



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 153/PUU-XXI/2023**

**Concerning**

**Minimum Age Requirement for Constitutional Justice Candidates  
and Requirements for Dismissal of Constitutional Justice**

<b>Petitioner</b>	: <b>Rega Felix</b>
<b>Type of Case</b>	: Judicial Review of Law Number 7 of 2020 concerning Third Amendments to Law Number 24 of 2003 concerning Constitutional Court (Law 7/2020) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
<b>Subject Matter</b>	: Judicial review of Article 15 paragraph (2) letter d, Article 23 paragraph (1) letter d, and Article 26 paragraph (1) letter b of the Constitutional Court Law against Article 24C paragraph (5), Article 27 paragraph (3), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution.
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety.
<b>Date of Decision</b>	: Wednesday, January 31, 2024
<b>Overview of Decision</b>	:

Whereas the Petitioner is an individual Indonesian citizen, who works as an advocate, and has worked in the legal field since 2013. By referring to Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), the minimum age requirement is lower than that determined by Law 7/2020, so that the Petitioner is able to reach the minimum age requirement in a period that is not too long, however the minimum age requirement to become a constitutional justice has increased along with the amendments to the Constitutional Court Law. The amendment to the meaning of Article 15 paragraph (2) letter d of Law 7/2020 has implications for the limitation of the term of office of constitutional justices, therefore it is also necessary to reinterpret Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 so that other legal issues would not occur. With the clarity in the meaning of the norms of this article, the Petitioner would have the opportunity to serve as a constitutional justice in accordance with Article 24C paragraph (5), Article 27 paragraph (3), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution.

Regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* 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, therefore the Court has the authority to examine the *a quo* petition.

Regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner has been able to describe his constitutional rights which, according to him, have been injured by the enactment of the norms being petitioned for review, namely Article 15 paragraph (2) letter d, Article 23 paragraph(1) letter d and Article 26 paragraph (1) letter b of Law 7/2020. Within the limits of reasonable reasoning, the Court is of the opinion that the presumed constitutional injury is specific and potential in nature, because at some point the Petitioner wishes to nominate himself as a constitutional justice. In addition, the presumed injury of constitutional rights as described has a causal relationship (*causal verband*) with the enactment of the legal norms being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed injury of the Petitioner's constitutional rights will not occur. Thus, regardless of whether or not the unconstitutionality of the norm being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition.

Before further considering the Petitioner's petition, the Court will first consider the Petitioner's arguments which states that the *a quo* petition may be re-submitted or as stated by the Petitioner, it is not *ne bis in idem*. In this regard, the Petitioner's petition is related to the review of the same norms, namely Article 15 paragraph (2) letter d, Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 in judicial review cases that have been decided previously by the Court regarding the compliance with the requirements of Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (hereinafter referred to as Constitutional Court Regulation 2/2021).

Whereas Article 15 paragraph (2) letter d of Law 7/2020 has already been submitted for review and has been decided by the Court in the Decision of the Constitutional Court Number 90/PUU-XVIII/2020, the Decision of the Constitutional Court Number 100/PUU-XVIII/2020, and the Decision Constitutional Court Number 81/PUU-XXI/2023. Whereas after the Court carefully examined the arguments of the Petitioner's petition, there were differences in the article being reviewed and the basis for review because Article 24C paragraph (5) of the 1945 Constitution is used as the basis for review in this petition, this Article was not used as a basis for review in the Case Number 90/PUU-XVIII /2020, Number 100/PUU-XVIII/2020 and Number 81/PUU-XXI/2023. Regarding the norms of Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b, the Court has not yet examined the subject matter of the petition. Therefore, regardless of whether or not the substance of the *a quo* petition is reasonable, pursuant to Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Constitutional Court Regulation 2/2021, formally the *a quo* petition may be re-submitted. Therefore, the Court shall further consider the subject matter of the petition.

Whereas regarding the arguments in the Petitioner's petition, upon further examination, there are legal issues being disputed by the Petitioner, the essence of which is as follows: is it true that the norms of Article 15 paragraph (2) letter d of Law 7/2020 are contrary to the 1945 Constitution and do not have binding legal force, to the extent that it is not interpreted as "must be at least 55 (fifty-five) years of age or have obtained recommendations from at least 2 (two) professors who have expertise in the constitution and state administration" and whether the norms of Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 may be re-enacted and whether Article 23 paragraph (1) letter d of Law 7/2020 may be declared unconstitutional to the extent that it is not interpreted as "his/her term of office has ended after serving the entire term of 15 (fifteen) years", and Article 26 paragraph (1) letter b of Law 7/2020 is declared unconstitutional to the extent that it is not interpreted as "his/her term of office has ended as intended in Article 23 paragraph (1) letter d".

Whereas the Petitioner argues that the norm of Article 15 paragraph (2) letter d of Law 7/2020 is unconstitutional to the extent that it is not interpreted as "must be at least 55 (fifty-five) years of age or have obtained recommendations from at least 2 (two) professors who have expertise in the constitution and state administration". Regarding the *a quo* argument of the Petitioner, it is important for the Court to first confirm that the norms of Article 15 paragraph (2) letter d of Law 7/2020 which have been decided by the Court in the Decision of the Constitutional Court Number 81/PUU-XXI/2023 in the legal consideration of Paragraph [3.12] to Paragraph [3.17]. Whereas regarding the legal considerations in Paragraph [3.12] to Paragraph [3.17], even though the Petitioner in his petition provides a reason for review that is different with the one in the Case Number 81/PUU-XXI/2023, however it has the same substance that is the minimum age requirements to become a constitutional justice are often amended, therefore making the Petitioner who wishes to become a constitutional justice in a state of uncertainty, especially regarding when the Petitioner will be able to fulfill the requirements to nominate himself as a constitutional justice candidate. In this regard, it is important to emphasize that the Court remains in its stance as has been considered in the aforementioned legal considerations relating to the requirements for the position of constitutional justices, especially the minimum age requirements, retirement age and term of office, the Court assesses in general these amendments are common because the law is required to always adapt to developments of the times, provided that such amendments do not threaten the independence of judicial power as stated in Article 24 paragraph (1) of the 1945 Constitution. In the event that there are any amendments to the Constitutional Court Law, these changes will apply to the candidates for constitutional justice who will be nominated by the nominating institution as confirmed and considered in the Decision of the Constitutional Court Number 81/PUU-XXI/2023.

Regarding the addition of alternative requirement in the *petitum* of the petition, namely if the minimum age requirement remains 55 (fifty-five) years of age, the Petitioner recommends to add an alternative requirement, namely "or have obtained recommendations from at least 2 (two) professors who have expertise in the constitution and state administration". Regarding the additional alternative requirement petitioned by the Petitioner, upon careful examination by the Court, the Petitioner did not provide a clear description of the criteria for professors who could be given the authority to provide recommendations to the proposing institution, the sole criteria was professor who have expertise in constitution and state administration. The Court is of the opinion that the Petitioner should have been more specific in describing the reasons why the Court must grant the alternative requirement petitioned by the Petitioner, such as whether the professor had to come from a particular institution, whether all constitutional law professors met the criteria for providing recommendations to the proposing institution, or other conditions, because there are a large number of professors in Indonesia, of course there must be other conditions that must be met, not only limited to having the expertise in constitution and state administration.

In relation to the minimum age requirement for constitutional justices, to be compared to the requirement to obtain 2 (two) recommendations from professors, apart from this is not being an equal comparison between the age norm and the recommendation of 2 (two) professors, this alternative requirement also does not have a valid fundamental argumentative basis from the Petitioner regarding the number of 2 (two) professors who fulfill the conditions to provide recommendations for candidates for constitutional justice. Therefore, the Court is of the opinion that the placement of an alternative requirement in the form of two recommendations to be equal to the age requirement is inappropriate. Due to the unclear criteria for professors and the inappropriate placement of the alternative requirement, the Court is of the opinion that this alternative requirement is irrelevant for further consideration. Therefore, the Petitioner's argument which states that the norms of Article 15 paragraph (2) letter d of Law 7/2020 is unconstitutional to the extent that it is not interpreted

as "must be at least 55 (fifty-five) years of age or have obtained recommendations from at least 2 (two) professors who have expertise in the constitution and state administration" is legally unjustifiable.

Whereas the Petitioner also argues that the norm of Article 23 paragraph (1) letter d of Law 7/2020 is unconstitutional to the extent that it is not interpreted as "his/her term of office has ended after serving the entire term of 15 (fifteen) years" and Article 26 paragraph (1) letter b of Law 7 /2020 is unconstitutional to the extent that it is not interpreted as "his/her term of office has ended as intended in Article 23 paragraph (1) letter d". Regarding the *a quo* argument of the Petitioner, the Court in principle considers the following:

1. Whereas in Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), for the appointment to become a candidate for constitutional justice, there are several requirements and one of them is the minimum age requirement. To become a constitutional justice a person must fulfill the provisions in the norms of Article 16 paragraph (1) letter c of the Constitutional Court Law, namely that a candidate must fulfill the requirement of being at least 40 (forty) years of age at the time of the appointment. In the *a quo* law, the term of office of a constitutional justice is also regulated in Article 22 of the Constitutional Court Law, namely that the term of office of a constitutional justice is for 5 (five) years and may only be re-elected for 1 (one) subsequent term of office. In addition to regulating the requirements for appointment, the conditions for dismissal are also regulated in the norms of Article 23 of the Constitutional Court Law, especially in the norms of Article 23 paragraph (1) letter c and letter d of the Constitutional Court Law, namely that constitutional justices are honorably dismissed when they are 67 (sixty-seven) years old and his/her term of office has ended. In the case of avoiding vacancy in the position of constitutional justice, whether due to resigning or being dismissed, the authorized institution may propose a replacement to the president within 30 (thirty) business days after the vacancy occurs as regulated in Article 26 paragraph (1) of the Constitutional Court Law.
2. Whereas in its development, the Constitutional Court Law has undergone several amendments because some of its norms were no longer in accordance with legal developments as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (hereinafter referred to as Law 8/2011 ). One of the amendments contained in the norms of Law 8/2011 was the minimum age requirement that must be met in order to be appointed as a constitutional justice as regulated in the norms of Article 15 paragraph (2) letter d which stated that a candidate for constitutional justice must meet the requirements of being at least 47 (forty-seven) years of age and a maximum of 65 (sixty-five) years of age at the time of appointment. This law also amended the provisions regarding the conditions for dismissal as a constitutional justice, the amendments were, among others, the age requirement as regulated in the norms of Article 23 paragraph (1) letter c of Law 8/2011 which stated that constitutional justices are honorably dismissed when they are 70 (seventy) years old. Law 8/2011 amended the norms of Article 26 which regulated the conditions for avoiding vacancies for the position of constitutional justices either due to resigning or being dismissed, especially Article 26 paragraph (1) of Law 8/2011, the amendment was in the form of the notification period to the competent institution, whereas the Constitutional Court must notify the competent institution no later than 6 (six) months before the relevant constitutional justice enters a retirement age as intended in Article 23 paragraph (1) letter c or the end of his term of office as intended in Article 23 paragraph (1) letter d.

3. Whereas after the first amendment in Law 8/2011, the Constitutional Court Law was amended by Law Number 4 of 2014 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court, however, in this amendment there are no significant changes to the norms in relation to the position of constitutional justices.
4. Furthermore, the Constitutional Court Law underwent another amendment with the issuance of Law 7/2020. One of the amendments contained in the norms of Law 7/2020 was the minimum age requirements that must be met in order to be appointed as a constitutional justice as regulated in the norms of Article 15 paragraph (2) letter d which stated that a constitutional justice candidate must meet the requirement of being at least 55 (fifty-five) years of age at the time of appointment. In Law 7/2020, the provisions regarding the term of office of constitutional justices which are regulated by the norms of Article 22 of the Constitutional Court Law are removed. This law also amended the provisions regarding the conditions for dismissal of constitutional justice which are regulated in the norms of Article 23 paragraph (1) letter c of Law 8/2011 which stated that constitutional justices are honorably dismissed when they are 70 (seventy) years old. Whereas Law 7/2020 also abolishes the norm of Article 23 paragraph (1) letter d of the Constitutional Court Law, namely the provision that the term of office has ended and the norm of Article 26 paragraph (1) letter b of the Constitutional Court Law.
5. Whereas pursuant to descriptions 1 to 4, there are several norms in the Constitutional Court Law that have been amended in Law 7/2020, these amendments occur because there are several provisions that are no longer in accordance with the development of the legal needs of society and constitutional life, and these amendments are made to the norms that regulate the election of the Chief Justice and Deputy Chief Justice of the Constitutional Court, the requirements for becoming a constitutional justice, dismissal of constitutional justices and retirement age limit for constitutional justices.
6. Whereas regarding the Petitioner's argument petitioning for the revival/re-enactment of the norms of Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020, the Court is of the opinion that the *a quo* norms have been abolished or are no longer valid because the norms governing the term of office of a constitutional justice as regulated in the norms of Article 22 of the Constitutional Court Law were abolished by the issuance of Law 7/2020. In this regard, it is important for the Court to explain that the norms contained in Law 7/2020 which were previously declared to be abolished were as follows, Article 23 paragraph (1) letter d of the Constitutional Court Law which states "... d. his/her term of office has ended; or () and Article 26 paragraph (1) letter b of the Constitutional Court Law states "... b. his/her term of office has ended as intended in Article 23 paragraph (1) letter d. ().

Law 7/2020 abolished these norms because they were no longer in line with the design of the position of constitutional justices which had changed from a periodization model to a non-periodization model based on the retirement age limit (*vide* Decision of the Constitutional Court Number 96/PUU-XVIII/2020). Such a design of the position of constitutional justice has caused the provisions regarding the end of the term of office of constitutional justices which have been deleted in Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 to be no longer relevant to be maintained as stated by the legislators to the extent that it does not threaten the independence of judicial power as stated in Article 24 paragraph (1) of the 1945 Constitution. Moreover, the regulation regarding the term of office of constitutional justices are regulated in the norms of Article 87 letter b of Law 7/2020, namely that Constitutional Justices who are in office at the time when this law is promulgated are considered to have fulfilled the requirements pursuant to this law and end their term of office until the age of 70 (seventy) years old to the extent that the total term of office does not exceed 15 (fifteen) years.

Therefore, the Petitioner's arguments in relation to declaring Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 should be re-enacted and declaring Article 23 paragraph (1) letter d of Law 7/2020 unconstitutional to the extent that it is not interpreted "his/her term of office has ended after serving the entire term of 15 (fifteen) years", and declaring Article 26 paragraph (1) letter b of Law 7/2020 unconstitutional to the extent that it is not interpreted as "his/her term of office has ended as intended in Article 23 paragraph (1) letter d" are no longer relevant for further consideration. Therefore, the Court is of the opinion that the arguments the Petitioner are legally unjustifiable.

Whereas in accordance with the aforementioned legal considerations, the norms of Article 15 paragraph (2) letter d, Article 23 paragraph (1) letter d and Article 26 paragraph (1) letter b of Law 7/2020 have apparently not caused any issues that injure the statesmanship of a constitutional justice, the right to defend the country, have not caused legal uncertainty and have ensured equal opportunities in government as are guaranteed in Article 24C paragraph (5), Article 27 paragraph (3), Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, instead of as argued by the Petitioner. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states To dismiss the Petitioner's petition in its entirety.