



**CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**JUDGMENT SUMMARY OF
CASE NUMBER 6/PUU-XVIII/2020**

Regarding

Transfer of PT Asuransi Sosial Angkatan Bersenjata Republik Indonesia (Persero)

- Applicants** : Major General TNI (Ret.) Endang Hairudin, et al
- Case Type** : Judicial Review of Law Number 24 of 2011 on the Social Security Administering Body (UU 24/2011) to the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Merits of Case** : Judicial Review of Article 57 letter e and Article 65 paragraph (1) of Law 24/2011 to Article 28D paragraph (1), Article 28H paragraph (2) and paragraph (3), and Article 34 paragraph (2) of the 1945 Constitution.
- Judgment** : 1. Granting the Applicant's request in its entirety.
2. Declaring that Article 57 letter e and Article 65 paragraph (1) of Law Number 24 of 2011 on the Social Security Administrative Body (State Gazette of the Republic of Indonesia of 2011 Number 116, Supplement to the State

Gazette of the Republic of Indonesia Number 5256) are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force;

3. Ordering this judgment to be published in the Official Gazette of the Republic of Indonesia as appropriate.

Judgment Date : Thursday, September 30th, 2021

Judgment Summary :

Whereas the Applicants are Indonesian citizens, retired/ pensioned Indonesian Army (TNI), who are participant in the program of Social Insurance of the Armed Forces of the Republic of Indonesia (Asuransi Sosial Angkatan Bersenjata Republik Indonesia/ ASABRI) which is managed by PT ASABRI.

Whereas in relation to the authority of the Court, since the request of the Applicants is a review of the constitutionality of legal norms, in this case Article 57 letter e and Article 65 paragraph (1) of Law 24/2011 to the 1945 Constitution, the Court has the authority to hear the *a quo* Applicants' request.

Whereas in relation to the legal standing of the Applicants, regardless of whether the Applicants' argument is proven or not, regarding the conflict of norms in the articles requested for review of the 1945 Constitution, according to the Court, the Applicants are Indonesian citizens, retired/pensioned TNI soldiers, participants of the ASABRI program who managed by PT ASABRI. The Applicants have been able to describe specifically the *causal verband* (casualty) between the application of the norms of Article 57 letter e and Article 65 paragraph (1) of Law 24/2011 with the assumption that the Applicants' constitutional losses that are regulated in Article 28D paragraph (1), Article 28H paragraph (2) and paragraph (3), and Article 34 paragraph (2) the 1945 Constitution, namely that the Applicants consider that they will experience legal uncertainty due to the potential for a

decrease in benefits that will be received if the ASABRI program participated by the Applicant is transferred to BPJS (Badan Penyelenggara jaminan Sosial/Social Security Administrative Body). According to the Applicants, if the request is granted, the potential constitutional loss will not occur. Thus, based on these legal considerations, the Court has the opinion that the Applicants have legal standing to act as Applicant in the *a quo* request.

Whereas because the main issue that is used as the reason for the request for review by the Applicants has similarities with case Number 72/PUU-XVII/2019 whose judgment has been pronounced previously, it is important for the Court to quote some of the Court's legal considerations in the Constitutional Court Judgment Number 72/PUU- XVII/2019.

Whereas the merger of state-owned companies engaged in the implementation of social security into BPJS Health and BPJS Employment in accordance with Article 57 and Article 65 of Law 24/2011 is contrary to or not in line with the policy choices of the legislators when forming Law Number 40 of 2004 (UU 40/2004) which requires the concept of many institutions or multiple institutions. Thus, the concept of institutional transition of the social security administering body into BPJS Employment causes the loss of the Persero entity which results in the emergence of legal uncertainty in the transformation of several pre-existing social security administering bodies, each of which has a different character and specificity.

Whereas even though Law 40/2004 requires agencies/institutions engaged in the administration of social security to be transformed into a social security administering agency, it does not mean that the agency is abolished by a model or method of combining it with other state-owned companies that have a different character, but only by making changes to the legal form of the legal entity in question and make adjustments to the position of the legal entity and strengthen regulations that mandate the obligations of social security providers to be regulated by law [see Article 5 paragraph (1) of Law 40/2004].

Whereas in order to fulfill the principle of mutual assistance, legislators actually do not have to transform all state-owned social security providers in the manpower sector into one body. Thus, even though by maintaining the existence of each company and transforming them into social security administering bodies, the principle of mutual assistance can still be fulfilled properly. Therefore, the design of the transformation of the social security administration body into BPJS Employment contains uncertainty, either because of the inconsistent institutional design choices taken or because of the lack of certainty regarding the fate of the participants in it, especially the scheme that should reflect the existence of guarantees and the potential for reduced benefits for the participants.

Whereas the arguments of the Applicants regarding the transfer of PT ASABRI (Persero) as referred to in Article 57 letter e and Article 65 paragraph (1) of Law 24/2011 are contrary to the right of everyone to social security which allows his/her full development as a dignified human being, as stated in in Article 28D paragraph (1) of the 1945 Constitution, and the mandate for the state to develop a social security system for all people and empower the weak and underprivileged in accordance with human dignity as stipulated in Article 34 paragraph (2) of the 1945 Constitution. It is also the spirit contained in the Constitutional Court Judgment Number 72/PUU-XVII/2019. Thus, the legal considerations in the Constitutional Court Judgment Number 72/PUU-XVII/2019 are *mutatis mutandis* part of the legal considerations of the *a quo* case judgments and therefore the Court has the opinion that the request of the Applicant is also legally grounded.

Whereas because there are a number of other articles in Law 24/2011 which are closely related to the norms of Article 57 letter e and Article 65 paragraph (1) of Law 24/2011 which have been declared unconstitutional by the Court, as a juridical consequence their enforcement must conform to the Court's *a quo* judgment.

Accordingly, the Court subsequently issued a judgment with the following judgment.

1. Granting the request of the Applicant in its entirety.
2. Declaring that Article 57 letter e and Article 65 paragraph (1) of Law Number 24 of 2011 on the Social Security Administering Body (State Gazette of the Republic of Indonesia of 2011 Number 116, Supplement to the State Gazette of the Republic of Indonesia Number 5256) are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force;
3. Ordering this judgment to be published in the Official Gazette of the Republic of Indonesia as appropriate.