a lawsuit filed by the respondent of such execution who is a foreign citizen until the case has permanent legal force, therefore even though the Decision (Stay of Execution) has terminated, deemed as invalid and/or must be cancelled, the head of the Semarang Religious Court still does not continue the execution in the form of implementing the auction, and did not revoke and/or cancel the stay of executory seizure on the grounds that such manner is already in accordance with the Supreme Court regulations, the Court is of the opinion that the Petitioner, who was facing a stay of execution by the Semarang

Religious Court, based on the provisions of the articles petitioned to reviewed by the Petitioner, has been able to describe specifically the existence of a causal relationship (*causal verband*) the assumption that the constitutional rights of the Petitioner as a citizen are harmed in a case at the Semarang Religious Court, the Petitioner has also been able to explain the alleged loss of his constitutional rights that occurred with the enactment of the legal norms being petitioned for review. Thus, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition;

Whereas because of the *a quo* petition is sufficiently clear, then the Court is of the opinion that there is no urgency or need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

In relation to the subject matter of the Petitioner's petition which in principal argues that Article 79 of Law 14/1985 has multiple interpretations because it gives unlimited authority to the Supreme Court to make its own regulations and Article 31 paragraph (1) of Law 5/2004 which gives authority to the Supreme Court to review any legislations under the Law against the Law including the regulations of the Supreme Court itself are not objective, the Court in principal considers the following:

- a. Whereas the Supreme Court as one of the holders of judicial power in Indonesia has the authority to determine how laws can be implemented in order to create justice for the Indonesian people and also to absorb the aspirations of the justice seekers. Therefore, based on Article 79 of Law 14/1985 which stipulates that the Supreme Court may further regulate the matters deemed necessary for the smooth administration of justice in the event that there are matters not sufficiently regulated in the law, then in carrying out its duties, the Supreme Court is given the authority to take the initiative to stipulate written regulations that are regulatory in nature, especially in the matters relating to the role and implementation of the judiciary so that there is no legal deficiency or vacuum as described in the Elucidation of Article 79 of Law 14/1985 which states that, "if in the administration of the judiciary there is a legal deficiency or vacuum in any matter, the Supreme Court shall have the authority to stipulate the regulations as a supplement to fill the deficiency or vacuum. Based on the *a quo* Law, the Supreme Court has the authority to determine the arrangements regarding how to resolve any matter that has not been or is not regulated in Law 14/1985. In other words, Article 79 of Law 14/1985 is the basis for carrying out one of the functions of the Supreme Court, namely the regulatory function where the Supreme Court can further regulate any matters necessary for the smooth administration of justice in the event that there are any matters to sufficiently regulated in the Law on the Supreme Court as a supplement to fill in legal deficiencies or vacuum required for the smooth administration of justice. Therefore, the Supreme Court as a judicial institution is given an attributive authority to stipulate an implementing regulation, one of the way is by absorbing the aspirations of the lower court institutions related to judicial technical matters that need to be regulated in regulations under the Supreme Court's authority. Therefore, the regulations under the Supreme Court's authority shall be binding on any parties wishing to hold a trial in court.
- b. Whereas the case faced by the Petitioner at the Semarang Religious Court which resulted in a stay of execution which according to the Petitioner such stay of execution was issued based on a Supreme Court Regulation as stipulated in Article 79 of Law 14/1985, the Court is of the opinion that the petition of the Petitioner is incorrect. Because, if Article 79 of Law 14/1985 is interpreted as petitioned for by the Petitioner, then it will actually narrow the meaning of the *a quo* Article and there will be a legal vacuum over the administration for any matters other than execution. Thus, the Supreme Court and the judicial institution under it shall have no more references or instructions in adjudicating a case if the rules have not been regulated in an implementing regulation. In addition, Article 79 of Law 14/1985 is the legal basis that gives the authority to the Supreme Court to make any further regulations, namely the regulations of the Supreme Court and any other regulations concerning the judiciary function that have not been

regulated in law, so that the Supreme Court in carrying out its judiciary functions does not find any deadlock or legal uncertainty in making any decision for the justice seekers. Moreover, the Supreme Court Regulations do not only regulate the matter of execution as experienced by the Petitioners, but also regulate other technical matters. Therefore, based on these considerations, the Court is of the opinion that the Petitioner's *a quo* argument is legally unreasonable.

- c. Whereas regarding the Petitioner's argument in relation to the authority of the Supreme Court as stated in Article 31 paragraph (1) of Law 5/2004, the Court has considered such matter in the Decision of the Constitutional Court Number 129/PUU-VII/2009 which was declared in a plenary session open to the public on February 2, 2010. Thus, since the substance of the *a quo* petition is the same as the petition that has been decided, then the consideration of the Court's decision becomes *mutatis mutandis* which shall apply in legal considerations of the *a quo* case decision. As for the Petitioners' argument that in principal states that Article 31 paragraph (1) of Law 5/2004 which authorizes the Supreme Court to review any legislations under the Law against the Law including the Supreme Court regulations themselves is not objective and in contrary to the principle *nemo iudex in causa sua*, so that the Petitioner in his *petitum* petitioned for the Court to review the Supreme Court regulations in the Constitutional Court. The Court is of the opinion that the Petitioner's *a quo* argument is a mere assumption by the Petitioner connected to the concrete case being faced by the Petitioner at the Semarang Religious Court, the truth of which is not within the authority of the Constitutional Court to judge. Moreover, based on Article 24A and Article 24C of the 1945 Constitution, the Supreme Court and the Constitutional Court already have their respective authorities. Therefore, the Court is of the opinion that the Petitioner's *a quo* argument is legally unreasonable.

Whereas based on all the aforementioned legal considerations, the Court is of the opinion that it has been proven that Article 79 of Law 14/1985 and Article 31 paragraph (1) of Law 5/2004 are not multi-interpretive and have guaranteed fair legal certainty as guaranteed by the 1945 Constitution. Thus, the Petitioner's petition is entirely legally unreasonable, and subsequently the Court passed a decision which verdict is to dismiss the Petitioner's petition entirely.