



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 19/PUU-XXI/2023**

**Concerning
Requirement of Age Limit for Industrial Relations
Conciliator**

- Petitioners** : Nandang Rakhmat Gumilar, et al.
- Type of Case** : Judicial Review of Law Number 2 of 2004 concerning Settlement of Industrial Relations Dispute (Law 2/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 19 paragraph (1) letter c of Law 2/2004 is considered to be contrary to the 1945 Constitution.
- Verdict** : To dismiss the petition of the Petitioner entirely
- Date of Decision** : Friday, 14 April 2023.
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who are also the candidates for industrial relations conciliators who have participated in the recruitment process for industrial relations conciliators. The Petitioners believes that they are harmed by the minimum age limit for conciliators as regulated by Article 19 paragraph (1) letter c of Law 2/2004 since it hinders the Petitioners' right to be appointed as conciliators. According to the Petitioners, this is contrary to Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution.

In relation to the authority of the Court, because the Petitioners petition for a judicial review of the norms of the Law, *in casu* Article 19 paragraph (1) letter c of Law 2/2004 against the 1945 Constitution, which is one of the powers of the Court, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners in this matter have been able to prove that they have followed the recruitment process for prospective conciliators as stipulated in *a quo* Law 2/2004 organized by the ministry [*vide* evidence P-9 to evidence P-32]. The Petitioners have also been able to prove that the Petitioners were not appointed as conciliators because they did not fulfil the age limit as stipulated in Article 19 paragraph (1) letter c of Law 2/2004. Thus, the Court is of the opinion that the Petitioners have been able to describe specifically and explain the existence of a causal relationship (*causal verband*) regarding the enactment of the provisions of Article 19 paragraph (1) letter c of Law 2/2004 which is deemed harmful to the constitutional rights of the Petitioner as stipulated in Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution. Therefore, regardless of whether or not the unconstitutionality of the norms being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to submit the *a quo* petition.

Regarding the subject matter of the petition, the Petitioners argue that there is a disparity in setting the age requirements to become conciliators with mediators, thus according to the Petitioners this violates the principle of equality before the law and in the government as guaranteed by Article 27 paragraph (1) of the 1945 Constitution, fair legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, and protection from discriminatory treatment as guaranteed by Article 28I paragraph (2) of the 1945 Constitution. Regarding this issue, the Court is of the opinion that there is a violation of the equality of positions before the law and in the government when the citizens of the country get unequal treatment and do not get equal opportunities. In order to implement the provisions of the constitution which guarantee equal opportunity before the law and in the government, it shall be regulated further in the laws and regulations. In this regard, the provisions of the laws and regulations, *in casu* Law 2/2004 has stipulated a number of terms and conditions that must be fulfilled in order for a person to be entitled and to be entrusted with holding certain position or office. As long as these requirements are applied equally to all citizens in a certain position or office, there is no violation of the said constitutional principle. In this case, the existence of different arrangements regarding the requirements between the conciliator and the mediator as disclosed by the Petitioners cannot necessarily be said to be a difference in equal standing before the law and in the government. A similar understanding also applies in understanding and implementing what is meant by discriminatory treatment as referred to in Article 28I paragraph (2) of the 1945 Constitution. A rule can be said to apply discriminatory treatment if there is a difference in treatment based solely on religion, ethnicity, race, tribe, group, class, social status, economic status, gender, language, or political beliefs. Also under these considerations, the existence of a distinction in terms of arrangement between the conciliator and the mediator in which the minimum age limit is not regulated for the mediator is not a rule that creates a violation of fair recognition, guarantee, protection and legal certainty and equal treatment before the law. Moreover, the two positions have different tasks from different resources so it is impossible to equate something that is different. Regarding the matter, the legislators have the right to determine the requirements that must be fulfilled in order for a citizen to be entitled to hold a certain position or office provided that these requirements are not contrary to the 1945 Constitution. Determination of the minimum age requirement for a conciliator as stipulated in Article 19 paragraph (1) letter c of Law 2/2004 is a policy choice from the legislators in determining what requirements, according to reasonable reasoning, need to be applied so that a person can be appointed as a conciliator. The same applies to the determination of the requirements for holding other positions as specified in *a quo* Law 2/2004, among them the requirements to be a mediator and arbitrator. Therefore, the different requirements between being a conciliator and a mediator is a matter of open legal policy, where the 1945 Constitution does not regulate and limit these requirements and hands them over to the legislators to be regulated in accordance with the characters and the needs of the said position. Thus, as described in the aforementioned legal considerations, the different requirements between being a conciliator and a mediator are not discriminatory in nature nor are they contrary to the principle of equality before the law and in the government, to the extent that these norms do not significantly conflict with the 1945 Constitution, do not exceed the authority of legislators, and do not constitute abuse of authority, therefore there is no constitutional reason for the Court to annul or give interpretation to the norms of Article 19 paragraph (1) letter c of Law 2/2004 in accordance with the *petitum* of the Petitioners.

In addition, it is also necessary to understand that the requirements to become a conciliator as stipulated in Article 19 paragraph (1) of Law 2/2004 are cumulative requirements. The formulation of the requirements of the norms uses the words "must fulfil" which means that all the requirements for the norms, from letter a to letter i must be fulfilled without exception. This is in accordance with the technique of drafting the laws and regulations as regulated in Number 269 ATTACHMENT II of Law 12/2011, which in principle states that the word "must" in a norm is used to express the fulfilment of a certain condition or requirement. If these requirements are not fulfilled, the relevant person does not obtain something that would have been obtained if he had fulfilled these conditions or requirements.

Thus, the exception as petitioned by the Petitioners in the formulation of conditional constitutionality in *petitum* number (2) of the petition of the Petitioners, if it is granted, it will contradict the necessity and the cumulative nature of the *a quo* requirements and will lead to unclear formulation of norms and legal uncertainty. Thus, the *a quo* petition must be declared unreasonable.

With regard to the Petitioners' argument regarding the enactment of the minimum age requirement of 45 (forty-five) years, that it has the potential to eliminate the opportunity to be appointed as a conciliator and to obtain honorarium rights for each prospective conciliator who is under 45 (forty-five) years of age, the Court is of the opinion that the right to obtain honorarium is not an absolute right attached to citizens, but to the profession of the citizens. The right to honorarium as referred to by the Petitioners is a right attached to the position of conciliator itself, where without being appointed as conciliator, a citizen automatically does not have the right to such honorarium. Since the enactment of the minimum age requirement for conciliators is not contrary to the 1945 Constitution, the failure to appoint the Petitioners as conciliators is not a violation of the constitutional rights of citizens, including the right to obtain a decent job and livelihood as guaranteed by Article 27 paragraph (2) of the 1945 Constitution. Pursuant to these legal considerations, the *a quo* arguments of the Petitioners is legally unreasonable.

With respect to the argument of the Petitioners regarding the small number of industrial relations conciliators so that there is an urgency to immediately recruit conciliators by excluding the minimum age requirement, the Court is of the opinion that this issue is not a matter of constitutional norms. The small number of conciliators cannot be fully related to the age requirement or other requirements as stipulated in the norms of Article 19 of Law 2/2004, moreover the requirements to become conciliators are cumulative. The fulfilment of certain requirements cannot negate other requirements because they become a single set of requirements that must be fulfilled. Therefore, meeting the needs of conciliators in the application of Law 2/2004 has no relevance to the constitutionality of the minimum age requirement for conciliators, thus it is inappropriate if this fact is used as an excuse to annul or to declare the norms of Article 19 paragraph (1) letter c of Law 2/2004 unconstitutional.

Regarding the factual issues as experienced by the Petitioners, in which the Petitioners have been invited and assigned to participate in all stages of the recruitment of prospective conciliators, despite the fact that the age of the Petitioners has not fulfil the requirements specified by the norms of Article 19 paragraph (1) letter c of Law 2/2004, so that the Petitioners cannot be appointed and given no legitimacy as conciliators, it is a matter of implementation or application of the norms, not a matter of the constitutionality of the norms. Pursuant to the aforementioned legal considerations, the *a quo* arguments of the Petitioners is legally unreasonable. Based on all of these legal considerations, the Court is of the opinion that it has been proven that Article 19 paragraph (1) letter c of Law 2/2004 has guaranteed fair legal certainty as guaranteed by the 1945 Constitution. Thus, the petition of the Petitioners is legally unreasonable entirely.

Subsequently, the Court passes down a decision in which the verdict states to dismiss the petition of the Petitioners entirely.