



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 18/PUU-XXI/2023

Concerning

Extension of Authority of Religious Courts in Examining
Results of Non-Halal Product Certification

- Petitioner** : Rega Felix
- Type of Case** : Judicial Review of Law Number 33 of 2014 concerning Guarantee of Halal Products (Law 33/2014) and Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation (Government Regulation 2/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of the norms of Article 34 paragraph (2) of Law 33/2014 and the norms of Article 48 number 19 of Government Regulation 2/2022 which contains the amendments to the norms of Article 33 paragraph (5) of Law 33/2014 and Article 48 point 20 of Government Regulation 2/2022 which contains the additions to the norms of Article 33A paragraph (1) of Law 33/2014 to the 1945 Constitution
- Verdict** : To declare that the petition of the Petitioner is inadmissible
- Date of Decision** : Friday, 14 April 2023
- Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen and is also a business actor who has a business in the culinary field under the name Felix Burger. In this case, the Petitioner intends to register his business products in order to obtain halal certification. The Petitioner believes that his constitutional rights have been harmed by the enactment of the provisions of Article 34 paragraph (1) of Law 33/2014 and Article 48 number 19 of Government Regulation 2/2022 which contain the amendments to the norms of Article 33 paragraph (5) of Law 33/2014, as well as Article 48 number 20 of Government Regulation 2/2022 which contains the additions to the norms of Article 33A paragraph (1) of Law 33/2014, because there is no legal action to remedy the decision on the *fatwa* concerning non-halal products. Moreover, the government has also formed Komite Fatwa Produk Halal (Fatwa Committee for Halal Products), which potentially may result in different interpretations which will lead to a wider scope for interpreting halal fatwa for a product. Thus, the Petitioner's constitutional rights are potentially harmed regarding his rights to develop himself in business and to obtain legal certainty as contained in the provisions of Article 28C paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2), and Article 29 paragraph (1) as well as paragraph (2) of the 1945 Constitution;

In relation to the authority of the Court, because the Petitioner petitions for a judicial review, *in casu* Law 33/2014 and Government Regulation 2/2022 against the 1945 Constitution, which is one of the powers of the Court, thus under Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law,

and Article 29 paragraph (1) of the Judicial Powers Law, as well as the Decision of the Constitutional Court Number 138/PUU-VII/2009 which was declared in a plenary session open to the public on 8 February 2010, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Petitioner has been able to explain his constitutional rights which, according to him, are potentially harmed due to the enactment of the norms being petitioned for review, namely Article 34 paragraph (2) of Law 33/2014 and Article 48 number 19 of Government Regulation 2/2022 which contain the amendments to the norms of Article 33 paragraph (5) of Law 33/2014 and Article 48 number 20 of Government Regulation 2/2022 which contain the additions to the norms of Article 33A paragraph (1) of Law 33/2014. Within the limits of reasonable reasoning, the presumption of such loss of constitutional rights may potentially occur. In addition, the presumption of such loss of constitutional rights has a causal relationship (*causal verband*) with the enactment of the law and the Government Regulation being petitioned for review. Therefore, if the *a quo* petition is granted, the presumption of such potential loss of constitutional rights will not occur. Thus, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* Petition;

Subject Matter

Whereas after the Court has carefully read the petition of the Petitioner, has examined the evidence presented, and has considered the Petitioner's arguments, the Court then considers the subject matter of the Petitioner's petition as follows:

1. whereas after the Court has carefully examined the Petitioner's petition, particularly with regard to the unconstitutionality of the norms of Article 48 number 19 of Government Regulation 2/2022 which contains the amendments to the norms of Article 33 paragraph (5) of Law 33/2014 and the norms of Article 48 number 20 of Government Regulation 2/2022 which contain the additions to the norms of Article 33A paragraph (1) of Law 33/2014, it turned out that Government Regulation 2/2022 has been approved and enacted into law, *in casu* Law Number 6 of 2023 concerning Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law, State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to State Gazette Number 6856 (Law 6/2023);
2. whereas since the change in the legal status of Government Regulation 2/2022 has been approved and enacted into Law 6/2023, normatively, the object being petitioned for, *in casu* the norms of Article 48 number 19 and Article 48 number 20 of Government Regulation 2/2022 have lost their legal form as legal products that can be reviewed for their constitutionality by the Court. Therefore, the petition regarding the unconstitutionality of the norms of Article 48 number 19 of Government Regulation 2/2022 and Article 48 number 20 of Government Regulation 2/2022 must be declared to have lost its object;
3. whereas furthermore regarding the norms of Article 34 paragraph (2) of Law 33/2014 which states, "In the event that the Halal Fatwa Session as referred to in Article 33 paragraph (2) declares that the product is not halal, BPJPH shall return the application for Halal Certificate to the Business Actor along with the reasons", these norms are integral part that cannot be separated from the norms of Article 33 paragraph (2) of Law 33/2014 which has been amended in Government Regulation 2/2022 and then stipulated to become Law 6/2023, so that the existence of Article 33 paragraph (2) is an absolute requirement (*condition sine qua non*) for the enactment of the provisions of Article 34 paragraph (2) of Law 33/2014. However, since the norms of Article 33 paragraph (2) have been amended by Government Regulation 2/2022 and then the *a quo* Government Regulation has been approved and enacted into Law 6/2023, the review regarding the relevant Government Regulation has lost its object, thus the Court cannot comprehensively assess the constitutionality of the

norms of Article 34 paragraph (2) of Law 33/2014. Within the limits of reasonable reasoning, this happens because, on one hand the assessment of the constitutionality of the norms of Article 34 paragraph (2) of Law 33/2014 may only be carried out in a comprehensive manner, together with the norms of Article 33 paragraph (2) of Government Regulation 2/2022, because the two norms are interrelated. While on the other hand, Government Regulation 2/2022 has lost its object. Therefore, since Government Regulation 2/2022 has lost its object, the Court is of the opinion that the Petitioner's argument throughout the review of the constitutionality of the norms of Article 34 paragraph (2) of Law 33/2014 becomes obscure or at least premature.

Whereas based on the entire legal considerations as described above, due to the norms of Article 48 number 19 of Government Regulation 2/2022 and Article 48 number 20 of Government Regulation 2/2022 have lost their objects and the assessment of the norms of Article 34 paragraph (2) of Law 33/2014 has become obscure or at least premature, the Court has not yet been able to judge the contradictions of the norms being petitioned for review of their constitutionality against Article 28C paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2), and Article 29 paragraph (1) and paragraph (2) of 1945 Constitution. Aside from that, any other matters and the remainder of the petition are not considered any further because they are deemed to be irrelevant.

Furthermore, the Court passes down a decision in which the verdict states that the Petitioner's petition is inadmissible.