



THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA

THE SUMMARY OF DECISION  
CASE NUMBER 34/PUU-XIX/2021

Concerning

The Rights of Employees of the Corruption Eradication Commission  
to Become Civil Servants

<b>Petitioner</b>	: <b>Muh. Yusuf Sahide</b>
<b>Type of Case</b>	: Review over Law Number 19 of 2019 regarding Second Amendment to Law Number 30 of 2002 regarding the Corruption Eradication Commission (Law 19/2019) against Constitution of the Republic of Indonesia of 1945 (1945 Constitution)
<b>Subject Matter</b>	: Review over the Constitutionality of Article 69B paragraph (1) and Article 69C of Law 19/2019 against the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety.
<b>Date of Decision</b>	: Tuesday, August 31 <sup>st</sup> , 2021
<b>Overview of Decision</b>	:

Whereas the Petitioner is an Indonesian citizen in his capacity as the Executive Director of KPK Watch Indonesia who in this matter has designated Mr. Iwan Gunawan, SH., et al as his legal attorneys in filing the petition in this case.

In relation to the jurisdiction of the Court, given that the Petitioner's petition concerning the review over Law 19 of 2019 regarding Second Amendment to Law Number 30 of 2002 regarding the Corruption Eradication Commission against the 1945 Constitution, the Court has the jurisdiction to hear the petition in this case;

In relation to the legal standing of the Petitioner, the Petitioner is an Indonesian citizen acting in his capacity as the Executive Director of KPK Watch Indonesia, which is a Non-Governmental Organization with a concern on corruption in Indonesia and the supervision of KPK, as elaborated in the NGO's by-laws. In its consideration, the Court assessed the legal standing of the Petitioner in submitting the petition in this case and declared that the Petitioner has the legal standing to file the case.

Whereas, due to the clarity of the Petition, the Court is of the opinion that there is neither urgency nor need to hear testimonies from the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas in relation to the subject matter of the petition, the Court in its legal standing declared that the Petitioner had misinterpreted the concept of a rule of law on a practical level in respect of the mechanism for the transfer of KPK employees to become civil servants.

According to the Court, as the Court had considered in its Decision Number 70/PUU-XVII/2019, the statutory provisions in question are laws and regulations related to civil servants which in this case are Law 5/2014 and its subordinate legislation. The Court also observed that there is a special treatment for KPK employees in the mechanism for the transfer of KPK employees to become civil servants as stipulated in Government Regulation 41/2020. According to the Court, the special treatment is actually intended to enhance the independence of KPK without prejudice to other rules related to civil servants, namely Law 5/2014 which applies to all civil servants. According to the Court, this matter should have also been considered by the Petitioner, which is to say that the existing mechanism is created pursuant to the laws and regulations which evidence the existence of the rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution and evidence the guarantee, protection and fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

The main aspect that should also be understood by the Petitioner is that the recognition, guarantee, protection and fair legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution are not separate from or must be seen as an integral part of the norms guaranteed by Article 28J paragraph (2) the 1945 Constitution. Whereas in exercising their rights and freedom, everyone is obliged to comply with the restrictions stipulated by law in order to guarantee the recognition of and respect for the rights and freedom of other people. The essence of human rights is freedom, but instead of referring to unlimited freedom, the freedom must cease when it begins to enter the area of freedom of other people so that the required justice can be served in consideration of morality, religious values, security, and public order existing in a democratic society.

In the meantime, in relation to the claim that the implementation of the national insight test (TWK) had caused the violation of the right to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law as stipulated in Article 28D paragraph (1) of the 1945 Constitution, it is not directly related to the opportunity for occupying a public office which in this case is the position as an investigator and/or preliminary investigator of KPK or the right to participate in the government but rather in the context of due process of law in a democratic country with a rule of law. For the foregoing reason, the Petitioner's argument could only be considered acceptable if in enforcing the due process of law, there are norms which cause the Petitioner to fail to not enjoy the fair legal certainty and the equal treatment as received by other Indonesian citizens in the same capacity as the Petitioner, namely part of the KPK employees who had not passed the national insight test. According to the Court, Article 28D paragraph (1) of the 1945 Constitution is not intended to guarantee that a person who has held a position would not be dismissed for the purpose of guaranteeing and upholding the legal certainty. The legal certainty as mentioned above is the fair legal certainty and equal treatment, which means that each employee who is transferred shall have the same opportunity to become a civil servant subject to the requirements under by the laws and regulations. The provisions of Article 69B paragraph (1) and Article 69C of Law 19/2019 do not apply only to the Petitioner, in this case are KPK employees who had not passed the national insight test, but also to all KPK employees. Therefore, according to the Court, the aforementioned provisions do not contain any discriminatory rules. The fact that several employees of KPK had not passed the national insight test is not an issue of the constitutionality of norms.

Furthermore, in relation to the Petitioner's argument that the national insight test mechanism has also violated Article 28D paragraph (2) of the 1945 Constitution, the Court is in the view that the Petitioner's analogy is not accurate because the right to work is directly related to the right to earn a living, which is closely related to the right to survive and the right to live in physical and spiritual prosperity. These rights do not belong only to a group of people, who for certain reasons have the privilege to get a job, but these rights also belong to everyone else without discrimination. The fact that certain jobs require certain requirements shall not be interpreted as an attempt to waive a person's right to work and to receive fair and proper remuneration and treatment in an employment as guaranteed by Article 28D paragraph (2) of the 1945 Constitution. According to the Court, specific requirements for a particular job do not violate Article 28D paragraph (2) as long as the same are put in place upon certain reasons and through fair, rational and valid procedures. What Article 28D paragraph (2) of the 1945 Constitution prohibits is a provision of law which completely eliminates a person's right to work.

Another matter that has also been considered by the Court is that the exercise of the right to equal opportunity in the government does not waive the state's authority to regulate and determine the conditions thereof particularly if the equal opportunity in the government involves a recruitment for public offices which require trust from the public. As the Court had considered in its decision in case no. 70/PUU-XVII/2019, substantially the mechanism for the transfer of KPK employees to become civil servants has been created in accordance with the laws and legislations, which in this case are Law 5/2014 and its subordinate legislation, and one of the general criteria generally accepted as an objective measure to satisfy such requirements for the requirement is the national insight, which is required in the recruitment of civil servants and for the career promotion of civil servants, as stipulated by Law 5/2014 and its subordinate legislation. Therefore, according to the Court, it is not appropriate to consider such requirement as a rule which obstructs the right of a citizen to enjoy an equal opportunity in the government and it shall also not be seen as a discriminatory rule.

Based on all of the foregoing legal considerations, the Court issued a decision which in its verdicts dismissed the Petitioner's petition in its entirety.

### **Concurring Opinion**

In relation to this Constitutional Court Decision, four Constitutional Justices, namely Constitutional Justice Wahiduddin Adams, Constitutional Justice Suhartoyo, Constitutional Justice Saldi Isra, and Constitutional Justice Enny Nurbaningsih express concurring opinions essentially state as follows:

Whereas in relation to the provisions of Article 24 of Law 19/2019, the Court has considered in the Constitutional Court Decision Number 70/PUU-XVII/2019 that, among others, that Article 24 of Law 19/2019 does not contain any limitation whatsoever of equal opportunities to become civil servants for KPK employees. Therefore, the Transitional Provisions in Article 69B and Article 69C of Law 19/2019 set forth the transfer mechanism in question so that it would not cause issues for the affected persons or even vacancies in KPK as maintained by the Petitioner. The reason for the foregoing is that because for any investigators or preliminary investigators of KPK and for any employees of KPK who are not appointed as civil servants within the period of 2 (two) years as of the enactment of Law 19/2019 may be appointed as civil servants provided that the KPK investigators or preliminary investigators have attended and passed the training of investigation and preliminary

investigation in accordance with the laws and regulations and for KPK employees, such appointment shall be made in accordance with the laws and regulations.

Whereas in accordance with the provisions of Article 24, Article 69B and Article 69C of Law 19/2019, the Constitutional Court Decision Number 70/PUU-XVII/2019 in Paragraph [3.22., p. 339] explicitly (*expression verbis*) stated that KPK employees shall legally become civil servants because of the enactment of Law 19/2019. Therefore, in Law 19/2019, it is determined that the period for preparing for the transition of employment status in KPK shall be no more than 2 (two) years after the Law came into force. The foregoing means that, for the employees of KPK, the transfer into civil servants is not made on a voluntary basis but upon the order of law, which in this case is Law 19/2019. Furthermore, based on Law 19/2019 the transition of status into civil servants is a statutory right of preliminary investigators, investigators and employees of KPK.

Whereas upon the foregoing consideration, in the same decision the Court also emphasized that, the transition of status of KPK's employees into civil servants pursuant to the mechanism that aligns to the intent of the Transitional Provisions under Law 19/2019 must not prejudice the rights of KPK's employees to be appointed as civil servants for any reason whatsoever beyond the predetermined mechanism. That is because KPK's employees have been serving at KPK and their dedication to eradicating corruption is not questionable.

Whereas upon the legal consideration in the Constitutional Court Decision Number 70/PUU-XVII/2019, the "transitional status" for KPK investigators or preliminary investigators and for KPK's employees does not constitute a process of recruiting new employees or recruiting new civil servants which would otherwise require diverse types of selection to be conducted for the purpose of determining "qualified" and "non-qualified" candidates. The provisions of Article 69B and Article 69C of Law 19/2019 must instead be seen, construed and placed as a transitional status for the investigators, investigators and employees of KPK to become civil servants so that the new design of KPK will continue to provide legal certainty for the preliminary investigators, investigators and employees of KPK.

Whereas with a reference to the transitional provisions of Article 69B and Article 69C of Law 19/2019 and upon the correct interpretation of the purposes and intent of the norms in the "Transitional Provisions" in the laws and regulations, the change of status must be seen as a transition of status instead of a selection of new candidates of employees. From a legal perspective, pursuant to the construction of Article 69B and Article 69C of Law 19/2019, the process of transition must be implemented first. Afterwards, following the designation of preliminary investigators, investigators and employees of KPK as civil servants, KPK may conduct several types of test for the purpose of placing them within KPK's organizational structure in accordance with the new design of KPK. Our legal position is that, because the status transfer is a right, the transfer shall be implemented first and after such right is exercised, other issues may be solved, including the possible promotion and demotion of civil servants at KPK.

Whereas, on the basis of the legal certainty, the spirit of the norms in Article 69B and Article 69C of Law 19/2019 should be seen as the upholding of the constitutional rights of citizens, which in this case are the constitutional rights of preliminary investigators, investigators and employees of KPK to be transferred into civil servants in accordance with Article 27 paragraph (2), Article 28C paragraph (2), Article 28D paragraph (1), and Article 28D paragraph (3) of the 1945 Constitution. In that context, even if the petition in this clause is dismissed, but the legal consideration can be seen as an opportunity to confirm the Court's stance regarding the transition of the status of preliminary investigators, investigators and employees of KPK by law into civil servants as a right that must be upheld in accordance with the spirit of the Constitutional Court Decision Number 70/PUU-XVII/2019.