



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 26/PUU-XXII/2024**

Concerning

**Term of Office of the Chairman
of the Indonesian Broadcasting Commission**

Petitioner	: Syaefurrochman A.
Type of Case	: Judicial Review of Law Number 32 of 2002 concerning Broadcasting (Law 32/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial Review of Article 9 paragraph (3) of Law 32/2002 against Article 27 paragraph (1), Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Thursday, March 21, 2024
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who works at the Regional Indonesian Broadcasting Commission (hereinafter referred to as KPID (Komisi Penyiaran Indonesia Daerah)) of the West Java Province.

Regarding the Court's authority, the Petitioner petitions for constitutionality review of the norms of law, *in casu* Article 9 paragraph (3) of Law 32/2002 against Article 27 paragraph (1), Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution, the Court has the authority to hear the Petitioner's petition;

Regarding the Petitioner's legal standing, the Petitioner substantially argues that the Petitioner believes that the norms of Article 9 paragraph (3) of Law 32/2002 have evidently and clearly discriminated against the Petitioner because there are differences between the term of office of the Chairman, Deputy Chairman and Members of the Central Indonesian Broadcasting Commission and Regional Indonesian Broadcasting Commission and the term of office of the chairman of other auxiliary state institutions/state commissions established by law. The Court is of the opinion that the Petitioner, who is working as a Member of the West Java KPID for the 2020-2023 period and is currently having his term of office extended until the appointment of new members of the West Java KPID, has been able to describe specifically the existence of causal relationship (*causal verband*) between the presumed injury of the Petitioner's constitutional rights as a member of the West Java KPID and the enactment of the norms of Article 9 paragraph (3) of Law 32/2002. According to the Petitioner, the term of office of a member of the West Java KPID should be the same as the term of office of other auxiliary state institutions/state commissions, namely the Corruption Eradication Commission, National Commission of Human Rights, Indonesia Competition Commission, and Indonesia Financial Services Authority, namely for five years, because all of them are of constitutional importance. Therefore, the Court is of the opinion that the

Petitioner has specifically described the presumed injury of his constitutional rights that occurred due to the enactment of the legal norms being petitioned for review. Therefore 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 urgency and relevance to hear statements from the parties as intended in Article 54 of the Constitutional Court Law. Likewise, regarding the petitions submitted by the Relevant Parties respectively the petition submitted by KPID Bengkulu dated 7 February 2024 and the petition submitted by KPID Bali dated 12 February 2024, the Court, in accordance with the Deliberation Meeting of Justices on 13 March 2024, has decided that since the *a quo* case is not brought to the plenary session, then there is no urgency to consider the Relevant Parties.

Whereas in the subject matter of the petition, the Petitioner substantially argued that the norms of Article 9 paragraph (3) of Law 32/2002 evidently and clearly contain unfair treatment and have created legal uncertainty for the Petitioner. In the *a quo* norms, there are differences between the term of office of the leadership of the Indonesian Broadcasting Commission and the term of office of other auxiliary state institutions/state commissions that are of constitutional importance. This is evidently and clearly detrimental to the Petitioner's constitutional rights as regulated in the 1945 Constitution. Regarding the Petitioners' arguments, the Court in principle considers the following:

- (1) The Petitioner petitions for the term of office of members of Indonesian Broadcasting Commission to be the same with the term of office of members of other state institutions, which is five years, as argued by the Petitioner. Such argument is incorrect and these state institutions cannot simply be compared. Because even though a state institution is independent, whether it is a main state organ which is mentioned in the 1945 Constitution or it is an auxiliary state organ which is established by the law and is of constitutional importance, each of these state institutions has different institutional designs and functions as stipulated in the laws governing each state institution. The difference in design and function is what, among other things, causes the legislators to determine different terms of office as an open legal policy.
- (2) Whereas the design and function of each state institution, whether it is a main state organ or auxiliary state organ, are linked to the term of office of the leadership members of each state institution, the Court is of the opinion that this matter is an open legal policy. The regulation of the leadership members of state institutions and state officials from the executive power, not only differ in the context of the length of the term of office, but also in the context of the appointment process, the number of people and the nature of the leadership members of each state institution, namely that it can take the form of single leadership or a collegial collective. To the extent that it is related to the term of office of the leadership members of a state institution, different arrangements may be implemented, although there may appear similar process in the appointment of the individuals who will occupy such positions, especially the selection process and the involvement of the House of Representatives. This is because the involvement of the House of Representatives in the selection process is only one of the types or characteristics that the Indonesian Broadcasting Commission is an independent state institution in carrying out its duties and functions. In this case there are laws regarding state institutions which *expressive verbs* determine the term of office in a certain period of years, such as 3 years, 4 years or 5 years. There are also laws regarding entities/institutions that may be categorized as constitutional importance, including the Prosecutor's Office and the Indonesian State Intelligence Agency, the terms of office of the leaders of these two institutions, *in casu* the

Attorney General and Chairman of Indonesian State Intelligence Agency, are not mentioned in the laws.

- (3) Whereas the differences in the terms of office for state institution which is a main state organ as a constitution-based establishment and a state institution which is of constitutional importance, it can also be seen in several other countries, such as in America, the members of the House of Representatives serve for 2 years, while the members of the Senate serve for 6 years. Another example as a reference is Australia. Pursuant to the provisions in the Australian Constitution 1901 (rev. 1985), term of office of members of Parliament (the House of Representatives) is not more than 3 years, as stipulated in item 28 of the Australian Constitution.
- (4) Whereas if the main point of the argument to change the term of office of leaders of state institutions is the Petitioner's constitutional injury as a member of the Regional Indonesian Broadcasting Commission due to unequal treatment, then the Petitioner is actually building an argument regarding injustice without considering the rights of other people who also have the interests in nominating themselves as candidates for leadership members of the Indonesian Broadcasting Commission. This means that if the Petitioner's petition is granted, then the rights of other people who also have the interests in submitting themselves as candidates will be postponed. Moreover, Law 32/2002 provides an opportunity for someone who is currently serving to serve again for the same term of office by going through the same selection process. Therefore, the term of office of members of the Indonesian Broadcasting Commission that has been determined in Law 32/2002 is not a provision that does not provide a sense of justice to the Petitioner, instead, the regulation regarding the term of office actually contains provisions that implicitly provide legal guarantees and certainty regarding the rights of those who are elected as the leadership members of Indonesian Broadcasting Commission, namely the right to a clear term of office, namely for 3 (three) years and the right to be re-elected for another term of office.
- (5) Whereas the existence of a difference between the term of office of membership of the Indonesian Broadcasting Commission and other state institutions as stated by the Petitioner, once again the Court emphasizes that the Indonesian Broadcasting Commission, the Corruption Eradication Commission, the National Commission of Human Rights, the Indonesia Competition Commission, and other commissions are institutionally important, they are established for distinguished aims, duties, functions and authority that cannot be carried out by the existing state institutions. Therefore, the Court is of the opinion that the determination of how long the term of office of members of each 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 Indonesian Broadcasting Commission. 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 (Law 39/1999). Therefore, the existence of differences in terms of office for the leadership members of agencies/institutions does not fall into the category of discrimination as stated in Article 1 point 3 of Law 39/1999 which has also been affirmed in several Court decisions. Therefore, the Petitioner's argument that Article 9 paragraph (3) of Law 32/2002 is contrary to the 1945 Constitution is legally unjustifiable.

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

Dissenting Opinion

Whereas regarding the *a quo* decision of the Constitutional Court, there is a dissenting opinion from 2 (two) justices, namely Constitutional Justice M. Guntur Hamzah and Constitutional Justice Daniel Yusmic P. Foekh, which substantially is as follows:

- (1) Whereas the terms of office of the chairman, deputy chairman and members of the Central Indonesian Broadcasting Commission and Regional Indonesian Broadcasting Commission are different from the terms of office of the leaders/members of other independent commissions or institutions which are classified as institutions of constitutional importance, this has violated the principles of justice, rationality, and is discriminatory in nature, thereby is contrary to the provisions of Article 28D paragraph (1) of the 1945 Constitution. Therefore, the terms of office of the chairman, deputy chairman and members of the Central Indonesian Broadcasting Commission and Regional Indonesian Broadcasting Commission should be the same with the terms of office of other independent commissions and institutions that are classified as institutions of constitutional importance, which is 5 (five) years, so that it would fulfill the principles of justice, equity and equality.
- (2) Whereas the Court should have been able to provide a re-interpretation of **the norms of provisions of** Article 9 paragraph (3) of Law Number 32 of 2002 concerning Broadcasting regarding the terms of office of the chairman, deputy chairman and members of the Central Indonesian Broadcasting Commission and Regional Indonesian Broadcasting Commission, from 3 (three) years and may be re-elected only for 1 (one) subsequent term of office to 5 (five) years and may be re-elected only for 1 (one) subsequent term of office. Therefore, in accordance with our sense of justice, the Petitioner's petition should have been granted in its entirety (*gegrond wordt verklaard*).