



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 107/PUU-XVIII/2020

Concerning

Formal Review of Law Number 11 of 2020
concerning Job Creation

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| Petitioner | : | Indonesian Farmer Union represented by Agus Ruli Ardiansyah, et al |
| Type of Case | : | Formal Review of Law Number 11 of 2020 concerning Job Creation (UU 11/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945) |
| Subject Matter | : | Formal Review of Law 11/2020 against the 1945 Constitution |
| Verdict | : | To declare that the Petitioners' petition is inadmissible |
| Date of Decision | : | Thursday, November 25, 2021 |
| Overview of Decision | : | |

The Petitioners are individual Indonesian citizens and private legal entities who feel harmed by the existence of Law Number 11 of 2020 concerning Job Creation (UU 11/2020) because the legal system in Indonesia does not recognize the concept of *omnibus law* and from the planning process to the ratification, it is in contrary to the formal requirements for the establishment of laws.

Whereas in relation to the authority of the Constitutional Court (Mahkamah), because what a formal review of the law *in casu* Law 11/2020 is petitioned, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the time limit for submitting the petition, based on the Decision of the Constitutional Court Number 27/PUU-VII/2009 dated June 16, 2010, paragraph [3.34] it basically states that the Court considers that the deadline is 45 (forty five) days after the Law is recorded in the State Gazette as sufficient time to submit a formal review of the Law. Because Law 11/2020 was promulgated on November 2, 2020, so the time limit for submitting a petition is December 17, 2020. The Petitioners' petition was received by the Court on November 19, 2020 based on the Deed of Receipt of the Petition File Number 240/PAN.MK/2020, which was later corrected by the Petitioners with a revised petition dated December 21, 2020 and received at the Registrar's Office of the Court on December 21, 2020. Thus, the petition of the Petitioners is still within the time limit for submitting a request for a formal review of a law.

Whereas in relation to the time limit for the completion of the formal review, the Court has also given special considerations as the Court's considerations in case 79/PUU-XVII/2019 dated May 4, 2021, in paragraph [3.16] which in essence, it is stated that the Court needs to emphasize that a maximum of 60 (sixty) business days after the case is recorded in the Constitutional Case Registration Book (*Buku Registrasi Perkara Konstitusi* or BRPK) is

deemed sufficient to complete the formal review of a law. In this regard, according to the Court, the *a quo* case was in trial when the Constitutional Court Decision Number 79/PUU-XVII/2019 was declared. Therefore, against the *a quo* case, The Court has indeed not been bound by a time limit of 60 (sixty) business days since the *a quo* case is recorded in BRPK. Moreover, when the *a quo* petition is submitted, the Court is faced with a national agenda, namely the settlement of the 2020 Regional Head Election Results Dispute which has been accepted by the Court since December 2020 and has a time limit for settlement within 45 (forty five) business days since the receipt of the petition, so that at that time the Court temporarily suspended all case reviews, including the case of the *a quo* Petitioners [vide Article 82 of the Regulation of the Constitutional Court Number 2 of 2021 concerning Proceedings in Cases of Judicial Review, hereinafter referred to as PMK 2/2021]. In addition, along with the *a quo* process of case review, most countries around the world, including in Indonesia are facing the threat of the Covid-19 pandemic which has been declared by the President as a non-natural national disaster [vide Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning Determination of Non-Natural Disasters the Spread of Corona Virus Disease 2019 (Covid-19) as National Disaster]. Furthermore, to prevent the relatively rapid spread of the virus with a high fatality rate, the government has set the Enforcement of Community Activity Restrictions (*Pemberlakuan Pembatasan Kegiatan Masyarakat* or PPKM) since January 2021. Because preventing the spread of the virus is important for all parties, including the Constitutional Court, the trial at the Court was suspended for some time, including the trial for the *a quo* case. However, without reducing the spirit of accelerating the completion of the formal reviews as referred to in the Constitutional Court Decision Number 79/PUU-XVII/2019, the Court in reviewing the case for the formal review of Law 11/2020 has conducted a separate review (*splitsing*) with a petition for a material review of Law 11/2020.

Whereas with respect to the legal standing in the formal examination, other than based on Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (UU MK) and Constitutional Court Decision Number 006/PUU-III/2005 and Number 11/PUU-V/2007, are also based on the Constitutional Court Decision Number 27/PUU-VII/2009 which in essence states that in the concrete cases proposed by the Petitioners it is necessary to assess whether there is a direct relationship between the Petitioners and the Law that is being submitted for a formal review. Petitioner I (Indonesian Farmers Union), Petitioner II (Bina Desa Sadajiwa Foundation), Petitioner IV (Union of Oil Palm Farmers), Petitioner V (Oil Monitoring Association), Petitioner X (Daun Bendera Nusantara Foundation), Petitioner XI (People's Coalition for Sovereignty) Food), Petitioner XII (Indonesian Farmers Society Network), Petitioner XIII (Indonesian Organic Alliance), and Petitioner XIV (Indonesian Fishermen Women's Sisterhood) are private legal entities operating in sectors including agriculture, plantations, livestock, and fisheries that feel harmed because Law 11/2020 has changed several laws that have been the foundation for the implementation of agrarian reform, food sovereignty, and the protection of farmers' human rights in Indonesia, meanwhile what have been amended are the Law on Plantations, the Law on the Protection of Varieties Plants, the Law on Sustainable Agricultural Cultivation Systems, the Law on the Protection and Empowerment of Farmers, and the Law on Horticulture. Meanwhile, Petitioner III (Federation of United Pertamina Labour Unions) is a legal entity of a union association, which feels that its constitutional rights have been impaired because the establishment of Law 11/2020 contains formal defects, is inaccurate, is in contrary with the establishment of laws and regulations, and the lack of public participation in the discussion of draft bills, so that the certain enactment of labour clusters will have the potential to harm the rights of workers, besides that Law 11/2020 has also changed the Manpower Law, which has the potential to create legal uncertainty as well as reducing legal protection for workers/labourers, as well as hindering the Petitioners' objectives in fighting for workers' rights. Petitioner VI (Indonesian Human Rights Committee for Social Justice (IHCS)) is an association engaged in the protection of human rights, whose constitutional rights have been

impaired because the establishment of Law 11/2020 contains formal defects, is inaccurate, is in contrary to the establishment of laws and regulations, and the lack of public participation in the discussion of the draft bills, so that the enactment of Law 11/2020 specifically for agricultural, labour and fishing clusters will have the potential to harm the communities advocated by the Petitioners, besides that the existence of Law 11/2020 will perpetuate social injustice and human rights violations in particular the labour's rights, farmers' rights, fishermen's rights and the people who work in rural areas, as well as the right to education, which are carried out by the state protected by law, so that the purpose of establishing the organization of Petitioner VI will be hindered. Petitioner VII (Indonesia For Global Justice) is an association body engaged in the global trade sector, that feels that its constitutional rights have been impaired because Law 11/2020 needs to be advocated by Petitioner VII because it results in national policies that do not protect, do not respect the values of life and livelihood and hindering the existence of a new world order based on pluralism, diversity, sustainability and justice, Law 11/2020 was born due to the dominance of the interests of investors and pressure from international organizations, so that, in the process of establishing it hastily it has given birth to a process that is not democratic and involves the wider community being affected by the enactment of the *a quo* law. Petitioner VIII (Indonesian Education Monitoring Network) is a legal entity engaged in education, which feels harmed because the establishment of Law 11/2020 contains formal defects, because it is not careful, it is in contrary to the establishment of legislation, and lacks public participation in the discussion of the draft bills, so that the enactment of Law 11/2020 has the potential to hinder the realization of Petitioner VIII's goals, especially in terms of placing education as a traded commodity, the cost of education in private schools will be increasingly expensive, and underprivileged children will drop out of school and cannot access education because there is no economic capacity to pay tuition fees and cannot enter public schools because the quota is limited. Petitioner IX is an individual Indonesian citizen who has concern for fishermen and serves as Secretary General of the Indonesian Fishermen Union so that he has the potential and/or is directly affected by the enactment of Law Number 11/2020, which causes several laws related to Indonesian fishermen to be amended and has the potential to have an impact on the violation of the constitutional rights of fishermen, as well as changes in policies related to agrarian reform, food sovereignty, the right to food, and the right to water. Petitioner XV (People's Coalition for the Right to Water) is a legal entity that feels that its constitutional rights have been impaired because the enactment of Law 11/2020 has caused several constitutional losses since Petitioner XV was not involved in the role played by Petitioner XV in establishing norms for the right to water in various policy advocacy that has been done so far, from the submission process until it is ratified by the President and then the enactment of the *a quo* Law, Petitioner XV was never consulted or involved even though Law Number 17 of 2019 concerning Water Resources is one of the laws included in the contents of the *a quo* Law. The Court is of the opinion that Petitioner I, Petitioner IV, Petitioner V, Petitioner XIII, and Petitioner XIV, have been able to explain the linkage relationship as legal entities of associations that actively carry out empowerment activities in the agricultural, livestock, fishery, and plantation sectors with the process of establishing Law 11/2020 which constitutionality is being questioned. Petitioner III has been able to explain the linkage relationship as a legal entity association that actively carries out activities to protect labour rights with the process of establishing Law 11/2020 which constitutionality is being questioned. Petitioner VI has been able to explain the linkage relationship as an association of legal entity that is actively carrying out activities to protect human rights with the process of establishing Law 11/2020 which constitutionality is being questioned. Petitioner VII has been able to explain the linkage relationship as an association of legal entity that is actively carrying out global trade activities with the process of establishing Law 11/2020 which constitutionality is being questioned. Petitioner IX has been able to explain the linkage relationship between Petitioner IX as Secretary General of the Fishermen's Union and the process of establishing Law 11/2020 which constitutionality is being questioned. Whereas Petitioner II, Petitioner X, Petitioner XII, and Petitioner XV are legal entities of associations that are only represented by the Chairmen,

even though in the Articles of Association or deed of establishment it has been determined that the parties who can represent the organization are at least the Chairman, Secretary, and Treasurer. However, in the *a quo* petition the Petitioner is only represented by the Chairmen, and Petitioner VIII and Petitioner XI are the legal entities of the association which in its Articles of Association nor its deed of incorporation does not specify who is entitled to represent the organization outside and inside the trial and there is no certificate from the organization stating about who is entitled to represent him. Therefore, according to the Court, Petitioner II, Petitioner VIII, Petitioner X, Petitioner XI, Petitioner XII, and Petitioner XV do not have the legal standing to file the *a quo* petition. Furthermore, in relation to Petitioners I, Petitioners III to Petitioner VII, Petitioner IX, Petitioner XIII, and Petitioner XIV have been able to describe their position and activities that are closely related to Law 11/2020 so that there are linkages between Petitioner I, Petitioner III to Petitioner VII, Petitioner IX, Petitioner XIII, and Petitioner XIV with the Law being petitioned for a formal review. Therefore, regardless of whether or not the arguments regarding the unconstitutionality of the establishment of Law 11/2020 which do not meet the provisions based on the 1945 Constitution are proven, Petitioners I, Petitioners III to Petitioners VII, Petitioners IX, Petitioners XIII, and Petitioners XIV (hereinafter referred to as Petitioners) have the legal standing to file the *a quo* petition.

Whereas because the Court has the authority to hear the *a quo* petition, the Petitioners' petition is still within the time limit for the submission of a formal review, and the Petitioners have legal standing to act as Petitioners in the *a quo* petition, and after carefully reading the petition of the Petitioners, the statement of DPR (House of Representatives), the President's statement, the Petitioners' expert testimony, the DPR's expert testimony, the President's expert testimony and witnesses, documentary evidence submitted by the Petitioners and the President, the written conclusions of the Petitioners, and the President's written conclusion, the Court subsequently consider the following:

Whereas with regard to the formal review of Law 11/2020 the Court has decided in the decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021, which has been stated before in the verdict of such subject matter which has declared:

1. To declare that the petition of Petitioner I and Petitioner II is inadmissible;
2. To grant the petition of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI in part;
3. To declare that the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as "no corrections have been made within 2 (two) years since this decision was declared";
4. To declare that Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is still in effect until corrections are made to the establishment in accordance with the time limit as determined in this decision;
5. To order the legislators to make corrections within a maximum period of 2 (two) years since this decision is declared and if within that time limit no corrections are made then Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall become permanently unconstitutional;
6. To state that if within a period of 2 (two) years the legislators cannot complete the corrections of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) then the law or articles or material contained in the law which have been revoked or amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall be

- declared as valid again;
7. To suspend all strategic and broad-impact actions/policies, and it is also not permissible to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573);
 8. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
 9. To dismiss the Petitioners' petition for the rest/remainder.

In such decision, there were 4 (four) Constitutional Justices who submitted dissenting opinions, namely Constitutional Justice Arief Hidayat, Constitutional Justice Anwar Usman, Constitutional Justice Daniel Yusmic P. Foekh, and Constitutional Justice Manahan M.P. Sitompul with regard to the formal review of Law 11/2020, but because Law 11/2020 has been declared conditionally unconstitutional and the decision has binding legal force since the decision was declared, so that the object of the petition submitted by the *a quo* Petitioners no longer have the substance of the law for which the review is being petitioned. Therefore, the petition of the *a quo* Petitioners become a lost object.

Whereas although the subject matter of the Petitioner's petition was not fully considered by the Court in the decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021, however, because the petition for a formal review is not required to fulfil all conditions cumulatively, thus according to the Court it is no longer relevant to consider the conditions other than and the rest as argued by the *a quo* Petitioner.

Based on all of the considerations above, the Court subsequently issued a decision which declared that the petition of the Petitioners is inadmissible.