



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 52/PUU-XXI/2023**

Concerning

Principle of Good Faith in Insurance Agreement

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| Petitioner | : Leonardo Siahaan |
| Type of Case | : Judicial Review of Indonesian Commercial Code (<i>Kitab Undang-Undang Hukum Dagang</i> or KUHD) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution) |
| Subject Matter | : Judicial Review of Article 251 of Indonesian Commercial Code against Article 28D paragraph (1) of the 1945 Constitution |
| Verdict | : To declare that the Petitioner's petition is inadmissible |
| Date of Decision | : Tuesday, 27 June 2023 |
| Overview of Decision | : |

Whereas the Petitioner is an individual Indonesian citizen who works as an Employee. The petitioner in this case believes that his constitutional rights is potentially harmed by the enactment of the phrase “so that the agreement will not be entered into, or will not be entered into with the same conditions, if the insurer knows the real circumstances of these things, it shall make the insurance void”, as it does not give an acknowledgment, guarantee, protection, and fair legal certainty as contained in Article 28D paragraph (1) of the 1945 Constitution. According to the Petitioner, Article 251 of Indonesian Commercial Code only provides benefits to one of the parties, namely the insurer because the obligation to give proper information is only given to the insured party and it causes the Petitioner to potentially lose his constitutional rights if the Petitioner becomes the insured party in the future;

Regarding the authority of the Court, because the Petitioner petitions for judicial review of Indonesian Commercial Code against the 1945 Constitution, which is one of the powers of the Court, based on 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, 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 he believes are harmed due to the enactment of the norms of Article 251 of Indonesian Commercial Code. The presumption of constitutional loss is specific and potential. The Petitioner has also been able to describe the presumption of the loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms being petitioned for review. Therefore, if the *a quo* petition is granted, the presumption of constitutional loss as described will not occur. Thus, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner 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 *a quo* petition along with the evidence submitted by the Petitioner, before further considering the arguments of the Petitioner's petition, it is important for the Court to consider the following matters:

1. Whereas regarding the systematic of the petition in the revision of the petition submitted by the Petitioner. Pursuant to Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021);
2. Whereas the systematic of such Revision of the Petition is basically in accordance with the format of petition for judicial review as stipulated in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. However, after the Court has carefully examined the part of the matters being petitioned to be decided (*petitum*) in the *a quo* petition, the Petitioner's *petitums* are contradictory to one another or at least are inconsistent with the prevalence of *petitum* in judicial review cases. Regarding this matter, in the trial on 12 June 2023, even though the agenda was not to provide advice, due to fact that there are irregularities in the Petitioner's *petitums*, the Court provided advice to revise the *petitums* so that they would be in accordance with the applicable *petitum* at the Constitutional Court [*vide* Minutes of Session Case Number 52/PUU-XXI/2023, Monday, 12 June 2023, p. 5-7]. In this regard, *petitum* number 2 states, "To declare that Article 251 of Indonesian Commercial Code is contrary to the 1945 Constitution and it shall have no binding legal force", and *petitum* number 3 states, "To declare Article 251 of Indonesian Commercial Code insofar as the phrase 'so that the agreement will not be entered into, or will not be entered into with the same conditions, if the insurer knows the real circumstances of these things, it shall make the insurance void' is conditionally unconstitutional with the 1945 Constitution and it shall have no binding legal force, to the extent that it is not interpreted as 'so that the insurance agreement shall be nullified under the mutual agreement of both parties or under a court decision". Regarding these facts, the Court needs to emphasize that the formulation of the two *a quo petitum* is an unusual formulation of *petitum*. Because, on the one hand, the Petitioner petitions for the Court to declare that the norms of Article 251 of Indonesian Commercial Code is contrary to the 1945 Constitution and it shall have no binding legal force, meanwhile, on the other hand, the Petitioner petitions for the Court to declare that the norms of Article 251 of Indonesian Commercial Code is conditionally unconstitutional with the 1945 Constitution. Within the limits of reasonable reasoning, the formulations of the two *petitums* contradict each other and it is impossible for the Court to grant them simultaneously. Such *petitums* can only be justified insofar as they are formulated as alternatives. Formally, such *petitums* are not the formulation of *petitum* as referred to in Article 10 paragraph (2) letter d of PMK 2/2021.

Whereas in accordance with all of the above legal considerations, even though the Court has the authority to hear the *a quo* petition and the Petitioner has the legal standing, but because the Petitioner's *petitum* is unclear or obscure (*obscur*), thus it does not fulfil the formal petition requirements as referred to in Article 31 paragraph (1) of Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. Therefore, the Court shall not consider the Petitioner's petition any further.

Accordingly, the Court subsequently passes down a decision in which the verdict states that the petition of the Petitioner is inadmissible