



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 121/PUU-XX/2022**

Concerning

**Retirement Age for Registrars, Junior Registrars, and Substitute Registrars
in the Constitutional Court**

- Petitioners** : **Syamsudin Noer and Triyono Edy Budhiarto**
- Type of Case** : Judicial review of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Law 7/2020) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of Article 7A paragraph (1) of Law 7/2020 against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** :
1. To grant the Petitioners' petition in part;
2. To declare that Article 7A paragraph (1) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2020 Number 216, Supplement to State Gazette Number 6554) which states, "Registrar Office as referred to in Article 7 is a functional position that carries out technical judicial administrative duties of the Constitutional Court with the retirement age of 62 (sixty two) years for registrars, junior registrars and substitute registrars" is contrary to the 1945 Constitution of the Republic of Indonesia and has no legal binding power, to the extent that it is not construed as "Registrar Office as referred to in Article 7 is an expert functional position that carries out technical judicial administrative duties of the Constitutional Court which includes the Main Expert of Constitutional Registrar, the Middle Expert of Constitutional Registrar, the Junior Expert of Constitutional Registrar, and the First Expert of Constitutional Registrar with the retirement age for registrars, junior registrars and substitute registrars is a maximum of 65 (sixty five) years in accordance with

the retirement age limit at the level of expertise functional positions as stipulated in the statutory regulations in the field of state's civil apparatus";

3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia;
4. To dismiss the remainder of the petition of the Petitioners.

Date of Decision : Tuesday, June 27, 2023

Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens who work as civil servants at the Constitutional Court (hereinafter referred to as the MK). Petitioner I has studied law up to the doctoral level and received an academic degree as a doctor. Petitioner I currently works as a case registration administrator at the Registrar's Office and the Secretariat General of the Constitutional Court. Petitioner I has experience in the field of registrarship as an ad hoc Substitute Registrar and has the Rank of Supervisor for Grade IV/a. This allows Petitioner I to climb the career ladder as Substitute Registrar (Substitute Registrar I and Substitute Registrar II) at the MK. Petitioner I is a party who has the potential to be harmed by the enactment of the norms of Article 7A paragraph (1) of Law 7/2020 because, as someone who meets the criteria as a Substitute Registrar at the MK, Petitioner I does not get the same retirement age as Substitute Registrars at the Supreme Court (hereinafter called MA). Petitioner II currently works as a Junior Registrar at the Registrar's Office and the Secretariat General of the Constitutional Court; when the *a quo* petition was submitted, he was 61 years old with the Rank of Junior Principal Supervisor and Grade IV/c. In Petitioner II's opinion, in accordance with rank and position grade, the Petitioner has the opportunity to climb the career ladder as a Registrar. Petitioner II has been potentially harmed by the enactment of the norms of Article 7A paragraph (1) of Law 7/2020 because, as a Junior Registrar of the Constitutional Court, he does not have the same retirement age as Junior Registrars at the MA. At the same time, according to the law, the position of the MA and the MK is equal, and the executor of judicial power in Indonesia.

Whereas before further considering the Petitioners' petition, the Court will first consider the Petitioners' petition regarding the petition for review of the same norms, namely Article 7A paragraph (1) of Law 7/2020, in the case of judicial review decided by the Court regarding the fulfilment of the requirements Article 60 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). Whereas Article 7A paragraph (1) of Law 7/2020 has been submitted for review, which has been decided by the Court in the Decision of the Constitutional Court Number 72/PUU-XX/2022 pronounced in a plenary session open to the public on 29 September 2022. In the case Number 72/PUU-XX/2022, the Petitioner submits a review of Article 7A paragraph (1) of Law 7/2020 on the review basis of Article 27 paragraph (1), Article 28D paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution. Meanwhile, the *a quo* Petitioners' petition petitioned for review is Article 7A paragraph (1) of Law 7/2020 against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. After the Court examines the Petitioners' arguments' petition and the articles used as the review basis, there are differences, namely the *a quo* petition does not use the review basis of the provisions of Article 28D paragraph (2) and paragraph (3) of the 1945 Constitution as used as the review basis in Case Number 72/PUU-XX/2022. Moreover, regarding Case Number 72/PUU-XX/2022, the Court has not yet examined the substance of the Petitioners' petition because the petition was declared inadmissible.

Whereas further regarding the reasons for the petition, the substance of Article 7A paragraph (1) of Law 7/2020 petitioned for review, is initially regulated in Article 7A paragraph (1) of Law 8/2011, which has also been petitioned for review in Case Number 34/PUU -X/2012 on the basis of unclear regulation regarding the age of Registrars, Junior Registrars and Substitute Registrars and has been decided by the Court in the Decision of the Constitutional Court Number 34/PUU-X/2012 pronounced in a plenary session open to the public on 25 September 2012. In the *a quo* Verdict, the Court grants the Petitioners' petition, which in principle states that the retirement age of Registrars, Junior Registrars, and Substitute Registrars is 62 years. Next, the *a quo* verdict becomes part of the materials of change of the norms of Article 7A paragraph (1) of Law 7/2020, which is currently being petitioned for review by the Petitioners for different reasons due to the age of Registrars, Junior Registrars, and Substitute Registrars as specified in the norms of *a quo* article has not provided guarantees of equal treatment and fair legal certainty for institutions holding judicial power as applied at the Supreme Court. In addition, there is no clear hierarchy within the functional group of positions. Therefore, there are differences in reasons for submitting the petition between Case Number 34/PUU-X/2012 and the *a quo* case. Moreover, the norms petitioned for review are substantially different. Thus, regardless of whether the *a quo* petition is substantially reasonable or not, the *a quo* petition, under Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of CCR 2/2021, is formally reasonable to be re-submitted. Therefore, the Court will consider the subject matter of the petition.

Whereas the main issue that needs to be answered pursuant to the arguments of the petition of the Petitioners is whether the norms of Article 7A paragraph (1) of Law 7/2020, which do not determine that Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court is the same as the positions and ages of Registrar at the Supreme Court, and which include registrar office in functional positions who do not get clear job descriptions and retirement ages is contrary to the Constitution because they do not guarantee equal position and do not guarantee legal protection and certainty.

Whereas regarding the Petitioners' petition, it is essential to first quote the legal considerations of the Decision of the Constitutional Court Number 34/PUU-X/2012 pronounced in a plenary session open to the public on 25 September 2012. This is because the retirement age of 62 (sixty-two) years for registrars, junior registrars, and substitute registrars, as provided in Article 7A paragraph (1) of Law 7/2020, was determined by the legislators referring to the retirement age limit in the Decision of the Constitutional Court Number 34/PUU-X/2012. In this case, the legal considerations are in Paragraph [3.14].

Whereas with reference to the excerpt of the legal considerations for the Decision of the Constitutional Court Number 34/PUU-X/2012 above, the Court needs to emphasize the following points: *First*, as one of the institutions within the field of judicial power, in accordance with rational considerations, the retirement age limit for Registrars at the Constitutional Court should be the same as that for Registrars at the Supreme Court. Therefore, the Constitutional Court uses the retirement age for Registrars at the Supreme Court as a comparison, which is 67 (sixty-seven) years. However, the age limit at the Supreme Court should remain to be given a special note, namely the limit of 67 (sixty-seven) years cannot be separated from the fact that such age refers to Registrars at the Supreme Court who are initially high court judges whose retirement age limit is 67 (sixty-seven) years. Automatically, the retirement age for Registrars at the Supreme Court becomes 67 (sixty-seven) years in accordance with the retirement age limit of high court judges. *Second*, apart from the age of Registrars at the Supreme Court, there is also a fact regarding the maximum age of Substitute Registrars at the Supreme Court,

which is 65 (sixty-five) years. Because the position of Substitute Registrars at the Supreme Court is held as a first-level judge, the age of the Substitute Registrars follows the retirement age of first-degree judges. In accordance with these facts, the Court determines the retirement age limit for Registrars at the Constitutional Court is 62 (sixty-two) years, in accordance with the retirement age limit for Registrars who do not have a career as a judge. In essence, according to the legal considerations of the Decision of the Constitutional Court Number 34/PUU-X/2012, the retirement age requirement for Registrars at the Constitutional Court is adjusted to the retirement age limit for registrars in the general courts, religious courts, and state administrative courts. *Third*, as a functional position carrying out duties of technical judicial administrative of the Constitutional Court, the determination of the age limit of 62 (sixty-two) years is constructed in the Decision of the Constitutional Court Number 34/PUU-X/2012 at the time of Law Number 5 of 2014 concerning State Civil Apparatuses (Law 5/2014) has not yet been established. This means that as a functional position, the determination of the age limit of 62 (sixty-two) years is not in accordance with the functional age limit as stipulated in Law 5/2014. *Fourth*, there are explicit legal considerations from the Constitutional Court to legislators, namely, if changes are made, either in the form of revisions or replacements, it is necessary to stipulate the same conditions for Registrars at the Supreme Court and Registrars at the Constitutional Court. As an institution consisting of several elements, the legal considerations of the Constitutional Court can be interpreted by legislators to complement and, at the same time, perfect the regulations of all critical elements supporting judicial function in the Constitutional Court (support system). Within the limits of reasonable reasoning, this opportunity cannot be separated from the fact that Law Number 24 of 2003 concerning the Constitutional Court, including its amendments, does not adequately regulate the support system around judges in carrying out their duties and judicial authorities, including the registrar's office.

Whereas after outlining several important substances from the Decision of the Constitutional Court Number 34/PUU-X/2012, the Court will consider the design of judicial powers in the 1945 Constitution. Whereas constitutionally, the norms of Article 24 paragraph (1) of the 1945 Constitution state, "Judicial power is an independent power to administer judicature to enforce law and justice." The reinforcement of Article 24 paragraph (1) of the 1945 Constitution is closely related to the nature of the independence of judicial power as a necessity for a country of laws. Meanwhile, as an institution that exercises judicial power, Article 24 paragraph (2) of the 1945 Constitution states, "Judicial power is exercised by a Supreme Court and judicial bodies under it within the scope of the general court, religious court, military court, state administrative, and by a Constitutional Court." The existence of the phrases "by a Supreme Court" and "by a Constitutional Court" as provided in Article 24 paragraph (2) of the 1945 Constitution shows that Indonesia's judicial power is exercised by two institutions with different powers, in an equal position, and with different jurisdictions.

Whereas even though the amended 1945 Constitution regulates in more detail regarding judicial power and even establishes judicial power actors other than the Supreme Court as foundational law, the 1945 Constitution does not regulate all matters related to the needs and management of institutions of the Supreme Court and the Constitutional Court. Therefore, to answer all the needs of the Supreme Court institution, Article 24A paragraph (5) of the 1945 Constitution states, "The composition, position, membership and procedural law of the Supreme Court and the judicial bodies under it are regulated by law." Likewise, with the needs of the Constitutional Court, Article 24C paragraph (6) of the 1945 Constitution states, "The appointment and dismissal of constitutional justices, procedural law, and other provisions regarding the Constitutional Court are regulated by law." With the word "organization" in Article 24A paragraph (5) of

the 1945 Constitution and the phrase "other provisions" in Article 24C paragraph (6) of the 1945 Constitution, the Supreme Court and the Constitutional Court require laws to regulate all institutional management needs so that they can carry out all of its powers. In this case, as an organization, these two institutions need a registrar's office, the Secretariat General/secretariat, and another support system around the supreme court judges and constitutional justices.

Whereas one of the substance of the law is regarding the regulation of the registrar's office. Even though both institutions exercise judicial power and are equal, the provisions regarding the institutionalization of a registrar's office, which assists constitutional justices in carrying out their judicial duties and powers, are not regulated in more detail and clearly, especially regarding the terms and procedures for appointment, as the registrar office at the Supreme Court. In this case, Article 20 paragraph (1) letter d, Article 20 paragraph (2) letter b, and Article 20 paragraph (3) letter b of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning The Supreme Court (MA Law) regulate the appointment of Registrars, Junior Registrars, and Substitute Registrars at the Supreme Court.

In contrast to the Supreme Court, the regulation of registrar office matters at the Constitutional Court remains to need to be more specific regarding the position, duties, and functions of the registrar's office. Regarding the registrar's office, for example, the first law on the Constitutional Court, *in casu* Article 7 of Law 24/2003, states, "For the smooth implementation of its duties and powers, the Constitutional Court is assisted by a Secretariat General and Registrar Office." Furthermore, Article 8 of Law 24/2003 delegates regulation regarding the organizational structure, functions, duties, and powers of the Registrar's Office at the Constitutional Court to a Presidential Regulation on the recommendation of the Constitutional Court. Then, Article 7 of Law 8/2011, as an amendment to Law 24/2003, states, "In the Constitutional Court, a registrar office and secretariat general are formed to assist in carrying out the duties and authority of the Constitutional Court." Registrarship and administrative technical tasks are regulated in the norms of Article 7A paragraph (1) and paragraph (2) of Law 8/2011.

Whereas regarding the Constitutional Court as a relatively new judicial institution, more detailed regulations regarding its registrar office are regulated in Presidential Decree Number 51 of 2004 concerning the Secretariat General and Registrars of the Constitutional Court (PD 51/2004). Without the Court intending to assess the legality of the *a quo* Presidential Regulation, it is determined that registrars and officers within the registrarship are functional officers in accordance with the provisions of the legislation. Appointment and dismissal of registrars are carried out by the President on the recommendation of the Chief Justice of the Constitutional Court [vide Article 10 paragraph (5) and Article 11 PD 51/2004].

Whereas in line with the amendment of several provisions in Law 24/2003 through Law 8/2011, the provisions concerning the registrar's office include matters that have been changed with the emphasis on the registrar's office as a group of functional positions in the framework of carrying out technical judicial, administrative duties of the Constitutional Court. Such technical judicial, administrative duties include: 1) coordination for judicial technical implementation at the Constitutional Court; 2) oversight and implementation of case administration; 3) oversight of technical services for judicial activities at the Constitutional Court; and 4) implementation of other tasks given by the Chief Justice of the Constitutional Court in accordance with the field of duty [vide Article 7A of Law 8/2011]. As the previous provisions, further regulations regarding the registrar office of the Constitutional Court are determined in a Presidential Regulation (*Perpres*). Without the Court intending to assess the legality of the Presidential Regulation as an

implementing regulation of Article 7A of Law 8/2011, the President has issued Presidential Regulation Number 49 of 2012 concerning the Registrar Office and the Secretariat General of the Constitutional Court (PR 49/2012). Pursuant to the *a quo* Presidential Regulation, the organization of the registrar office, the rank/position, and retirement age limits for the registrar office shall be coordinated by a registrar assisted by 2 (two) Junior Registrars, 4 (four) Substitute Registrars Level I, and 12 (twelve) Substitute Registrars Level II. In addition, it also provides that Registrars, Junior Registrars, Substitute Registrars Level I, and Substitute Registrars Level II, as referred to in paragraph (1), are non-credit score functional positions of registrar office [vide Article 3 of PR 49/2012]. In this regard, the age limit for the registrar's office has been determined, with the retirement age limit for functional positions within the registrar's office being 56 (fifty-six) years. However, the retirement age limit for Registrars and Junior Registrars can be extended up to 60 (sixty) years by considering aspects of work performance, competency, regeneration, and health. The said retirement age limit extension is carried out for a maximum period of 2 (two) years and may be re-extended for a maximum period of 2 (two) years [vide Article 9 of PR 49/2012]. The *a quo* Perpres determines the retirement age limit for registrars not as specific and detailed as applied in the Supreme Court because Law 3/2009 basically stipulates that in order to be appointed as a Registrar at the Supreme Court, a candidate must meet the following requirements: ... d. experience of at least 2 (two) years as a Junior Registrar at the Supreme Court or as the chairman or the deputy chairman of the appellate court" [vide Article 20 paragraph (1) letter d and paragraph (2) letter b of Law 3/2009]. Furthermore, to be appointed as a Deputy Registrar at the Supreme Court, a candidate must meet the following requirements: ... b. experience of at least 1 (one) year as a high court judge [vide Article 20 paragraph (3) letter b of Law 3/2009], and to be appointed as a Substitute Registrar at the Supreme Court, a candidate must meet the following requirements: ... b. experience of at least 10 (ten) years as a first instance court judge. Thus, the retirement age for Registrars and Junior Registrars at the Supreme Court is adjusted/equated with the retirement age for judges at the appellate level, namely 67 years. Meanwhile, the retirement age for Substitute Registrar at the Supreme Court is 65 years old in accordance with the retirement age of first instance judges [vide the Decision of the Constitutional Court Number 34/PUU-X/2012]. This means that the positions of registrars, junior registrars, and substitute registrars at the Supreme Court are held by judges so that their retirement ages are in accordance with the retirement ages of judges.

Whereas the Registrar's Office at the Constitutional Court is held by a civil servant (PNS) or state civil apparatus (ASN), not a judge. Therefore, it is determined that the position family is a functional position. In conditions of uncertainty regarding the retirement age limit for registrars as an essential part of the implementation of judicial functions, the Court, through the Decision of the Constitutional Court Number 34/PUU-X/2012, has provided legal considerations regarding the retirement age limit for registrars, junior registrars, and substitute registrars of 62 (sixty-two) years. The *a quo* decision is then followed up with the issuance of Presidential Regulation Number 73 of 2013 concerning Amendments to PR 49/2012 (PR 73/2013) which states that, in essence, the retirement age limit for registrars, junior registrars, substitute registrars level I and substitute registrars level II is 62 (sixty-two) years. The *a quo* the Decision of the Constitutional Court was subsequently accommodated in amendments to the Constitutional Court Law, *in casu* Article 7A paragraph (1) of Law 7/2020, without further regulations regarding the essence of the constitutional court registrar office determined to be in a functional position, because such position is attached to a civil servant or state civil apparatus carrying out technical constitutional judicial administrative, *in casu* the Constitutional Court whose position is equivalent to the Supreme Court.

Whereas when related to Law Number 5 of 2014 concerning State Civil Apparatus [the ASN Law], such functional position is defined as a group of positions that contain functions and tasks related to functional services in accordance with particular expertise and skills. In this regard, Registrars and Substitute Registrars at the Constitutional Court are civil servants as functional officers with particular expertise in assisting or supporting the implementation of the primary judicial duties to examine, hear and decide cases. The functional level of expertise in question consists of: 1) main experts; 2) middle experts; 3) junior experts; and 4) first experts [vide Article 18 paragraph (2) of the ASN Law]. Regarding the retirement age limit, the ASN Law determines that the retirement age limit for civil servants honorably discharged is when they have reached the age of 58 (fifty-eight) years for Administrative Officers, the age of 60 (sixty) years for High Executive Officers, and in accordance with the provisions of statutory regulations for Functional Officers [vide Article 87 paragraph (1) letter c of the ASN Law].

Whereas over time, when Presidential Regulation 49/2012 was amended by Presidential Regulation 65/2017, no changes were made regarding the retirement age limit for registrars because its changes are only related to the material number of young registrars increasing to become three people [vide Article 3 paragraph (2) of Presidential Regulation 65/2017]. Therefore, the statutory regulations for functional officers referred to by the ASN Law refer to implementing regulations for the ASN Law, namely Government Regulation Number 11 of 2017 concerning Management of Civil Servants (GR 11/2017). Without the Court intending to assess the legality of the *a quo* GR, the functional level of expertise consists of: main experts; middle experts; junior experts; and first experts. The functional level of the main expert carries out the main tasks and functions that require the highest level of professional qualifications. Meanwhile, the functional level of the middle expert carries out the main tasks and functions that require high-level professional qualifications. The functional level of the junior expert carries out the main tasks and functions which require advanced level professional qualifications, and the functional level of the first expert carries out the main tasks and functions which require basic level professional qualifications [vide Article 69 of GR 11/2017]. In this regard, GR 11/2017 also reinforces the retirement age limit for civil servants who are honorably discharged, namely: a). 58 (fifty-eight) years for administration officers, junior expert functional officers, first expert functional officers, and skills functional officers; b). 60 (sixty) years for high-ranking officers and middle-functional officers; and c). 65 (sixty-five) years for civil servants as main expert functional officers [vide Article 239 of GR 11/2017].

Whereas regarding the issue of constitutionality argued by the Petitioners, the Court can understand that there is a connection between the Court and the Law being petitioned for review by the Petitioners. Even the *a quo* petition is not directly related to constitutional justices' interests. However, institutionally, the registrar's office is an important element and is intertwined with the duties and powers of constitutional justices in carrying out judicial functions. Therefore, if this condition is related to the universal principle in the judicial world regarding *nemo iudex in causa sua*, meaning that judges do not hear matters related to themselves, however, in this context, there are three reasons for the Court to "deviate" so that it continues to hear the *a quo* case because: there is no other forum that can hear this petition; The Court may not refuse to hear a petition submitted to it on the basis that the law does not exist or is unclear; This case has constitutional interests related to law enforcement and justice, not merely the Constitutional Court's interests. However, in hearing this petition, the Court remains impartial and independent. The Court guarantees to decide on this petition in accordance with one of the powers granted by Article 24C paragraph (1) of the 1945 Constitution,

namely to examine whether the norms of the article being petitioned for review are contrary to the 1945 Constitution or not;

Whereas one of the *objectum litis* of the judicial process at the Court is to examine the constitutionality of laws that concern the public interest guaranteed by the Constitution as the highest law. Therefore, in hearing the *a quo* case, the Court also remains in carrying out its functions and duties of guarding and upholding the Constitution while maintaining the principles of independence and impartiality in the entire judicial process. Moreover, Article 10 paragraph (1) of Law 48/2009 explicitly states that "The Court is prohibited from refusing to examine, hear and decide on a submitted case on the pretext that the law does not exist or is unclear, but is obliged to examine and hear it." Moreover, in the Court's opinion, in accordance with the Court's authority in Article 24C paragraph (1) of the 1945 Constitution and the principle of judicial power, the Court must continue to examine, hear and decide on the entire *a quo* petition in accordance with its constitutional authority, while maintaining their independence, impartiality, and integrity in order to uphold the constitution;

Whereas the Court will consider the Petitioners' arguments which, in essence, question the inequality of retirement ages for Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court as stipulated in the norms of Article 7A paragraph (1) of Law 7/2020 with Registrars, Junior Registrars and Substitute Registrars at the Supreme Court. In fact, both carry out the duties and functions of the registrar's office at judicial institutions, and the two judicial institutions have an equal position as actors of judicial power. To answer the *a quo* Petitioners' arguments, the Court again quotes the legal considerations of the Decision of the Constitutional Court Number 34/PUU-X/2012 in Paragraph **[3.13]** and Paragraph **[3.14]**.

Pursuant to the excerpt of the legal considerations of the Decision of the Constitutional Court Number 34/PUU-X/2012 in Paragraph **[3.13]** and Paragraph **[3.14]**, the Court needs to reiterate the following important matters; that Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court do not have to be occupied by judges as applied at the Supreme Court because the Constitutional Court does not have judicial institutions under it. The Constitutional Court exists only in the national capital [vide Article 3 of Law 24/2003]. Therefore, any civil servant/ASN who fulfils the requirements according to the needs of the Court's authority in accordance with statutory regulations can be selected as a Registrar. The appointment of functional registrar office at the Constitutional Court is a closed position because civil servants/ASNs only have careers as Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court. Therefore, it is impossible for judges, especially constitutional justices, to occupy the position of Registrar. Also, there is no career path in the judiciary under the Supreme Court to become Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court because Law 48/2009 has basically confirmed that judges and constitutional justices are state officers who exercise judicial power regulated in law [vide Article 19 of Law 48/2009]. The judges in question are judges at the Supreme Court and judges at the judicial bodies under them within the scope of the general court, religious court, military court, and state administrative court, and judges at special courts within the said court environments, whose status are confirmed as state officers [vide Article 1 point 5 and Article 3 of Law 48/2009]. Meanwhile, the Constitutional Court Law and its implementing regulations have emphasized that Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court are functional positions. Therefore, a judge cannot hold the functional registrar's office at the Constitutional Court as it is at the Supreme Court. Therefore, to fill the regulatory vacuum to provide certainty over the retirement age limit

for Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court in accordance with the Decision of the Constitutional Court Number 34/PUU-X/2012, the retirement age limits are adjusted to that for registrars within the scope of the general court, religious court, and state administrative court. This choice is made because Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court are not judges like those at the Supreme Court. However, the Court's legal considerations in Paragraph **[3.13]** of the Decision of the Constitutional Court Number 34/PUU-X/2012, in fact, are not supposed to be understood only in that paragraph but are closely related to the next paragraph **[3.14]**, which in essence, states " in accordance with rational considerations, the retirement age limit for Registrars at the Constitutional Court should be the same as the retirement age for Registrars at the Supreme Court. Therefore, in the future, the Court will also emphasize the legal considerations of the *a quo* Decision so that legislators must stipulate the same requirements for candidates for Registrars at the Supreme Court and the Constitutional Court." However, even though the Constitutional Court and the Supreme Court are both actors of judicial power, as has been considered above, it is evident that the career path for the registrar office at the Constitutional Court is different and cannot be equated with that for registrar office at the Supreme Court as argued by the Petitioners.

Regarding functional positions at the Constitutional Court, apart from the registrar's office, namely, among others, expert assistants to constitutional justices (ASLI), archivists, and librarians, they already have clear and definite career paths in accordance with statutory regulations. Therefore, regarding the registrar's office emphasized in the law as functional position, for the sake of fair legal certainty, within the limits of reasonable reasoning, there is no other choice but to attach their functional position within the registrar office of the Constitutional Court at the cluster of expert functional positions as stipulated in the ASN Law, namely the Constitutional Registrar with the following levels: (1) the Main Expert of Constitutional Registrar; (2) the Associate Expert of Constitutional Registrar; (3) the Junior Expert of Constitutional Registrar; and (4) the First Expert of Constitutional Registrar.

Whereas because the career path for the registrar office within the Constitutional Court is attached to the cluster of expert functional positions as stipulated in the ASN Law, as a juridical and logical consequence, adjustments/*inpassing* for the position levels of the Registrars of the Constitution must be made on a non-detrimental basis in terms of the existence and career continuity of Registrars, Junior Registrars, and Substitute Registrars who are currently in office (existing). Thus, the retirement age limit for existing Registrars, Junior Registrars, and Substitute Registrars at the Constitutional Court is a minimum of 62 (sixty-two) years and a maximum of 65 (sixty-five) years. As for functional positions in the field of registrar office who are recruited after the *a quo* decision, functional position rankings under the ASN Law apply. Because expert functional positions within the Constitutional Court registrar office are closed positions, adjustments/*inpassing* for the position levels and other matters related to the arrangement of the registrar office shall be adjusted immediately by stipulating the Regulation of the Chief Justice of the Constitutional Court in accordance with the results of the Judge Deliberation Meeting. Consequently, the Constitutional Court also becomes an agency for supervising the registrar's office within the Constitutional Court. In this regard, in order to carry out judicial function support to constitutional justices, the expert functional positions in the administrative unit of the Constitutional Court in question are grouped into the position of Registrars equivalent to echelon IA officers, Junior Registrars equivalent to echelon IIA officers, and Substitute Registrar determined by the Chief Justice of the Constitutional Court in accordance with the Regulation of the Chief Justice of the Constitutional Court.

Whereas because the Court has given a new meaning to the norms of Article 7A paragraph (1) of Law 7/2020, as a consequence, the Court needs to emphasize the institutional strengthening of other support systems in the Constitutional Court, *in casu* Expert Assistants to Constitutional Justices (ASLI). In this regard, if traced from the initial process of establishing the Constitutional Court, the role of ASLI was carried out by Experts. Then, this role was replaced by researchers with the status of State Civil Apparatus (ASN). However, with the enactment of Presidential Regulation Number 78 of 2021 concerning the National Research and Innovation Agency [PR 78/2021], without the Court intending to assess the legality of Presidential Regulation 78/2021, all researchers in ministries/agencies were required to be integrated under the National Research and Innovation Agency (BRIN). By looking at the specific duties and functions of the researchers attached to the Constitutional Court, the researchers maintained their career at the Constitutional Court by changing the functional position nomenclature to ASLI [vide Regulation of the Minister of State Apparatus Empowerment and Bureaucratic Reform of the Republic of Indonesia Number 40 of 2022 concerning the Functional Positions of Expert Assistants to Constitutional Justices]. Thus, ASLI will be coordinated by a coordinator or other designation whose position is equivalent to an echelon IIA officer as regulated under the Regulation of the Head of the Constitutional Court.

Whereas ASLI is a functional position with a new nomenclature, a transformation from a researcher functional position with a long career at the Constitutional Court. Researchers who are currently ASLI have been educated and fostered to develop the capacity and capability to provide substantive support to constitutional justices in examining and hearing cases. As is the case with functional positions within the Registrar's Office at the Constitutional Court, functional positions of ASLI include closed functional positions which only exist at the Constitutional Court. Therefore, there is a need for guarantees of the rights to legal certainty and welfare in providing substantive support to constitutional justices in accordance with changes in ASLI's design, system, and work patterns that are more focused on handling constitutional cases.

Whereas even though the Petitioners do not argue the ASLI issue because it is closely related to the Petitioners' arguments which principally boils down to the essence of the institutionalization of the registrar's office at the Constitutional Court, in order to provide legal certainty while clarifying the institutionalization, ASLI becomes part of the organizational structure of the Registrar Office which is no longer under the organizational structure of the Secretariat General. ASLI is part of the registrar's office's organizational structure, which functions as a support system for justices in carrying out judicial function support to constitutional justices.

In this regard, as is the case with expert functional positions in the field of registrar office, the supervisory institution for ASLI positions is the Constitutional Court which is further regulated by the Regulation of the Chief Justice of the Constitutional Court.

Whereas in accordance with these legal considerations, it has been shown that the norms of Article 7A paragraph (1) of Law 7/2020 have created fair legal uncertainty. However, due to the meaning of the norms of Article 7A paragraph (1) of Law 7/2020 being petitioned by the Petitioners, as will be set forth in the *a quo* verdict, is unlike what was petitioned by the Petitioners in the *petitum*, then the Petitioners' petition is legally justifiable in part. Whereas other matters and the remainder of the petition shall not be further considered since they are considered as irrelevant.

Accordingly, the Court subsequently passes down a decision in which the verdict states:

1. To grant the Petitioners' petition in part;
2. To declare that Article 7A paragraph (1) of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2020 Number 216, Supplement to State Gazette Number 6554) which states, "Registrar Office as referred to in Article 7 is a functional position that carries out technical judicial administrative duties of the Constitutional Court with the retirement age of 62 (sixty two) years for registrars, junior registrars and substitute registrars" is contrary to the 1945 Constitution of the Republic of Indonesia and has no legal binding power, to the extent that it is not construed as "Registrar Office as referred to in Article 7 is an expert functional position that carries out technical judicial administrative duties of the Constitutional Court which includes the Main Expert of Constitutional Registrar, the Middle Expert of Constitutional Registrar, the Junior Expert of Constitutional Registrar, and the First Expert of Constitutional Registrar with the retirement age for registrars, junior registrars and substitute registrars is a maximum of 65 (sixty five) years in accordance with the retirement age limit at the level of expertise functional positions as stipulated in the statutory regulations in the field of state's civil apparatus";
3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia;
4. To dismiss the remainder of the petition of the Petitioners.