



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 37/PUU-XXI/2023**

**Concerning  
Prosecutor Retirement Age**

- Petitioners** : H. Irnensif, Zulhadi Savitri Noor, Wilmar Ambarita, I Wayan Dana Aryantha, Made Putriningsih, Mangatur Hutauruk, Zairida, and Eko Kuntadi
- Type of Case** : Judicial Review of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) and Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Law 11/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : The final and binding nature of the decision of the Constitutional Court on the Elucidation of Article 10 paragraph (1) of the Constitutional Court Law and the norms of Article 47 of the Constitutional Court Law and the retirement age provisions in Article 40A of Law 11/2021 are discriminatory, they create legal uncertainty, eliminate guarantees of protection, and deprive the dignity of citizen as guaranteed in Article 1 paragraph (3), Article 28D paragraph (1), Article 28G paragraph (1), Article 28I paragraph (2), and Article 28I paragraph (4) of the 1945 Constitution
- Verdict** : To dismiss the petition of the Petitioners for preliminary injunction;  
To dismiss the petition of the Petitioners entirely;
- Date of Decision** : Thursday, 25 May 2023
- Overview of Decision** :

Whereas the object of the Petitioners' petition is the Elucidation of Article 10 paragraph (1) of the Constitutional Court Law which states, "The decision of the Constitutional Court shall be final, namely the decision of the Constitutional Court shall immediately obtain permanent legal force from the moment it is declared and there shall be no legal remedy that can be taken. The final character of the decision of the Constitutional Court in this Law also includes final and binding character", the norms of Article 47 of the Constitutional Court Law which states, "The decision of the Constitutional Court shall have permanent legal force from the moment it is declared in a plenary session open to the public", as well as Article 40A of Law 11/2021 which has been interpreted in the Decision of the Constitutional Court Number 70/PUU-XX /2022 which states: *"The provisions of the norms of Article 40A of Law 11/2021 which impose a prosecutor retirement age limit as regulated in the provisions of the norms of Article 12 letter c of Law 11/2021 shall come into force 5 (five) years after the a quo decision of the Court is declared"*. The Court is of the opinion that because the petition submitted is a review of the constitutionality of

legal norms, *in casu* Elucidation of Article 10 paragraph (1) of the Constitutional Court Law and the norms of Article 47 of the Constitutional Court Law and Article 40A of Law 11/2021 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas the Petitioners, in describing their respective legal standings, have described their qualifications as Indonesian citizens who work as prosecutors who have been retired. According to the Petitioners, there is a discrimination between any prosecutors who were 60 years old before the Interlocutory Decision of the Constitutional Court Number 70-PS/PUU-XX/2022 was declared and any prosecutors who were 60 years old after the Interlocutory Decision of the Constitutional Court Number 70-PS/PUU-XX/2022 was declared. The Court considers that the Petitioners are able to prove that they are prosecutors who were declared retired after Law 11/2021 was promulgated, to be precise before the Interlocutory Decision of the Constitutional Court Number 70-PS/PUU-XX/2022 was declared in a plenary session open to the public on 11 October 2022.

Whereas in the petition for preliminary injunction, the Petitioners petition for the Court to declare the postponement of the enforcement of the Attorney General Circular Letter Number 1 of 2023 concerning Implementation of the Decision of the Constitutional Court Number 70/PUU-XX/2022 dated 20 December 2022, dated 17 March 2023 (hereinafter referred to as SEJA 1/2023) and the Decision of the Attorney General Number 87 of 2023 concerning Revocation and Annulment of the Decision of the Attorney General concerning the Granting of Service Promotions, Dismissal and Retirement for Civil Servants who have reached the Retirement Age Limit and the Transfer of Civil Servants of the Prosecutors' Office of the Republic of Indonesia, dated 20 March 2023 (hereinafter referred to as KEPJA 87/2023), until a final decision is made for the *a quo* case. Against the *a quo* petition for preliminary injunction, the Court is of the opinion that in the context of judicial review, this is not within the scope of the authority of the Court to declare the annulment or postponement of the enforcement of a decision issued by a concrete, individual and final state administrative agency or officer. Therefore, the Petitioners' petition for preliminary injunction is legally unjustifiable.

Whereas in the subject matter of the petition, the Petitioners petition for the Court to declare that the Elucidation of Article 10 paragraph (1) and the norms of Article 47 of the Constitutional Court Law are contrary to the 1945 Constitution and do not have binding legal force to the extent that they are not interpreted as "the decision of the Constitutional Court shall have binding legal force from the moment it is declared, unless the Court in the decision determines otherwise"; as well as Article 40A of Law 11/2021 as interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022, is contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as "shall come into force 5 years after Law 11/2021 was passed into law on 31 December 2021".

Whereas regarding the subject matter of the petition, the Court is of the opinion that the definition of decision of the first and final levels at the Constitutional Court is intended as a court decision which immediately obtains permanent legal force (*in kracht van gewijsde*) and it does not recognize the existence of a tiered judicial system such as appeals and cassation in the judicial environment under the Supreme Court. Thus, in exercising its authority, the Court does not recognize other mechanisms of legal remedy against its decision, thus making its decision final and binding from the moment it is declared in a plenary session open to the public. In exercising the authority of judicial review, the existence of Article 47 of the Constitutional Court Law and the Elucidation of Article 10 paragraph (1) of the Constitutional Court Law actually provides legal certainty for the public regarding the enforceability of the norms of law. In this case, the provisions of Article 47 of the Constitutional Court Law provide confirmation that the decision of the Court is in principle prospective in nature and it shall apply from the moment it is declared. Therefore, the provisions of an article of a law that has been in force since it was published in the State Gazette and the Supplement to the State Gazette of the Republic of Indonesia shall continue to be in force as it should to the extent that it is not amended by a new law or to the extent that there is no decision of the Constitutional Court which annuls or postpones the enforcement of the elucidation or the norms of the law. Therefore, the arguments of the Petitioners regarding the Elucidation of Article 10 paragraph (1) of the Constitutional Court Law and the norms of Article 47 of the Constitutional Court Law are legally unjustifiable.

Whereas with respect to the arguments of the Petitioners regarding Article 40A of Law 11/2021 as interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022, in principle the Court has considered and decided on the constitutionality of the *a quo* norms of Article 40A of Law 11/2021 in the Interlocutory Decision Number 70-PS/PUU-XX/2022 and the Decision of the Constitutional Court Number 70/PUU-XX/2022. In the legal considerations on paragraphs [3.14] of the Decision of the Constitutional Court Number 70/PUU-XX/2022, in principle, the Court has considered the matter of the need for sufficient time so that the implementation of the transitional rules as stipulated in Article 40A of Law 11/2021 is able to be carried out in a balanced manner. In other words, the implementation of the transitional provisions of Article 40A of Law 11/2021 cannot be enforced immediately, because it does not provide legal protection for the prosecutors who are affected since they are forced to retire suddenly. The Court considered that it would be fair if the enforcement of the provisions of Article 40A of Law 11/2021 which enforces the provisions of the norms of Article 12 letter c Law 11/2021 would only come into force 5 (five) years after Law 11/2021 was passed into law. In principle, the Decision of the Constitutional Court Number 70/PUU-XX/2022 reaffirms the Interlocutory Decision Number 70-PS/PUU-XX/2022 which states that it postpones the enforcement of Article 40A of Law 11/2021. Due to this postponement, Article 12 letter c of Law 16/2004 shall remain valid as before the existence of the transitional provisions in Article 40A of Law 11/2021. In this regard, Law 11/2021 was promulgated on 31 December 2021, which means it will come into force on 31 December 2021. Thus, the dismissal of prosecutors who are 60 (sixty) years of age or older as of 31 December 2021 will still follow the provisions for the retirement age limit as stipulated in Law 16/2004. Under such stance of the Court, as of 31 December 2021, the prosecutors who are 60 (sixty) years of age or older will automatically retire according to their respective ages, with a maximum retirement age of 62 (sixty two) years in accordance with Article 12 letter c of Law 16/2004. This shall be valid for the next 5 (five) years after Law 11/2021 was passed into law. Therefore, the number 2 verdict of the Decision of the Constitutional Court Number 70/PUU-XX/2022 which states that “The provisions of the norms of Article 40A of Law 11/2021 which impose a prosecutor retirement age limit as regulated in the provisions of the norms of Article 12 letter c of Law 11/2021 shall come into force 5 (five) years after the *a quo* decision of the Court is declared” is to give affirmation in a *declaratoir* manner that Article 40A *juncto* Article 12 letter c of Law 11/2021 has been postponed from coming into force so that Law 11/2021 shall be in effect continuously since its promulgation.

Whereas in this regard, there is also no reason for the Court to enforce the decision in the *a quo* case retroactively as argued by the Petitioners, because the Decision of the Constitutional Court Number 70/PUU-XX/2022 has interpreted Article 40A of Law 11/2021 so that there is no longer any legal uncertainty caused by Article 40A of Law 11/2021.

Whereas regarding the meaning of Article 40A of Law 11/2021 which has been interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022, the Petitioners petition to be re-interpreted as “shall come into force 5 years after Law 11/2021 was passed into Law on 31 December 2021”, the Court is of the opinion that it is irrelevant for reconsideration, because automatically the dismissal of any prosecutors who are 60 (sixty) years of age or older as of 31 December 2021 will still comply with the provisions for the retirement age limit as stipulated in Law 16/2004, namely they will retire according to their respective ages with a maximum retirement age of 62 (sixty-two) years based on Article 12 letter c of Law 16/2004 until 5 (five) years after Law 11/2021 was passed into law as stipulated in the norms of Article 40A of Law 11 /2021 which has been interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022. Therefore, the argument of the Petitioners that Article 40A of Law 11/2021 as interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022 has caused a discriminatory treatment for fellow prosecutors is no longer a matter of constitutional norms but rather a matter of implementing the decision of the Court.

Whereas furthermore the argument of the Petitioners regarding Article 40A of Law 11/2021 as interpreted in the Decision of the Constitutional Court Number 70/PUU-XX/2022, which, according to the Petitioners, became the basis for the issuance of SEJA 1/2023 and KEPJA 87/2023 which had caused the losses for the Petitioners, the Court is of the opinion that

this is a concrete issue and this is the issue of the implementation of the decision of the Court, therefore it is not under the authority of the Court to consider its legality. Nevertheless, the Court needs to remind that the implementation of any article of any law, especially one that has been interpreted by the Court, must be carried out in accordance with the contents of the provisions in such article or in the interpretation of the Court. In a hierarchy of norms, the laws and regulations at a lower level should not annul or overrule the laws and regulations at a higher level, including legal norms that have been interpreted in a decision of the Constitutional Court. Thus, the implementation of Article 40A of Law 11/2021 must be in accordance with the Decision of the Constitutional Court Number 70/PUU-XX/2022 and the *a quo* decision.

Whereas based on these legal considerations, the Court is of the opinion that the petition of the Petitioners is legally unjustifiable, therefore in its decision, the Court declares that it dismisses the petition of the Petitioners.