



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 105/PUU-XX/2022**

Concerning

Meat/Animals Import from Countries Not Free from Infectious Animal Diseases

- Petitioner** : Teguh Boediyana, et al
- Type of Case** : Judicial review of Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Husbandry and Animal Health (Law 41/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 36E paragraph (1) and paragraph (2) and the Elucidation of Article 36E paragraph (1) of Law 41/2014 are contrary to the Preamble of the 1945 Constitution, Article 1 paragraph (3), Article 28A, Article 28D paragraph (1), Article 28H paragraph (1), and Article 33 paragraph (4) of the 1945 Constitution
- Verdict** : To dismiss the Petitioners' petition entirely
- Date of Decision** : Tuesday, January 31, 2023
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who work as cattle breeders who carry out activities raising cows as well as consumers of meat and milk and they believe that their constitutional rights have been harmed by the enactment of the formulation of Article 36E of Law 41/2014. Because Article 36E of Law 41/2014 makes it permissible to import animals/livestock/animal products/meat from countries not free from infectious animal diseases (foot and mouth disease/FMD), with the enactment of a zone system in the importation of livestock/animal products to Indonesia. The free importation of meat/animal products threatens local cattle farming businesses. In addition, the FMD outbreak caused the Petitioners' livestock business to be disrupted and suffered losses. Moreover, as consumers, it is also difficult for the Petitioners to obtain healthy meat and milk.

Regarding the authority of the Court, because the Petitioners petition for a judicial review of the Law, *in casu* Article 36E paragraph (1) and paragraph (2) and the Elucidation of Article 36E paragraph (1) of Law 41/2014 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of individual citizens who believe that their constitutional rights, namely the right to legal certainty, the right to live and defend their life and existence, the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment, as well as the right to do business in the national economic system which is carried out in accordance with economic democracy, are harmed by the enactment of the formulation of Article 36E of Law 41/2014, the Court is of the opinion that the Petitioners have been able to describe their constitutional rights, which are presumed to have been harmed by the enactment of the norms of the law being petitioned for review, in which the presumed loss arises because of the causal relationship (*causal verband*) between the norms being petitioned for review and the loss presumed to be suffered by the Petitioners in terms of the Petitioners' constitutional rights guaranteed by the 1945 Constitution. So that if the petition is granted, such loss will not occur. Therefore, regardless of whether or not the norms of articles of Law 41/2014 being petitioned for review is unconstitutional, the Court is of the opinion that the Petitioners have the legal standing to submit the *a quo* petition.

Concerning the subject matter of the petition, because the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance to request information from the parties as stated in Article 54 of the Constitutional Court Law.

Furthermore, before assessing the constitutionality of Article 36E paragraph (1) and paragraph (2) as well as the Elucidation of Article 36E paragraph (1) of Law 41/2014, the Court will first consider whether the *a quo* norms may be re-submitted pursuant to Article 60 of the Constitutional Court Law and Article 78 PMK 2/2021. Whereas although there is an article being petitioned for review that is the same as the petition that was decided in the Decision of the Constitutional Court Number 129/PUU-XIII/2015 dated 7 February 2017, namely Article 36E paragraph (1) of Law 41/2014, the *a quo* petition also reviews Article 36E paragraph (2) and the Elucidation of Article 36E paragraph (1) of Law 41/2014. In addition, there is a new basis for the review in the *a quo* petition which is not found in case Number 129/PUU-XIII/2015, namely Article 28D paragraph (1) of the 1945 Constitution. Therefore, regardless of whether or not the *a quo* petition is substantially proven, formally, *a quo* petition under the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021 may be re-submitted.

Furthermore, because the *a quo* petition formally may be re-submitted, the Court will further consider the arguments of the Petitioners' petition by first considering the following matters:

1. The constitution has mandated that Indonesia become an independent and sovereign country, including having sovereignty over food security. Sovereignty and food security are essential for the state and Indonesian people and also become an inseparable part of the country's independence. Even so, this does not mean that Indonesia cannot become an importing country for its food needs. Importation can be carried out incidentally to support national food stability to the extent that it does not eliminate Indonesia's sovereignty over food and is aimed solely at fulfilling national food security so that the people's need for food is met in accordance with food health standards, while its implementation is in accordance with the prudence principle. Provisions regarding food imports have been regulated in the Law concerning Food that food imports can only be carried out if domestic food production is insufficient and/or cannot be produced domestically [vide Article 36 paragraph (1) of Law Number 18 of 2012 concerning Food (Law 18/2012)].
2. Whereas following an open flow of food imports, balance and caution for the state in determining policies on imports of livestock products is required so that they are in

line with the economic philosophy mandated by the 1945 Constitution, namely that it shall be conducted by virtue of economic democracy under the principles of togetherness, efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity [*vide* Article 33 paragraph (4) of the 1945 Constitution] as well as in the purpose of strengthening the principle of self-sufficiency and as much as possible for the prosperity of the people.

3. Whereas concerning the requirements for the importation of animal products, the Court has decided in the Decision of the Constitutional Court Number 129/PUU-XIII/2015, which considers that Indonesia absolutely applies the principle of maximum prudence and safety in carrying out the importation of any goods from outside into the territory of the Unitary State of the Republic of Indonesia (*Negara Kesatuan Republik Indonesia* or NKRI). Therefore, the importation of animal products into the territory of the Republic of Indonesia, primarily through the zone system, must be perceived as a temporary solution that can only be carried out under certain circumstances.

Furthermore, in accordance with the above matters, the Court will consider the Petitioners' arguments regarding the unconstitutionality of the norms of Article 36E paragraph (1) and paragraph (2) as well as the Elucidation of Article 36E paragraph (1) of Law 41/2014, which in the Petitioners' opinion has resulted in imports of meat and animal products from other countries that are not disease-free so that the Petitioners as breeders suffered losses, as follows:

- a. The main issue as the reason for the Petitioners' petition in their submission is the enactment of Government Regulation Number 4 of 2016 concerning the Importation of Livestock and/or Animal Products in certain cases Originating from a Country or Zone within a Country of Origin (GR 4/2016). The Court is of the opinion that such issue is related to the implementation of norms, *in casu* the implementation of norms in Law 41/2014, and not a matter of constitutionality of norms. Even if there are issues of legality and implementation of Government Regulation 4/2016, such an issue is beyond the Court's authority to decide. Thus, the Petitioners' main arguments related to the enactment of Government Regulation 4/2016 as the implementation of Article 36E paragraph (1) and paragraph (2) of Law 41/2014 is legally unjustifiable;
- b. Whereas regarding the importation of livestock and/or animal products from a country or zone within a country, the Court has also issued a decision, namely the Decision of the Constitutional Court Number 129/PUU-XIII/2015. Since the issue of unconstitutionality of the norms of the article being petitioned for review by the Petitioners and the arguments or reasons used as the basis for the Petitioners' petition are substantially the same as those related to the Decision of the Constitutional Court Number 129/PUU-XIII/2015, although on a different basis for review, basically it has the same essence, and therefore the legal considerations in such decision shall also become the legal considerations for the *a quo* case with regard to the Elucidation of Article 36E paragraph (1) of Law 41/2014. Thus, the arguments for the *a quo* petition are legally unjustifiable;
- c. Whereas in addition, regarding the state's sovereignty over food security for the community, the Community needs to remind the aspects of the quantity and quality of livestock products which are the responsibility of the government together with breeders and entrepreneurs in the livestock sector to work together to carry out endeavours and procedures that fulfil the livestock health standards, under the principle of maximum prudence and safety, and likewise to increase the aspect of

supervision, both internally by the government and externally by the House of Representatives, on the implementation of import policies implemented by the state so as not to harm national interests, especially in terms of environmental and public health. Thus, in accordance with the description of the legal considerations mentioned above, the Court is of the opinion that the Petitioners' arguments regarding the unconstitutionality of the norms of Article 36E paragraph (1) and paragraph (2) and the Elucidation of Article 36E paragraph (1) of Law 41/2014 are legally unjustifiable;

- d. Meanwhile, regarding *petitum* number 3, which petitions for the Court that the phrase "in certain matters" in Article 36E paragraph (1) and paragraph (2) as well as the Elucidation of Article 36E paragraph (1) of Law 41/2014 is interpreted as "a state of urgency resulting from a disaster as referred to in the law on disaster management", the Court is of the opinion that such interpretation will narrow the phrase "in certain cases" in the *a quo* Article. The Petitioners' interpretation will close the possibility of another urgent situation occurring and close the government's discretionary space in the event of an emergency caused by other matters that have not been stipulated in statutory regulations. This situation hinders the prudence principle that the Court considered in the Decision of the Constitutional Court Number 129/PUU-XIII/2015. In addition, if the importation of livestock and/or animal products from a country or a zone within a country can only be carried out when the situation is urgent only due to a disaster as intended in the Petitioners' *petitum*, then this will actually have the potential to make it difficult for consumers to get animal products when their stocks are reduced and the supply of domestic animal products is limited which will result in uncontrollable prices. Thus, if granted, the Petitioners' *petitum* number 3 would be counterproductive, contrary to the prudence principle, and result in legal uncertainty.

In accordance with all of the considerations mentioned above, the provisions of the norms of Article 36E paragraph (1) and paragraph (2), as well as the Elucidation of Article 36E paragraph (1) of Law 41/2014, have been proven to be not contrary to the principle of the rule of law, not violating the right to live and prosper, not causing legal uncertainty, and not violating the principles of economic democracy guaranteed in the 1945 Constitution. Therefore, the Petitioners' petition is entirely legally unjustifiable.

Accordingly, the Court subsequently passes down a decision in which the verdict states to dismiss the Petitioners' petition entirely.