



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 72/PUU-XXI/2023**

Concerning

**Term of Office of Members of the Badan Wakaf
Indonesia (Indonesian Waqf Board)**

Petitioner	: Hasanuddin Rahman Daeng Naja
Type of Case	: Judicial Review of Law Number 41 of 2004 concerning Waqf (Law 41/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Type of Case	: Judicial Review of Article 56 of Law 41/2004 against Article 7, Article 28D paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Wednesday, 30 August 2023
Overview of Decision	:

Whereas the Petitioner is an individual Indonesian citizen who is a member of the Badan Wakaf Indonesia (BWI or Indonesian Waqf Board) for the period of 2020 - 2023. According to the Petitioner, Article 56 of Law 41/2004 does not provide the same treatment as other non-ministerial state institutions, especially since there are similar institutions such as BAZNAS and BPKH;

Regarding the Court's authority, because the Petitioner petitions for a review of Article 56 of Law 41/2004 against the 1945 Constitution, which is one of the Court's authorities, then pursuant 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 Power Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Petitioner, as a member of BWI, believes that the differentiation in the term of office of BWI members as regulated in Article 56 of Law 41/2004 is a form of discrimination between BWI and similar institutions, thus preventing the Petitioner from dedicating himself to the state in developing the national waqf and giving rise to interpretation that consider BWI to be inferior from other independent non-ministerial state institutions who have a term of office of 5 years. The Court is of the opinion that the alleged constitutional loss was specific and actual. The Petitioner has also been able to describe the presumed 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 presumed constitutional loss as described will not or will no longer occur. Therefore, 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 Petitioner in the *a quo* petition;

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no need and urgency to hear statements from the parties as intended in Article 54 of the Constitutional Court Law.

The main issue that must be answered based on the arguments of the Petitioner's petition is whether the regulation of the term of office of BWI members in the norms of Article 56 of Law 41/2004 is discriminatory and therefore contrary to the 1945 Constitution. Regarding this matter, the Court considers the following:

- Whereas by looking comprehensively at Law 41/2004, it can be considered that BWI was formed on the grounds of law, namely Law 41/2004, BWI is an independent institution in carrying out important government tasks only in the field of waqf, and the process of recruiting members of the institution/agency, including the recruitment process of its members and/or leaders are carried out by the Government. Pursuant to this, the existence of BWI is institutionally important in order to advance general welfare, especially in the field of waqf in accordance with the objectives, duties, functions and authority specified in Law 41/2004.
- Whereas furthermore regarding the Petitioner's argument which states that BWI has similarities with one of the independent institutions, namely the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) and therefore it is appropriate for the term of office for BWI members to be the same as the KPK as stated in Constitutional Court Decision Number 112/PUU-XX/2022. The Court is of the opinion that these matters cannot be compared simply as argued by the Petitioner. Even though BWI is referred to as an independent institution by Law 41/2004 [*vide* Article 1 number 7 of Law 41/2004] and the KPK is also an independent institution, the tasks, functions and authority of the KPK cannot be equated with BWI because the KPK carries out functions that are directly related to the function of judicial power as stipulated in the 1945 Constitution, especially as a law enforcement agency in the field of eradicating corruption. This means that KPK is an institution of constitutional importance as confirmed in several previous Constitutional Court decisions, including Constitutional Court Decision Number 024/PUU-III/2005 which was declared in a plenary session open to the public on 29 March 2006 which was also quoted in Constitutional Court Decision Number 97/PUU-XIV/2016.
- The Court is of the opinion that there is a difference in the terms of office of BWI members with BAZNAS and BPKH, both BWI and BAZNAS and BPKH are institutionally important institutions that were established because the goals, duties, functions and authority of these institutions cannot be carried out by the existing main state organ or auxiliary state organ. Therefore, the determination of how long the term of office of members of the respective institutions is entirely within the authority of the institution that establishes the laws and regulations in accordance with the needs of each institution, body or organ in its establishment regulations. Therefore, there is no constitutionality issue in the norms caused by a difference in the term of office of the members at BWI and the members at BAZNAS and BPKH. Because, these differences are not based on "religion, custom, race, ethnicity, group, class, social status, economic status, gender, language or political beliefs", as specified in Article 1 number 3 of Law Number 39 of 1999 concerning Human Rights. Therefore, the Court is of the opinion that the Petitioner's argument which states that Article 56 of Law 41/2004 is discriminative is legally unjustifiable.
- Whereas in relation to the Petitioner's argument which questions the Petitioner's rights who do not get equal opportunities in government because his term of office is not 5 (five) years, it has nothing to do with Article 56 of Law 41/2004 because the difference in the term of office of the members in the three institutions (BWI, BAZNAS , and BPKH) does not prevent every Indonesian citizen from obtaining equal opportunities in the government. In addition, it also does not limit service to the state in developing the national waqf. The Court is of the opinion that the terms of office is actually not correlated with the high or low level of position of an institution, agency or organ, and it is not related to the quantity and quality of service to the state, therefore it does not prevent every Indonesian citizen from getting equal opportunities in the government. In fact, these differences give Indonesian citizens a choice regarding legal certainty to determine how long they will be in the government to carry out their specified functions. The difference in the term of office in each institution, namely BWI, BAZNAS, and BPKH cannot necessarily be interpreted as violating the constitutional rights of citizens or contrary to the 1945 Constitution because this is determined in accordance with the legal grounds for its establishment, in accordance with the regulatory needs of each institution. Therefore, the Court is of the opinion that the Petitioner's *a quo* argument which states that Article 56 of Law 41/2004 is contrary to Article 28D paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution is legally unjustifiable.

Whereas pursuant to all the legal considerations above, the Court is of the opinion that Article 56 of Law 41/2004 is not discriminatory and therefore is not contrary to the 1945 Constitution and accordingly the Petitioner's argument is legally unjustifiable. And for other matters and the remainder of the petition shall not be considered further because they are deemed to be irrelevant.

The Court subsequently handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.