

# AMENDMENT TO LAW NO. 14/1985 ON SUPREME COURT (Law No. 5/2004 dated January 15, 2004)

WITH GRACE OF THE ALMIGHTY GOD  
PRESIDENT OF THE REPUBLIC OF INDONESIA

## Considering:

- a. that, judicial power is an independent power executed by the Supreme Court and the courts within the general judicature, religious court, military court, and constitutional court; and by the Constitutional Council;
- b. that, Supreme Court rulings as set forth in Law No. 14/1985 have no longer been suitable to the societal and constitutional developments pursuant to the 1945 Constitution;
- c. that, based on the considerations as mentioned in paragraphs a and b, it is necessary to stipulate a Law on Amendment to Law No. 14/1985 on Supreme Court.

## In view of:

1. Articles 20, 21, 24, 24A, 24B, and 25 of the 1945 Constitution;
2. Law No. 4/2004 on Judicial Power (Statute Book of 2004 No. 8, Supplement to Statute Book No. 4358);
3. Law No. 14/1985 on Supreme Court (Statute Book of 1985 No. 73, Supplement to Statute Book No. 3316).

With joint approval of  
THE REGIONAL HOUSE OF REPRESENTATIVES OF DKI  
JAKARTA PROVINCE

## DECIDES:

## To stipulate:

LAW ON AMENDMENT TO LAW NO. 14/1985 ON SUPREME COURT.

### Article I

Some provisions of Law No. 14/1985 on Supreme Court (Statute Book of 1985 No. 73, Supplement to Statute Book No. 3316) shall be amended as follows:

1. Article 1 is amended to become as follows:

### Article 1

Supreme Court is one of judicial power performers as set forth in the 1945 Constitution.

2. Article 4 is amended to become as follows:

### Article 4

(1) The Supreme Court consists of chiefs, member judges, registrars, and a secretary.

(2) The chiefs and the member judges Court shall be defined as Supreme Court's justices.

(3) Total number of Supreme Court's justices shall be sixty (60) persons, at the maximum.

3. Article 5 is amended to become as follows:

### Article 5

(1) The Supreme Court's Chiefs consist of a chief, two (2) deputy chiefs, and several junior chiefs.

(2) The deputy chiefs as mentioned in paragraph (1) consist of deputy chief for judicial affairs and deputy chief for non-judicial affairs.

(3) The deputy chief for judicial affairs supervises the deputy chief for civil affairs, deputy chief for criminal affairs, deputy chief for religious affairs, deputy chief for military affairs, and deputy chief for constitutional affairs.

(4) On each of the affair as mentioned in paragraph (3), the Supreme Court may divide the legal specializations supervised by the deputy chief.

(5) The deputy chief for non-judicial affairs supervises the deputy chief for development and deputy chief for supervision.

(6) The Chiefs, Deputy Chiefs, and Junior Chief shall hold office for a five (5) year-term.

4. Article 7 is amended to become as follows:

### Article 7

(1) To be appointed as a Supreme Court's justice, a candidate must fulfill qualifications as the following:

- a. Indonesian citizen;
- b. Devout;
- c. Possessing certificate of Master's degree in law or other legal specializations;
- d. Having reached the age of at least fifty (50) years old;
- e. Physically and mentally healthy;
- f. Having an experience of at least twenty (20) years as a Judge inclusive of at least three (3) years as high judge.

(2) If required, Supreme Court's justice can be appointed not based on his or her career system according to the following conditions:

- a. Having fulfilled the conditions as mentioned in paragraph (1) clauses a, b, d, and e;
- b. Having an experience as a legal professional and/or academican for at least twenty-five (25) years;
- c. Possessing certificate of Post-Master's degree in law after possessing master's degree in law or other legal specializations;
- d. Having never been penalized based on an executorial court verdict due to committing of criminal act that carries a punishment of five (5) or more years;

(3) Within the Supreme Court's, ad-hoc justices may be appointed pursuant to the laws.

5. Article 8 is amended to become as follows:

#### Article 8

(1) Supreme Court's justices shall be appointed by the President from the candidates submitted by the House of Representatives.

(2) The candidates as mentioned in paragraph (1) shall be elected by the House of Representatives from names of persons proposed by the Judicial Committee.

(3) The selection of candidates as mentioned in paragraph (2) shall be implemented within fourteen (14) session days since receipt of names of the candidates by the House of Representatives, at the latest.

(4) The Chiefs and Deputy Chiefs shall be elected from and by the justices and appointed by the President.

(5) The Deputy Chiefs shall be appointed by the President from and among the justices proposed by the Chiefs.

(6) Presidential Decree regarding appointment of Supreme Court's justices, Chiefs, and Deputy Chiefs as mentioned in paragraphs (1), (4), and (5) shall be stipulated within fourteen (14) working days since receipt of the proposal by the President, at the latest.

6. Article 9 is amended to become as follows:

#### Article 9

(1) Prior to holding his or her office, a justice must be sworn-in according to his or her religion.

(2) The oath or swear as meant in paragraph (1) is as follows:

#### Oath:

"In the name of God I swear that I will fulfill my duties as Supreme Court's justice to the best of my knowledge and with utmost fairness, I will obey the 1945 Constitution and will enforce the laws properly pursuant to the 1945 Constitution, and will dedicate myself to the country and the nation."

#### Swear:

"I promise that I will fulfill my obligations as a Supreme Court's justice to the best of my knowledge and with utmost fairness, will obey the 1945 Constitution, will enforce all laws properly pursuant to the 1945 Constitution, and will dedicate myself to the country and the nation."

(3) The Chiefs, Deputy Chiefs, and Junior Chiefs shall say their oath or swear of office before the President.

(4) The member judges will be sworn-in by the Supreme Court's Chief.

7. Article 11 is amended to become as follows:

#### Article 11

(1) The Supreme Court's Chiefs, Deputy Chiefs, and Member Judges will be dismissed with honor by the President at the proposal of the Supreme Court's Chief based on the following reasons:

- a. Death;
- b. Having reached the age of sixty-five (65) years old;
- c. At his or her own request;
- d. Constantly in physical or mental illness; or
- e. Not being able to perform his or her duties properly.

(2) In the case that a justice has reached sixty-five (65) years of age, the age can be extended until sixty-seven (67) providing that he or she has shown an extraordinary work performance and has been in good physical and mental health based on a physician's certification.

## 8. Article 12 is amended to become as follows:

## Article 12

(1) The Supreme Court's Chiefs, Deputy Chiefs, and Member Judges will be dismissed without honor by the President at the Supreme Court's proposal because of the following reasons:

- a. Being imprisoned based on an executorial court verdict because of committing of criminal act that carries a five (5) year or more imprisonment;
- b. Committing wrongdoings;
- c. Constantly failing to perform his or her duties properly;
- d. Violating his or her oath or swear of office;
- e. Violating the conditions mentioned in Article 10.

(2) The proposal for dismissal without honor as mentioned in paragraph (1) clauses b, c, d, and e shall be submitted after the pertinent party has been given an opportunity to defend him or herself before the Supreme Court's Honorary Council.

(3) The provisions regarding formation, structure, and work procedure of the Honorary Council will be stipulated by the Supreme Court.

## 9. Article 13 is amended to become as follows:

## Article 13

(1) The Supreme Court's Chiefs, Deputy Chiefs, and Member Judges, prior to the dismissal without honor as mentioned in Article 12 paragraph (1), may temporarily be dismissed by the President at the Supreme Court's proposal.

(2) For the temporary dismissal as mentioned in paragraph (1) the provision of Article 12 paragraph (2) will be applicable.

## 10. Article 18 is amended to become as follows:

## Article 18

A Registrar Office shall be formed within the Supreme Court, which is chaired by a Registrar assisted by several Junior Registrars and several Acting Registrars.

## 11. Article 19 is amended to become as follows:

## Article 19

Provisions regarding organizational structure, duties, responsibilities, and work procedure of the Registrar Office will be stipulated in a Presidential Decree at

the Supreme Court's proposal.

## 12. Article 20 is amended to become as follows:

## Article 20

(1) To be appointed as a Registrar, a candidate must meet the following qualifications:

- a. Indonesian citizen;
- b. Devout;
- c. Possessing certificate of Master's degree in law or other legal specializations;
- d. Having an experience of at least two (2) years as Junior Registrar with the Supreme Court and at least three (3) years as Registrar with the High Court.

(2) To be appointed as a Junior Registrar, a candidate must meet the following qualifications:

- a. The conditions as mentioned in paragraph (1) clauses a, b, and c; and
- b. Having an experience of two (2) years as High Court's Registrar and five (5) years as Lower Court's Registrar.

(3) To be appointed as an Acting Registrar, a candidate must meet the following qualifications:

- a. The conditions as mentioned in paragraph (1) clauses a, b, and c; and
- b. Having an experience of at least ten (10) years as civil servant specializing in technical matters for handling cases with the Supreme Court.

## 13. Article 21 is amended to become as follows:

## Article 21

The Supreme Court's Registrar shall be appointed and dismissed by the President at the Supreme Court's proposal.

## 14. Article 22 is amended to become as follows:

## Article 22

Before holding his or her office, a Registrar shall be sworn-in by the Supreme Court's Chief.

## 15. Between Article 24 and Part Four, a new Article, namely Article 24A is inserted and it reads as follows:

## Article 24A

(1) The Registrar, Junior Registrars, and Acting Registrars will be dismissed with honor because of the following reasons:

- a. Death;

b. Having . . . . .

- b. Having reached pension age pursuant to the laws in force;
- c. At their own request;
- d. Being constantly in physical or mental illness; or
- e. Not being able to perform their duties properly.

(2) The Registrar, Junior Registrars, and Acting Registrars will be dismissed without honor because of the following reasons:

- a. Being penalized based on an executorial court verdict due to committing of criminal acts that carry a five (5) year or more imprisonment;
- b. Committing wrongdoings;
- c. Constantly failing to fulfill their obligations in the performance of their duties; or
- d. Violating their oath or swear of office.

16. Chapter II Part Four on Supreme Court's Secretary General is amended to Supreme Court's Secretary.

17. Article 25 is amended to become as follows:

#### Article 25

(1) There must be a Secretariat within the Supreme Court managed by a Secretary.

(2) The Supreme Court's Secretary shall be appointed and dismissed by the President at the Supreme Court's proposal.

(3) Within the Secretariat, several directorate generals and agencies shall be formed which are managed by director generals and agencies' heads.

(4) The director generals and agencies' heads shall be appointed and dismissed by the President at the Supreme Court's proposal.

(5) Before holding their office, the director generals and the agencies' heads shall be sworn-in by the Supreme Court's Chief.

(6) Provisions regarding organizational structures, duties, responsibilities, and work procedures of the Secretariat and Agencies will be stipulated in a Presidential Decree at the Supreme Court's proposal.

18. Articles 26 and 27 are deleted.

19. Article 30 is amended to become as follows:

#### Article 30

(1) The Supreme Court shall annul verdicts or stipulations of all other courts because of the following reasons:

- a. The courts have had no authority or have decided something beyond their authorities;
- b. The courts have misapplied or violated the laws in force;
- c. The courts have failed to comply with the conditions required by the laws threatening the failure by canceling the issued verdicts.

(2) In the deliberation session, each justice must convey his or her consideration or opinion in writing on the examined cases and such consideration or opinion will become an inseparable part of the verdicts.

(3) In the case that the deliberation session does not reach a consensus, differences of opinion must be contained in the verdict.

(4) Further enforcement of the provisions of paragraphs (2) and (3) will be stipulated by the Supreme Court.

20. Article 31 is amended to become as follows:

#### Article 31

(1) The Supreme Court is authorized to evaluate regulations lower than laws in adjustment to the laws.

(2) The Supreme Court shall declare inapplicable all regulations lower than the laws with reason that such regulations are in contradiction with the higher regulations or the arrangement of which does not comply with the applicable rulings.

(3) Decisions regarding inapplicability of the regulations as mentioned in paragraph (2) may be made either in relation to examination in the cessation level or based on direct requests to the Supreme Court.

(4) The regulations declared inapplicable as mentioned in paragraph (3) will not have legal power.

(5) The decision as mentioned in paragraph (3) must be published in the State Gazette of the Republic of Indonesia within thirty (30) working days since declaration of the decision, at the latest.

21. Between Article 31 and 32, a new Article, namely Article 31A is inserted and it reads as follows:

## Article 31A

- (1) Request for the evaluation of regulations which are lower than the laws in adjustment to the laws shall directly be submitted by the applicant or his or her proxy to the Supreme Court and made in writing in the Indonesian language.
- (2) The request shall at least contain:
  - a. Applicant's name and address;
  - b. Reasons and:
    - 1) Paragraphs, Articles, and/or parts of the regulations which breach the higher regulations; and/or
    - 2) Regulations which are arranged not in compliance with the applicable rulings.
  - c. Matters to be decided.
- (3) In the case that the Supreme Court has an opinion that the applicant or his or her request is unqualified, content of the verdict must state that the request is not accepted.
- (4) In the case that the Supreme Court is in the opinion that such request is reasonable, the content of the verdict must indicate that the request is accepted.
- (5) In the case that such request is accepted as mentioned in paragraph (4), the content of the verdict must indicate which paragraphs, Articles and/or parts of the regulations are in contradiction with the higher regulations.
- (6) In the case that the regulations are not in contradiction with the higher regulations and/or the arrangement of those regulations is not in contradiction, the content of the verdict shall indicate that the request is rejected.
- (7) Further provisions regarding the evaluation of regulations lower than the laws will be stipulated by the Supreme Court.

22. Article 35 is amended to become as follows:

## Article 35

The Supreme Court shall convey its legal considerations to the President in requests for clemency and rehabilitation.

23. Between Article 45 and paragraph 2 on General Judicature, a new Article, namely Article 45A is inserted and it reads as follows:

## Article 45A

- (1) The Supreme Court shall examine cases qualified to be submitted to cessation level, except cases which submission, pursuant to this Law, is limited.
- (2) The excepted cases as mentioned in paragraph (1) consist of:
  - a. Court verdict on pretrial;
  - b. Criminal cases threatened by an imprisonment of one (1) year at the maximum and/or penalty payment;
  - c. Constitutional cases which objects of the lawsuits are decisions of regional officials applicable in the pertinent regions.
- (3) The request for cessation of the cases as mentioned in paragraph (2) or cessation request which does not comply with the formal conditions shall be declared not accepted by virtue of stipulation of chief of the lower court; and documents of the cases shall not be delivered to the Supreme Court.
- (4) The stipulation of chief of the lower court as mentioned in paragraph (3) cannot be petitioned.
- (5) Enforcement of the provisions of paragraphs (3) and (4) will be further stipulated by the Supreme Court.

24. Between Article 80 and Chapter VII on Closing Provisions, three (3) new Articles, namely Articles 80A, 80B, and 80C are inserted and those Articles read as follows:

## Article 80A

Prior to establishment of the Judicial Committee as mentioned in Article 8 paragraph (2), the proposal of candidates for justices shall be submitted by the Supreme Court for approval of the House of Representatives, and, afterwards, the candidates will be nominated as justices by the President.

## Article 80B

The Supreme Court's Registrar occupation which is held by a justice must be adjusted to the provisions of this Law within five (5) years since enforceability of this Law, at the latest.

## Article 80C

Provisions regarding development of military personnel of the Supreme Court's Registrar Office will be implemented in accordance with the laws regarding military personnel.

25. In Chapter VII on Closing Provisions, a new Article, namely Article 81A is inserted and it reads as follows:

**Article 81A**

Budget of the Supreme Court shall be put on a separate budget post of the State Revenues and Expenditures Budget.

**Article II**

This Law shall come into effect from the date of enactment.

For public cognizance, this Law shall be enacted by placing it in the Statute Book of the Republic of Indonesia.

Ratified in Jakarta

On January 15, 2004

**PRESIDENT OF THE REPUBLIC OF INDONESIA**

Sgd

**MEGAWATI SOEKARNOPUTRI**

Enacted in Jakarta

On January 15, 2004

**STATE SECRETARY OF THE REPUBLIC OF INDONESIA**

Sgd

**BAMBANG KESOWO**

**STATUTE BOOK OF**

**THE REPUBLIC OF INDONESIA OF 2004 NO. 9**

**ELUCIDATION**

**OF**

**LAW NO. 5/2004**

**ON**

**AMENDMENT TO LAW NO. 14/1985**

**ON SUPREME COURT**

**I. GENERAL**

The 1945 Constitution sets forth that the Supreme Court and the courts below it within the general judiciary, the religious courts, military court, and constitutional court are independent judicial power performers besides the Constitutional Council to implement judiciary in order to enforce law and justice. The 1945 Constitution also stipulates that the Supreme Court is authorized to examine cases in the cessation level, to evaluate regulations lower than the laws and it has other authorities granted by the laws.

Independent judicial power is one of the important principles for Indonesia as a legal state. This principle has intended to create judicial power which is free from the interference of any party whomsoever and in other form whatso-

ever; so that in the performance of duties and obligations there is a guarantee of a non-alliance judicial power, except to law and justice. To strengthen the direction of the execution of judicial power mandated in the 1945 Constitution adjustment of laws on judicial power need to be implemented.

This Law contains amendments to the content of the 1945 Constitution regarding Supreme Court. These amendments, other than to be adjusted to the direction of the policy as stipulated in the 1945 Constitution, is also based on the new law on judicial power replacing Law No. 14/1970 on Fundamental Provisions on Judicial Power as amended by Law No. 35/1999 on Amendment to Law No. 14/1970 on Fundamental Provisions on Judicial Power.

The amendments set forth in this Law are, among other things, explanation of status of the Supreme Court as judicial power performer, qualifications for a judicial power performer, qualifications for a justice, and amendments relating to the procedure law, especially in the performance of duties and authorities in examining and deciding cases in the cessation level and in evaluating regulations lower than the laws. This Law has set limitations for cases which can be requested for cessation to the Supreme Court. These limitations are intended to reduce the tendency of the submission of every case to the Supreme Court and also to encourage improvement of the quality of verdicts of the lower and high courts in accordance with legal and justice values prevailing in the society.

With the increase of scope of duties and responsibilities of the Supreme Court, which are, amongst others, in the regulating and managing of organizational, administrative, and financial affairs of the courts below the Supreme Court, the Supreme Court's organization need to be adjusted.

**II. ARTICLE BY ARTICLE**

**Article I**

**Item 1**

**Article 1**

Sufficiently clear.

**Item 2**

**Article 4**

Sufficiently clear.

**Item 3**

**Article 5**

**Paragraphs (1) - (3)**

Sufficiently clear.

**Paragraph (4)**

Legal specializations shall be adjusted to the required

conditions. For example, the Deputy Chief for Civil Affairs may consist of deputy chief for general civil affairs and deputy chief for traditional law. The Deputy Chief for Criminal Affairs may consist of deputy chief for general criminal affairs and deputy chief for special criminal affairs.

Paragraphs (5) and (6)  
Sufficiently clear.

Item 4  
Article 7  
Paragraph (1)  
Clauses a and b  
Sufficiently clear.

Clause c  
"Master's degree in other legal specializations" means master's degree in Syariah studies and master's degree in police affairs.

Clauses d-f  
Sufficiently clear.

Paragraph (2)  
Clauses a and b  
Sufficiently clear.

Clause c  
"Master's degree in other legal specializations" has the meaning as the elucidation of paragraph (1) clause c.

Clause d  
Sufficiently clear.

Paragraph (3)  
"Ad-hoc justices" are, amongst others, ad-hoc justices for human rights pursuant to Law No. 26/2000 on Human Rights Tribunal and ad-hoc justices for corruption cases pursuant to Law No. 30/2002 on the Commission for the Elimination of Corruption.

Item 5  
Article 8  
Paragraphs (1) and (2)  
Sufficiently clear.

Paragraph (3)  
The term "session day" does not include recess.

Paragraphs (4) - (6)  
Sufficiently clear.

Item 6  
Article 9  
Sufficiently clear.

Item 7  
Article 11  
Paragraph (1)  
Clauses a-c  
Sufficiently clear.

Clause d  
"Constantly in physical or mental illness" is a health condition causing the pertinent party no longer being able to perform his or her duties properly.

Clause e  
"Not being able to perform his or her duties properly" is, for example, the pertinent party has made a big mistake in the performance of his or her duties.

Paragraph (2)  
"Extraordinary work performance" is as set forth in rulings on the Supreme Court pursuant to the laws in force.

Item 8  
Article 12  
Paragraph (1)  
Clause a  
Sufficiently clear.

Clause b  
"Wrongdoing" is an act or behavior, either inside or outside the court, which may lower the judges' dignity.

Clauses c and d  
Sufficiently clear.

Clause e  
"Article 10" means Law No. 14/1985 on Supreme Court.

Paragraphs (2) and (3)  
Sufficiently clear.

Item 9  
Article 13

## Paragraph (1)

During the temporary dismissal, a justice shall not examine cases.

## Paragraph (2)

Sufficiently clear.

## Item 10

## Article 18

Sufficiently clear.

## Item 11

## Article 19

Sufficiently clear.

## Item 12

## Article 20

## Paragraph (1)

## Clauses a and b

Sufficiently clear.

## Clause c

See elucidation of Article 7 paragraph (1) clause c.

## Clause d

Sufficiently clear.

## Paragraphs (2) and (3)

Sufficiently clear.

## Item 13

## Article 21

Sufficiently clear.

## Item 14

## Article 22

Sufficiently clear.

## Item 15

## Article 24A

Sufficiently clear.

## Item 16

Sufficiently clear.

## Item 17

## Article 25

Sufficiently clear.

## Item 18

Sufficiently clear.

## Item 19

## Article 30

## Paragraph (1)

In examining cases, the Supreme Court is obliged to cultivate, follow, and understand a sense of justice prevailing in the society.

## Paragraphs (2) - (4)

Sufficiently clear.

## Item 20

## Article 31

Sufficiently clear.

## Item 21

## Article 31A

Sufficiently clear.

## Item 22

## Article 35

Sufficiently clear.

## Item 23

## Article 45A

## Paragraph (1)

Sufficiently clear.

## Paragraph (2)

## Clauses a and b

Sufficiently clear.

## Clause c

Decisions of constitutional officials originating from the authority which is not granted to the regions pursuant to the laws in force are excluded.

## Paragraphs (3) - (5)

Sufficiently clear.

## Item 24

## Articles 80A - 80C

Sufficiently clear.

## Item 25

## Article 81A

Sufficiently clear.

## Article II

Sufficiently clear.

SUPPLEMENT TO STATUTE BOOK OF  
THE REPUBLIC OF INDONESIA NO. 4359

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