



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 68/PUU-XXI/2023**

Concerning

**Term of Office of the Chairman of the Corruption Eradication
Commission**

Petitioners	:	Perkumpulan Masyarakat Anti Korupsi Indonesia (MAKI or Indonesian Anti-Corruption Society Association) represented by Boyamin Bin Saiman as Coordinator and Founder of MAKI and Komaryono as Deputy and Founder of MAKI and Christophorus Harno
Type of Case	:	Judicial Review of Law 30 of 2002 concerning Corruption Eradication Commission (Law 30/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Type of Case	:	Article 34 of Law 30/2002 is contrary to Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	To declare that the Petitioners' petition is inadmissible
Date of Decision	:	Tuesday, 15 August 2023
Overview of Decision	:	

The Petitioners consist of a legal entity called Perkumpulan Masyarakat Anti Korupsi (MAKI or Anti-Corruption Society Association) (Petitioner I) represented by Boyamin Bin Saiman as Coordinator and Founder and Komaryono as Deputy and Founder of MAKI and individual Indonesian citizen (Petitioner II) who believe that their constitutional rights are impaired due to the enactment of the norms of Article 34 of Law Number 30 of 2002 concerning the Corruption Eradication Commission (Law 30/2002) as have been interpreted conditionally constitutional by the Court in the Constitutional Court Decision Number 112/PUU-XX/2022 which determines that the terms of office of 5 (five) years shall apply to the chairman of KPK (Corruption Eradication Commission) for the period of 2019-2023, it has made the law apply retroactively and has caused the inability to achieve the goal of KPK of being independent because the term of office of the chairman of KPK is different from the executive and legislative positions and it has hindered his desire to become the chairman of KPK in 2023.

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 34 letter g of Law 30/2002 against 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, both Petitioner I as a legal entity and Petitioner II as individual Indonesian citizen have been able to describe specifically their constitutional rights which according to the Petitioners are impaired or at least potentially impaired due to the enactment of the legal norms being petitioned for review. The presumption of loss arises due to the causal relationship (*causal verband*) between the norms being petitioned for review and the losses deemed to be experienced by the Petitioners and the impairment of constitutional rights of the Petitioners as guaranteed by the 1945 Constitution, therefore if the petition is granted, such loss will not occur or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms of Law 7/2017 is proven or not, 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 Petitioners' petition, because it is sufficiently clear, the Court is of the opinion that there is no urgency and relevance in requesting statements from the parties as intended in Article 54 of the Constitutional Court Law. Furthermore, in considering the Petitioner's *a quo* petition, the Court shall first quote the legal considerations of the Constitutional Court Decision Number 112/PUU-XX/2022, which was declared in a plenary session open to the public on 25 May 2023. The Court is of the opinion that although the verdict of such decision generally regulates that the term of office of the chairman of the KPK shall be 5 (five) years, however in the legal considerations, the decision has actually explicitly taken into consideration the current term of office of the chairman of KPK which will end on 20 December 2023 in order to obtain legal certainty and equitable benefits. This is confirmed by the simulation carried out by the Court in considering the *a quo* legal decision. Therefore, there is no longer any doubt as to what is meant by the Constitutional Court Decision Number 112/PUU-XX/2022, that the term of office of the chairman of KPK shall be 5 (five) years, which shall also apply to the current chairman of KPK. This is also in line with the provisions of Article 47 of the Constitutional Court Law which confirms that the Constitutional Court decision has permanent legal force from the time it is declared in a plenary session open to the public. In other words, the current chairman of KPK shall also have a term of office of 5 (five) years, accordingly, the term of office will end on 20 December 2024. This means that this does not conflict with the principle of non-retroactive.

Furthermore, regarding the Petitioners' argument that the Presidential Decree regarding the extension of the term of office of the chairman of KPK to end on 20 December 2024 may be cancelled, so that it will create legal uncertainty and chaos to all law enforcement actions for the criminal acts of corruption carried out by the KPK, the Court is of the opinion that it is unreasonable because the President acts as *addressee* of the decision of the Court in following up on the Constitutional Court Decision Number 112/PUU-XX/2022. This means that the President has correctly and thoroughly understood that the Court decision is not only in the form of a decision, but also consists of the identity of the decision, the case, the legal considerations, and the decision and even the minutes of the trial which are an inseparable unit as the decision of the Constitutional Court. Therefore, the Court may issue a judicial order in the legal considerations section or it could also be that the Court's legal considerations give rise to juridical consequences which must also be followed up by the *addressat* of the Court decision.

Meanwhile, the Petitioners' argument regarding the current chairman of KPK not performing well, violating the code of ethics and appearing to be influenced by political power so that there is no need to extend their term of office, this is not a matter of unconstitutional norms therefore it is not within the Court's authority to review it. Regarding the Petitioners' argument, if the *a quo* norm is implemented during the period of the current chairman of KPK, the future chairman of KPK will coincide with the period of the President and DPR therefore the aim of making the KPK an independent institution is not achieved, the Court is of the opinion that this does not necessarily mean that the KPK's independence cannot be achieved. Independence starts from the selection or recruitment system for the chairman of KPK. The Constitutional Court Decision Number 112/PUU-XX/2022 has considered that the assessment in the KPK leadership recruitment system may not be carried out 2 (two) times by the President or the DPR during the same term of office. Because, in addition to causing the treatment to be different from other state institutions that are classified as institutions of constitutional importance, it also has the potential to not affecting the independence of the chairman of KPK and the psychological burden and conflict of interest on the chairman of KPK who wish to re-register to take part in the selection of candidates for the next chairman of KPK.

Subsequently, regarding the *petitum* of the Petitioners' petition which plead for the regulations to apply for the next term of leadership, the Court is of the opinion that it is an ambiguous *petitum*, in fact it cannot be implemented because there is no certainty regarding the next period as referred to. The formulation of the *petitum* which states "leadership for the next period" is unclear in terms of time and may be interpreted at any time, meanwhile in the *posita* of the petition the period 2024-2029 is stated, therefore it can be considered that there is an inconsistency between the *posita* and the *petitum* of the petition, therefore the Petitioners' petition is unclear or obscure. However, if the Petitioners' petition is not obscure, *quod non*, the subject matter of the Petitioners' petition is legally unjustifiable.

Accordingly, the Court subsequently handed down a decision whose verdict states that the Petitioners' petition is inadmissible.

Concurring Opinion

Regarding the *a quo* decision, there is a concurring opinion from Constitutional Justice Saldi Isra.

After reading the *a quo* decision carefully and thoroughly, even though I also agree that the petition is obscure, I, Constitutional Justice Saldi Isra, have a concurring opinion as follows:

Whereas with the conclusion which states, "the subject matter of the Petitioners' petition is obscure, even if it is not obscure, *quod non*, the Petitioners' petition is legally unjustifiable in its entirety", the Court continued to review the subject matter of the petition. In fact, by carefully reading the Petitioners' petition, specifically the *Petitum* submitted to the Court, which states, "The Chairman of the Corruption Eradication Commission holds the office for 5 (five) years and may be re-elected for only one term of office" as interpreted in Constitutional Court Decision Number 112/PUU-XX/2022, interpreted as, "The provision that the Chairman of the Corruption Eradication Commission holds the office for 5 (five) years is valid for the next period of leadership" is a *Petitum* that is unable to resolve the constitutional issue questioned by the Petitioners. In this case, when exactly is the "next period of leadership" referred to by the Petitioners;

Whereas regarding the obscure petition, the Constitutional Court Regulation (*Peraturan Mahkamah Konstitusi* or PMK) Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021) has provided confirmation regarding the unclear or obscure nature of the Petitioner's petition in judicial review. In Article 74 of PMK 2/2021, it is stated that the Court may declare a Petition unclear or obscure, among other things because: a. there is an inconsistency between the arguments of the Petition in the *Posita* and the *petitum*; b. the argument is not contained in the *posita*, instead it is stated in the *petitum* or vice versa; and c. the Petitioner's petition in the *petitum* contradict each other and do not provide alternative options. Due to the unclear nature of the actual time contained in the phrase "the next period of leadership" in the *Petitum*, the petitioners were unable to provide confirmation to the Constitutional Court Decision Number 112/PUU-XX/2022 which stated, "The Chairman of the Corruption Eradication Commission holds office for 5 (five) years and may be re-elected only for one term of office", which they deemed unconstitutional. Within the limits of reasonable reasoning, the Petitioners wish or are looking for a way out of the unclear verdict in the Constitutional Court Decision Number 112/PUU-XX/2022, however the *Petitum* prepared in a formulation as proposed by the Petitioners, namely "The provision that the Chairman of the Corruption Eradication Commission holds the office for 5 (five) years is valid for the next period of leadership", whether they realize it or not, they also fall into the trap of ambiguity, specifically due to the lack of clarity regarding when to actually calculate the time for the "next period of leadership" as referred to by the Petitioners.

Whereas pursuant to the aforementioned reasons, in accordance with the provisions of Article 74 of PMK 2/2021, since the Court has declared the petition of the Petitioners is obscure, the Court does not need to discuss or review the subject matter of the petition.