THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION

CASE NUMBER 19/PUU-IX/2011

CONCERNING

TERMINATION OF EMPLOYMENT OF WORKERS/LABORERS

Petitioners	:	Asep Ruhiyat, Suhesti Dianingsih, Bambang Mardiyanto, *et al.*
Type of Case	:	Judicial Review of Law Number 13 Year 2003 concerning Manpower against the 1945 Constitution.
Substance of the Case	:	Article 164 paragraph (3) of Law Number 13 Year 2003 concerning Manpower which provides for the termination of employment of workers/laborers is inconsistent with Article 28D paragraph (2) of the 1945 Constitution regarding the right to work and to receive proper remuneration.
Injunction of Decision	:	to declare that the petition of the Petitioners is granted in part.

Date of Decision : Wednesday, June 20, 2012.

Summary of the Decision:

The Petitioners are Indonesian citizen individuals who filed a petition for review of the constitutionality of Article 164 paragraph (3) of Law Number 13 Year 2003 concerning Manpower (Law 13/2003) because the aforementioned article has impaired the constitutional rights of the Petitioner.

With regard to the authorities of the Court, Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning the Constitutional Court (the Constitutional Court Law), as well as Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power state that one of the Court's constitutional authorities is to hear at the first and final levels, the decisions of which shall be final, in order to conduct review of Laws against the 1945 Constitution. Since the petition of the Petitioners is a review of the constitutionality of a norm of Law, namely Article 164 paragraph (3) of Law 13/2003 against Article 28D paragraph (2) of the 1945 Constitution, which falls within one of the Court's

authorities, the Court has the authority to examine, hear and decide upon the petition *a quo*.

With regard to legal standing, Article 51 paragraph (1) of the Constitutional Court Law and the Elucidation thereof stipulate that the parties eligible to file a petition for judicial review of Laws against the 1945 Constitution shall be the parties considering that their constitutional rights and/or authority, which are granted by the 1945 Constitution, are impaired by the coming into effect of a Law, namely:

a. individual Indonesian citizens (including groups of people having a common interest);
b. customary law community groups insofar as they are still in existence and in accordance with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated by Law;
c. public or private legal entities; or
d. state institutions.

Following the issuance of Decision Number 006/PUU-III/2005 and Decision Number 11/PUU-V/2007 as well as subsequent decisions, the Court is of the opinion that the impairment of constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet the following five requirements, namely:

a. the existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;

b. the Petitioner considers that such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;

c the impairment of such constitutional rights and/or authority must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;

d. there is a causal relationship (*causal verband*) between the intended impairment and the Law petitioned for review;

e. the possibility that with the granting of the Petitioner's petition, the impairment of such constitutional rights and/or authority argued by the Petitioner will not or will no longer occur;

The Petitioners consider themselves to be impaired by the coming into effect of Article 164 paragraph (3) of Law 13/2003 because their workplace, namely Papandayan Hotel Bandung, conducted termination of employment based on Article 164 paragraph (3) of Law 13/2003. The Court considers that the Petitioners as Indonesian individual citizens have constitutional rights which are impaired by the coming into effect of the Law being petitioned for review. Such impairment is actual, specific in nature and there is a causal relationship (*causal verband*) between the intended impairment and the Law petitioned for review. Therefore, the Petitioners have legal standing to file the petition *a quo*.

Article 164 paragraph (3) of Law 13/2003 states, "*The entrepreneur may terminate the employment of workers/laborers due to the reason of the company's having to be closed down neither due to continual losses for 2 (two) consecutive years nor due to force majeure but due to the company's implementing efficiency, provided that the workers/laborers shall be entitled to severance pay in the amount of 2 (two) times the amount of severance pay provided for under Article 156 paragraph (2), service pay in the amount of 1 (one) time the amount provided for under Article 156 paragraph (3), and compensation pay for entitlements pursuant to the provisions of Article 156 paragraph (4)*." In the substance of their petition, the Petitioners considers that the aforementioned article is inconsistent with Article 28D paragraph (2) of the 1945 Constitution which guarantees every person's right to work, to receive fair and proper remuneration and treatment in work relationships.

The Petitioners argued that the word "efficiency" in Article 164 paragraph (3) of Law 13/2003 cannot be interpreted as the basis for the company to terminate the workers' employment or "to make workers' costs efficient" by terminating the employment of the existing workers. However, it must be interpreted that termination of employment can be conducted by a company if the company is closed down, and the closing down is a form of efficiency, or in other words, the entrepreneur applies efficiency by way of closing down the company.

In its legal considerations, the Court is of the opinion that the problem faced by the Petitioners cannot be determined solely by the application of law, considering that there is no clear and rigid definition of the phrase "*the company's having to be closed down*" in Law 13/2003, namely whether referring to a company which is permanently closed down or referring to a company which is temporarily closed-down. The Elucidation of Article 164 of Law No. 13/2003 only states "self-explanatory". Therefore, anyone can interpret the norm according to his/her own interest, for example, considering the temporary closing down of a company for renovation as a part of efficiency and making it the basis for conducting termination of employment. Such different interpretations may lead to different legal settlement in its application, because the employment of every worker can be terminated at any time for the reason of temporary closing down of a company or temporary stoppage of its operation. This condition may lead to legal uncertainty for the continuation of work for workers/laborers in performing their works, which is inconsistent with Article 28D paragraph (2) of the 1945 Constitution which states, "*Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationships*."

Termination of employment constitutes the last option as an effort to conduct efficiency of a company after first making other efforts for the purpose of such efficiency. Based on the matter, according to the Court,

the company cannot conduct termination of employment before taking the following efforts: (a) reducing wages and facilities for upper level workers, for example at the manager and director levels; (b) reducing shift; (c) limiting/eliminating overtime work; (d) reducing work hours; (e) reducing work days; (f) giving time off or sending workers/laborers home in turn temporarily; (g) not extending or extending contracts for workers whose contract terms have expired; (h) giving pensions for those who have met the requirements. This is because in essence, manpower must be considered as one of the assets of the company, and then efficiency alone without the closing down of the company cannot be used as the reason for terminating employment.

The Court needs to eliminate legal uncertainty contained in the norm of Article 164 paragraph (3) of Law 13/2003 in order to enforce justice by determining that the phrase "*the company's having to be closed down*" in Article 164 paragraph (3) of Law 13/2003 shall remain constitutional to the extent it is interpreted as "***the company's having to be permanently closed down or the company's having to be closed down not temporarily***". In other words, the phrase "*the company's having to be closed down*" is inconsistent with the 1945 Constitution to the extent it is not interpreted as "*the company's having to be permanently closed down or the company's having to be closed down not temporarily*".

Based on the legal considerations above, the Court grants the petition of the Petitioners in part and declares Article 164 paragraph (3) of Law 13/2003 inconsistent with the 1945 Constitution and not having any binding legal effect to the extent that it is not interpreted as “the company’s having to be permanently closed down or the company’s having to be closed down not temporarily”.