



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 112/PUU-XX/2022**

**Concerning**

**Requirements of Limitations on Age and Term of Office for KPK Leaders**

- Petitioner** : **Dr. Nurul Ghufron, S.H., M.H.**
- Type of Case** : Judicial review of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions against the 1945 Constitution of the Republic of Indonesia
- Subject Matter** : Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions and Article 34 of Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions is contrary to Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution
- Verdict** :
1. To grant the Petitioner's petition entirely.
  2. To declare Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally reads, "Having the minimum age of 50 (fifty) years and the maximum age of 65 (sixty-five) years in the election process", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have legal binding force conditionally to the extent that it is not construed, "Having the minimum age of 50 (fifty) years or the experience as a KPK Leader, and the maximum age of 65 (sixty-five) years in the election process."
  3. To declare Article 34 of Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (State Gazette of the Republic of Indonesia of 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250), which originally reads, "The Corruption

Eradication Commission leaders hold office for 4 (four) years and can be re-elected only for one term of office", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have legal binding force conditionally to the extent that it is not construed, "The Corruption Eradication Commission leaders hold office for 5 (five) years and can be re-elected only for one term of office".

4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

**Date of Decision** : Thursday, May 25, 2023

**Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen who currently serves as the Deputy Chair of the Corruption Eradication Commission (KPK) for the 2019-2023 period, and has been appointed and met the qualifications under Law 30/2002 and will end his term of office on 20 December 2023. The Petitioner participates in the selection of the KPK leaders for the 2019-2023 period at the age of 45 under Article 29 letter e of Law 30/2002, which regulates the minimum age requirement of 40 years to be able to run for the KPK leaders. However, with changes to Law 30/2002, the minimum age limit of candidacy for the KPK leaders under Article 29 letter e of Law 19/2019 is 50 years. The change in the age requirement of candidacy for KPK leaders results in the end of his term of office as the KPK leader for the 2019-2023 period. Moreover, the Petitioner cannot re-register immediately to participate in the selection of candidates for the KPK leaders of the next period because he does not meet the minimum age requirement.

Whereas regarding the authority of the Court, because the Petitioner's petition is a review of the constitutionality of norms of law, *in casu* Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (Law 19/2019) and Article 34 of Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (Law 30/2002) against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding legal standing, the Petitioner has been able to describe the existence of his constitutional rights and the presumed loss due to the enactment of the norms of law being petitioned for review. The presumed loss of constitutional rights is specific and actual, and there is a causal relationship (*causal verband*) between the presumed loss of constitutional rights and enactment of Article 29 letter e of Law 19/2019 and Article 34 of Law 30/2002, which, if the Court grants the petition, then the presumed loss of constitutional rights in question will no longer occur. Therefore, regardless of whether or not the issue of the constitutionality of norms argued by the Petitioner exists, in the Court's opinion, the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition.

Whereas the Court considers the Petitioner's petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (CCR 2/2021), it is evident that there are differences on the review basis used and the constitutional reasons between the review of the *a quo* case and the previous cases that the Court has decided, namely Case Number 62/PUU-XVII/2019 and Case Number 5/PUU-IX/2011. Therefore, the *a quo* norms may be re-submitted for review.

Whereas the Court considers the issue of the constitutionality of the norms of Article 29 letter e of Law 19/2019, which, in the Court's opinion, although they are related to the minimum and maximum ages for filling public office, which are formal requirements that are not explicitly contrary to the constitution, they implicitly raise issues of injustice and discriminatory when associated with substantive requirements, where someone, for instance, who has served or is currently serving as the KPK leader and has a good track record in terms of integrity and other requirements stipulated in Article 29 of Law 19/2019.

Whereas, in the Court's opinion, in the selection process for the appointment of KPK leaders, two requirements must be met by candidates of leaders who will participate in the selection, namely formal requirements or referred to as administrative requirements, and substance requirements of, among other things, education, and work experience. The Court needs to emphasize that the requirements for education, expertise, and especially experience are substantially essential rather than mere formal age requirements. This is because candidates for the KPK leaders should understand the work system, the problems faced by the institution, and the performance targets to achieve. Moreover, the issues handled and under the authority of the Corruption Eradication Commission have a special nature, namely those relating to judicial cases that require specific experience. Thus, in accordance with the above considerations, a person who has served or is currently serving as the KPK leader and will then re-nominate himself, either immediately or with a break, to the extent that if the person in question meets other requirements, for instance, a good track record, then the person is a valid candidate having a potential to be considered by the selection committee because of his experience leading the KPK.

Thus, in the Court's opinion, the Petitioner's arguments that Article 29 letter e of Law 19/2019 is contrary to the 1945 Constitution to the extent that it does not mean "having the minimum age of 50 (fifty) years or the experience as a KPK Leader, and the maximum age of 65 (sixty-five) years in the election process" is legally justifiable.

Whereas the Court considers reviews of the constitutionality of Article 34 of Law 30/2002, which has been previously reviewed and decided by the Court in the Decision of the Constitutional Court Number 5/PUU-IX/2011 with the verdict stating conditional unconstitutionality, namely Article 34 of Law 30/2002 is unconstitutional to the extent that it is not construed that the KPK leaders, both leaders appointed concurrently and replacement leaders appointed to replace leaders quitting during their term of office, hold office for 4 (four) years and thereafter can be re-elected only for one term of office.

Whereas in the *a quo* Case, the legal issue that was reviewed related to the term of office for the KPK leaders for four years. As revealed in the trial, at least 12 independent state institutions have five years of terms of office. In the perspective of constitutional law, not all of the 12 state institutions being independent and having a term of office of their leaders/members for five years are state institutions that have a position or degree that is equal to the state institutions stated in the 1945 Constitution or known as institutions of constitutional importance. In the Court's opinion, the KPK is an independent commission, an institution of constitutional importance that, in carrying out its duties to uphold the law, is free from interference from any branch of power. However, regarding the term of office of its leadership, the KPK is distinguished from other institutions of constitutional importance, which is discriminatory and unfair. In addition, in accordance with the principles of benefit and efficiency, the term of office of 5 (five) years for the KPK leaders is far more useful and efficient than that of 4 (four) years. In accordance with this efficiency reason, the Court also used it when deciding case

Number 5/PUU-IX/2011. The Court also needs to reaffirm the Decision of the Constitutional Court Number 5/PUU-IX/2011, which basically states that the term of office of the KPK replacement leaders has the same term of office as other KPK leaders and does not continue the remaining term of office of the replaced leaders.

Whereas even though the regulation regarding the term of office for the KPK leaders is a legal policy from the legislators, the principle of open legal policy can be ruled out if it conflicts with morality and rationality and creates intolerable injustice, which is an abuse of authority (*detournement de pouvoir*) or done arbitrarily (*willekeur*) and exceeds the authority of legislators and/or contravenes the law. This is the Court's consideration so that the open legal policy cannot be left to legislators to determine in the *a quo* case. Moreover, in the *a quo* case, it is very clear that there is unfair treatment (injustice) that should be treated equally according to the justice principle. The term of office for the KPK leaders that is different from the term of office for the leaders/members of commissions or independent institutions, especially those of constitutional importance, has violated the principles of justice, rationality, and reasonable reasoning and is discriminatory so that it is contrary to the provisions of Article 28D paragraph (1) of the 1945 Constitution. Therefore, in the Court's opinion, the term of office of the KPK leaders should be equated with the term of office of independent commissions and institutions that belong to the commission family and institutions having constitutional importance, namely 5 (five) years to fulfil the principles of fairness, equity, and equality.

Taking into account the term of office of the current KPK leaders, which will end on 20 December 2023, which is approximately 6 (six) months away, without intending to examine a concrete case, it is important for the Court to immediately decide on the *a quo* case to provide legal certainty and fair benefits.

Whereas the term of office of 4 years for KPK leaders granted by Article 34 of Law 30/2002 with the possibility to be re-elected for one term, turns out that in one period of the term of office of the President and the DPR, namely 5 (five) years *in casu* Period of 2019-2024, the assessment of the KPK institution can be carried out 2 (two) times in terms of selecting or recruiting KPK leaders. In this case, institutionally, the KPK is treated differently from other supporting state institutions but is classified as an institution of constitutional importance that is independent and formed under the law. Meanwhile, independent institutions of constitutional importance that have 5 (five) years of leadership terms are assessed once during 1 (one) term of office for the President and the DPR. For example, the President and the DPR who were elected in the 2019 elections (2019-2024 term of office), if using a 4 (four) year term of office for KPK leaders, during such term of office will select or recruit KPK leaders for 2 (two) times, the first selection or recruitment in December 2019 and the second selection or recruitment in December 2023. The assessment carried out twice as described above will at least be repeated in the next 20 (twenty) years. However, if using the 5 (five) year term of office for the KPK leaders, the selection or recruitment of the KPK leaders will only be carried out once by the President and the DPR for the 2019-2024 period, namely last December 2019, and the selection or recruitment for filling the KPK leaders' positions for the 2024-2029 period will be carried out by the next period President and DPR (2024-2029 period).

Whereas the recruitment system of the KPK leaders with a 4-year scheme under Article 34 of Law 30/2002 has resulted in the assessment of the KPK leaders' performance, which is a manifestation of the KPK institution's performance, twice carried out by the President and the DPR during the same term of office. Such two assessments of the KPK may threaten the KPK's independence because the President and the DPR's authority can select or recruit the KPK leaders two times in their leadership period or

term of office may influence the KPK leaders' independence, but also the psychological burdens and conflict of interests of the KP leaders who want to re-register for the selection of candidates for the next KPK leaders. The difference between the term of office of the KPK and that of other independent institutions has led to differences in treatment which have turned out to hurt the sense of justice (unfairness) because of treating the same things differently. This actually is contrary to the provisions of Article 28D paragraph (1) of the 1945 Constitution. Therefore, in the Court's opinion, in order to uphold the law and justice, in accordance with Article 24 paragraph (1) of the 1945 Constitution and according to reasonable reasoning, the provisions providing the term of office for the KPK leaders should be the same as the provisions providing the same matters for state institutions of constitutional importance which are independent, namely for 5 (five) years.

Meanwhile, under Law 19/2019, the Supervisory Board and Leadership of the Corruption Eradication Commission are regulated by Law 19/2019, and Corruption Eradication Commission employees are regulated in regulations related to the State Civil Apparatus. Therefore, the Court needs to emphasize that in line with the reformulation of the term of office for the KPK leaders, which is initially 4 (four) years to become 5 (five) years, this will also impact the term of office of the Supervisory Board. Under the provisions of Article 37A of Law 19/2019, which states, "Members of the Board of Supervisors as referred to in paragraph (2) hold office for 4 (four) years and can be re-elected in the same office only for 1 (one) time." In order to maintain consistency and harmonization in setting the term of office for the KPK leaders and the term of office of the Supervisory Board, the reformulation of the term of office for the KPK leaders according to reasonable reasoning also applies that for the Supervisory Board, so that the initial term of office of the Supervisory Board which was 4 (four) years is also equated to 5 (five) years.

Accordingly, the Court subsequently passes down a decision in which the verdicts are as follows:

1. To grant the Petitioner's petition entirely.
2. To declare Article 29 letter e of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (State Gazette of the Republic of Indonesia of 2019 Number 197, Supplement to the State Gazette of the Republic of Indonesia Number 6409) which originally reads, "Having the minimum age of 50 (fifty) years and the maximum age of 65 (sixty-five) years in the election process", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have legal binding force conditionally to the extent that it is not construed, "Having the minimum age of 50 (fifty) years or the experience as a KPK Leader, and the maximum age of 65 (sixty-five) years in the election process."
3. To declare Article 34 of Law Number 30 of 2002 concerning the Corruption Crimes Eradication Commissions (State Gazette of the Republic of Indonesia of 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250), which originally reads, "The Corruption Eradication Commission leaders hold office for 4 (four) years and can be re-elected only for one term of office", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have legal binding force conditionally to the extent that it is not construed, "The Corruption Eradication Commission leaders hold office for 5 (five) years and can be re-elected only for one term of office".
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Whereas regarding the *a quo* the Decision of the Constitutional Court, there is a concurring opinion from Constitutional Justice Saldi Isra, specifically regarding the review of the norms of Article 29 letter e of Law 19/2019, and there dissenting opinions of 4 (four) Constitutional Justices, namely Constitutional Justice Suhartoyo, Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, and Constitutional Justice Enny Nurbaningsih, specifically for testing the norms of Article 34 of Law 30/2002.

Whereas the concurring opinion from Constitutional Justice Saldi Isra principally states that the determination of the minimum and maximum age requirements for public officers is under the legislators' full authority unless the policy choice clearly violates morality, rationality, and injustice in an intolerable way. However, after referring to recent facts or empirical developments, Constitutional Justice Saldi Isra finds legislators' tendency to change the minimum or maximum age requirements for public officers regulated in the law without a strong and clear philosophical or sociological basis. This results in the potential for legal uncertainty for relevant public officers regarding their term of office or their opportunity to run for re-election in the next period. This legal uncertainty can also impact the disruption of the performance of the state officials concerned, even on the performance of state institutions or agencies they lead. Therefore, I am of the view that in order to protect and provide fair legal certainty for public officers affected by changes in minimum or maximum age requirements, adding an alternative requirement in the form of "experience" in the position currently occupied can be a constitutional solution to prevent uncertainty of fair law in accordance with the spirit of the 1945 Constitution for incumbent officers.

Whereas dissenting opinions of 4 (four) Constitutional Justices, in essence, state that the inconsistency regarding the term of office of the state commission in Indonesia cannot be interpreted as having resulted in inequality, injustice, legal uncertainty, and discrimination, as well as the emergence of public doubts about the position and independence of the KPK in the Indonesian state administration structure, as argued by the Petitioner. The argument for changing the KPK leaders' term of office period should be related to institutional designs. However, the Petitioner argues that the term of office for the KPK leaders should have been 5 (five) years so that they are treated equally, or there is justice in the protection of rights between the KPK leaders and the heads of other non-ministerial institutions. Against this construction of argumentation, two things need to be addressed, namely: first, efforts to change the term of office for the heads of state institutions should be related to institutional design and not about injustice or unequal treatment between the term of office of heads of one state institutions and the term of office of heads of other state institutions. Second, if what is highlighted in constructing the arguments regarding the change of the term of office of the heads of state institutions is that there is a loss of the Petitioner's rights as the KPK leader for unequal treatment, then in fact, the Petitioner is constructing arguments regarding injustice without considering other people's rights who are also interested in submitting themselves as candidates for KPK leaders. Moreover, it is feared that the Court's decision to grant the Petitioner's petition to change the term of office for the KPK leaders from 4 (four) years to 5 (five) years will trigger other petitions at a later date regarding differences in the term of office of the leadership in several state institutions or commissions. In such conditions, the Court will enter into areas that have so far been the authority of legislators to determine.

Whereas in accordance with the description of the legal considerations above, we are of the opinion that the Petitioner's *petitum* petitioning the Court to construe the norms of Article 34 of Law 30/2002 to "Corruption Eradication Commission Leaders hold

office for 5 (five) years", is legally unjustifiable so that the Court should dismiss the *a quo* Petitioner's petition.