CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 6/PUU-XXII/2024

Concerning

Requirement for Attorney General Recruitment Not Coming from Political Party Administrators

Petitioner	:	**Jovi Andrea Bachtiar**
Type of Case	:	Judicial Review of Law Number 11 of 2021 concerning Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Law 11/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 20 of Law 11/2021 is contrary to Article 1 paragraph (3), Article 24 paragraph (1), Article 27 paragraph (1) of the 1945 Constitution.
Verdict	:	1. To grant the Petitioner's petition in part. 2. To declare that Article 20 of Law Number 11 of 2021 concerning Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force to the extent that it is not interpreted as "To be appointed as the Attorney General, the requirements as referred to in Article 20 letters a to f, including the requirement of not being a political party administrator unless having quit from being a political party administrator at least 5 (five) years before the appointment as the Attorney General, must be fulfilled." 3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.
Date of Decision	:	Thursday, February 29, 2024
Overview of Decision	:	

Whereas the Petitioner is an individual Indonesian citizen who currently works as a Prosecutor. The Petitioner argues that the provisions of Article 20 of the Prosecutor's Office Law are contrary to the Petitioner's constitutional rights as guaranteed in Article 27 paragraph (1) of the 1945 Constitution and also are contrary to Article 1 paragraph (3) and Article 24 paragraph (1) of the 1945 Constitution

Whereas regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of norms of law, *in casu* Article 20 of the Prosecutor's Office Law against the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the *a quo* petition.

Whereas regarding legal standing, in the Court's opinion, the norms submitted for review by the Petitioner are the requirements for the appointment of the Attorney General that are correlated with the Petitioner's interests as an employee of the Prosecutor's Office of the Republic of Indonesia in carrying out his duties, functions, and authority in the field of law enforcement. In such qualifications, the Petitioner has been able to specifically describe that there is a potential injury of his constitutional rights and a causal relationship (*causal verband*) between the assumptions regarding the injury of constitutional rights that he experiences and the enactment of the norms of Article 20 of the Prosecutor's Office Law. Such assumptions regarding the injury of constitutional rights are potential or at least may occur, and if the Petitioner's petition is granted by the Court, then the assumption regarding the injury of constitutional rights will not occur. Therefore, regardless of whether the unconstitutionality of the norms argued by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas because the *a quo* petition is evident, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas the Court will first consider the arguments of the Petitioner's petition regarding the Petitioner's petition that the Court does not involve Constitutional Justice Arsul Sani in examining and adjudicating the *a quo* petition on the basis that Constitutional Justice Arsul Sani had not quit a political party membership for 5 (five) years when he was nominated and proposed by the DPR as a constitutional justice so there is a potential conflict of interest for Constitutional Justice Arsul Sani if he is allowed to participate in examining and adjudicating the *a quo* petition. Regarding this matter, the Court emphasized that the main issue that must be assessed is whether the justice concerned has resigned or not as a member or administrator of a political party. If he has not resigned from the political party, the right of refusal becomes relevant. Moreover, the issue or norms whose constitutionality is being reviewed do not directly relate to the constitutional justice as intended by the Petitioner. In addition, the right of refusal in question finds relevance if the norms being reviewed have direct interests and indirect interests that can be assessed on a case-by-case basis by constitutional justices, either because of blood or marriage factors. Thus, the Petitioner's petition that Constitutional Justice Arsul Sani be prohibited from participating in examining and adjudicating the *a quo* petition is legally unjustifiable.

Whereas regarding the Petition for review of Article 20 of the Prosecutor's Office Law, a review has been submitted previously, which was also submitted by the same Petitioner and has been decided in Constitutional Court Decision Number 30/PUU-XXI/2023. Meanwhile, in case Number 30/PUU-XXI/2023, the Petitioner submitted a review of Article 20 of the Prosecutor's Office Law against Article 1 paragraph (3), Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution. Meanwhile, the Petitioner's reasons basically stated that Article 20 of the Prosecutor's Office Law enabled a person to be appointed as the Attorney General even if he/she had never served as part of the

employees of the Prosecutor's Office, namely he/she was not an active Prosecutor or a retired Prosecutor with the final rank of Principal Prosecutor (IV/e) and had never been declared to have passed the Prosecutor Formation Education and Training (PPPJ). In addition, the provisions of Article 20 of the Prosecutor's Office Law have left a legal loophole for administrators or members of political parties to be appointed as the Attorney General, which would endanger the institution of the Prosecutor's Office in carrying out its duties independently without intervention from any party. Meanwhile, in the *a quo* petition, the Petitioner re-submits a review of the norms of Article 20 of the Prosecutor's Office Law against Article 1 paragraph (3), Article 24 paragraph (1), and Article 27 paragraph (1) of the 1945 Constitution for reasons that essentially emphasize the need for constitutional interpretation of the requirements for the appointment of the Attorney General namely, candidates for Attorney General must have quit political party memberships for 5 (five) years, either due to being dismissed or resigning, before being appointed as the Attorney General. Thus, in the Court's opinion, the Petitioner has been able to describe the different reasons which are then concluded in a petition as contained in the *Petitum* submitted by the Petitioner, so regardless of whether the *a quo* petition is substantially legally justifiable or not, formally the *a quo* petition, under the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, may be re-submitted.

Whereas regarding the issue of the constitutionality of the norms of Article 20 of the Prosecutor's Office Law, in the Court's opinion, the Attorney General position requires independence and neutrality in carrying out his/her duties, so that ideally the Attorney General must be free from affiliation with political parties. The Attorney General's relationship with political parties, especially as an administrator of a political party, will give rise to a conflict of interest when the Attorney General concerned has to make legal decisions in accordance with legal considerations, but because of having an interest in a political party, there is the possibility of him/her making decisions in accordance with considerations of political interests and the possibility of intervention from the political party that oversees him/her. The Attorney General's affiliation with a political party will influence the perception of neutrality in prosecution and professionalism in maintaining integrity and independence. An Attorney General is required to focus fully on carrying out the duties and authority of the Prosecutor's Office assigned to him/her. The Attorney General's involvement in political party affairs will disrupt the performance and effectiveness of his/her leadership which will eventually eliminate public trust in the Prosecutor's Office. In this regard, the Court needs to emphasize the Court's opinion regarding the independence of the Prosecutor's Office, especially the Attorney General position which must be free from membership or administration of a political party, as has been decided by the Court in Constitutional Court Decision Number 30/PUU-XXI/2023 which was pronounced in a Plenary Session open to the public on 15 August 2023.

Whereas under the provisions of Law Number 2 of 2011 concerning Amendment to Law Number 2 of 2008 concerning Political Parties (Political Parties Law), there are differences in roles in terms of the structure and function of political parties between political party members and political party administrators. Under the Political Parties Law, political parties recruit Indonesian citizens to become members of political parties, prospective candidates for members of the House of Representatives (DPR) and the Regional Legislative Council (DPRD), and prospective candidates for regional heads and deputy regional heads as well as prospective candidates for President and Vice President. Meanwhile, the provisions of Article 240 paragraph (1) letter n of Law 7/2017 provide that prospective candidates for members of the DPR, the provincial DPRD, and the Regency/Municipal DPRD must be members of political parties participating in elections. These provisions can be interpreted as someone who has an interest in participating in the world of politics by becoming a member of the DPR or a member of the DPRD must first join a political party by becoming a member of a political party. Party administrators are

responsible for the management, and regulation of political parties and party operations. Party administrators will play active roles in making strategic decisions such as party programs, party coalitions, and political direction, coordinating party activities, and ensuring the party runs efficiently. The function of the party's administrators is to carry out interest aggregation (collecting aspirations), interest articulation (voicing aspirations), cadre formation, and recruitment. Therefore, party administrators have deeper access to information and decision-making processes within a political party.

Whereas in accordance with the differences in duties, functions, and authority between political party administrators and political party members, in the Court's opinion, a political party administrator has a stronger attachment to his/her party, because an administrator chooses to be more deeply involved with his/her party. This is different from political party members who may use the political party only as a "vehicle" to achieve their political goals, for example, to become members of the DPR or the DPRD, so they do not have as strong an attachment to their party as party administrators have.

Therefore, in relation to the Petitioner's petition, in the Court's opinion, the requirement of having quit political party for 5 (five) years before being appointed as the Attorney General must be applied to candidates for Attorney General who were previously political party administrators. This is because, as a political party administrator, a person has a deep attachment to his/her party, so pursuant to reasonable reasoning he/she has the potential to have a conflict of interest when he/she is appointed as the Attorney General without being limited by sufficient time to sever his/her affiliation with the political party he/she supports. Meanwhile, candidates for Attorney General who, before being appointed as the Attorney General, were members of a political party, simply have to resign from the moment they are appointed as the Attorney General. The period of 5 (five) years after quitting the administration of a political party before being appointed as the Attorney General is considered sufficient time to decide various political interests and intervention from the political party to the Attorney General.

Whereas the interpretation of the requirement as described above should not be interpreted as eliminating the president's prerogative in determining cabinet members. As part of the cabinet members [*vide* Constitutional Court Decision Number 49/PUU-VIII/2010]. Doctrinally, the use of the prerogative to fill certain political positions is more of a right to determine people in the sense of officials, rather than a right to determine the requirements for holding office. In this regard, to the extent that the president has the freedom to determine candidates to fill the cabinet members, including to select the Attorney General, the president's prerogative is not limited. Such considerations do not reduce the President's prerogative because they are intended to maintain the independence of the position of the Prosecutor's Office institution in carrying out its duties, functions, and authority in an effort to strengthen law enforcement, which is an important part of the President's work program. [*vide* Constitutional Court Decision Number 30/PUU-XXI/2023].

Whereas pursuant to the entire description of the legal considerations above, in the Court's opinion, the Petitioner's argument that the provisions of the norms of Article 20 of the Prosecutor's Office Law are contrary to the 1945 Constitution and do not have binding legal force is an argument that can be justified. However, regarding the time limit of at least 5 (five) years for a candidate for Attorney General to have quit political party membership, either by resigning or being dismissed, as petitioned by the Petitioner in his *petitum*, in the Court's opinion, even though the Court can understand the substance of what the Petitioner wants as stated in the *petitum* of the petition, the Court cannot grant it because it is evident that there are differences in duties, functions and authority between political party administrators and political party members which is indicative to the degree of attachment to the party. Likewise, regarding the Petitioner's petition

intending to attach such requirement to Article 20 letter a the Prosecutor's Office Law, the Court also cannot grant it fully, given that the addition of the requirement as desired by the Petitioner will not be appropriate if placed on the requirements for citizenship or added as a new norm of letter g, so that the interpretation of the petitioned requirement is more appropriate if attached to the entire norms of Article 20 of the Prosecutor's Office Law as fully stated in the verdict of the Decision of the *a quo* case. Therefore the Petitioner's arguments are legally justifiable in part.

Accordingly, the Court subsequently passed down a decision in which the verdict was as follows:

1. To grant the Petitioner's petition in part.
2. To declare that Article 20 of Law Number 11 of 2021 concerning Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force to the extent that it is not interpreted as "To be appointed as the Attorney General, the requirements as referred to in Article 20 letters a to f, including the requirement of not being a political party administrator unless having quit from being a political party administrator at least 5 (five) years before the appointment as the Attorney General, must be fulfilled."
3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

Concurring Opinion and Dissenting Opinion

Against the Court Decision, there is a concurring opinion of Constitutional Justice Arsul Sani as well as dissenting opinions of Constitutional Justice Anwar Usman and Constitutional Justice Daniel Yusmic P. Foekh.

Concurring Opinion of Constitutional Justice Arsul Sani

Whereas regarding the Court's opinion as contained in the legal considerations of the *a quo* Decision, I accept the *a quo* Court's opinion but also convey and add the complete reasons below which, because not being included in the *a quo* Court's opinion, constitute a concurring opinion. The things I want to convey are to minimize the possibility of differences in understanding or interpretation of the *a quo* verdict which eventually can give rise to legal uncertainty in the implementation of the *a quo* Decision.

Whereas I believe that what is meant by a political party administrator is a person or a group of people who are within the group of functions, duties, and authority of political party administration or executive which includes at least planning, executing, and evaluating extensive work programs, as well as representing the political party both inside and outside the political party. Not included in the scope of the definition of administrators are those who are not within such functions, duties, and authority, as is known by the names of various councils and tribunals or other terms that can be found in the organizational structure of political parties.

Dissenting Opinion of Constitutional Justice Anwar Usman and Constitutional Justice Daniel Yusmic P. Foekh

Whereas from the *a quo* verdict, the Court shifts its stance from initially prohibiting members of political parties [*vide* Constitutional Court Decision Number 30/PUU-XXI/2023] to becoming "party administrators" as a requirement for becoming the Attorney General. This shift raises several questions. Aren't political party administrators automatically members of the political party? Why are only party administrators and not party members prohibited? Is a party administrator, when he becomes the Attorney General, not independent in comparison to party members? Hasn't the Prosecutor's Office Law guaranteed the state's power in the field of prosecution independently for the sake of justice in accordance with law and conscience to be exercised independently, so that the implementation of prosecution must be free from the influence of the power of any party? Therefore, as a consequence, if a person is appointed by the President as the Attorney General, the person concerned should not only resign as a party administrator but also resign from the political party membership. On the other hand, in fact, regarding the administration of political parties, there are several functions, namely executive function, advisory function, expert function (expert council), and dispute resolution function (party tribunal) or an administrator in an ad hoc body such as the election-winning body (Bapilu) and so on. Meanwhile, in terms of executive functions, political party administration is hierarchical at the central level and regional level (province/regency/municipality), and even large political parties have administration at the level of branch up to sub-branch. From the political parties' functions, according to reasonable reasoning, if it is desired that party administrators are prohibited from becoming the Attorney General, the measurements or criteria must be clear.

From all the descriptions of legal considerations above, we are of the opinion that the petitioner's petition should be dismissed.