



**THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**THE SUMMARY OF THE DECISION  
OF CASE NUMBER 105/PUU-XVIII/2020**

**Concerning**

**Formal and Material Review of Law Number 11 of 2020  
concerning Job Creation**

- Petitioner** : **The Central Leadership of the Federation of Textile, Clothing and Leather Workers Unions of All Indonesia (PP FSP TSK-SPSI) represented by Roy Jinto Ferianto as General Chairman, and Moch. Popon as General Secretary, Rudi Harlan, et al.**
- Type of Case** : 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 and Material Review of Article 81 Number 1, Article 13 paragraph (1) letter c, Number 2 Article 14 paragraph (1), number 3 Article 37 paragraph (1) letter b, number 4 Article 42, Number 12 Article 56 paragraph (3) and paragraph (4), Number 13 Article 57, Number 14 Article 58 paragraph (2), Number 15 Article 59, Number 16 Article 61 paragraph (1) letter c, Number 20 Article 66, Number 23 Article 79 paragraph (2) letter b, Number 24 Article 88, Number 25 Article 88A paragraph (7), Article 88B, Article 88C, Number 30 Article 92, Number 37 Article 151, Number 38 Article 151A, Number 42 Article 154A, and Number 44 Article 156 paragraph (4) letter c 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 consist of groups of people who have the same interests which consist of Trade Unions and individual Indonesian citizens who each work as workers/labourers. According to the Petitioners, the President and DPR (House of Representatives) who have been elected by the people, including the Petitioners, should not ignore the aspirations, participation, and activity of the Petitioners in the process of establishing the Law 11/2020 so that the establishment, discussion and ratification of Law 11/2020 should not be carried out in a hurry, and Chapter IV of Manpower in Law 11/2020 was only discussed for 3 days, the involvement of the Petitioners in the process of establishing Law 11/2020 should not be ignored. According to the Petitioners, the enactment of Law 11/2020 has harmed the Constitutional Rights of Petitioner I and Members of Petitioner I, either directly or indirectly. The direct and indirect impact on the other Petitioners as Indonesian employees/workers where the direct interests of the implementation of Law 11/2020 are seen as detrimental to the constitutional rights of workers as regulated in the 1945 Constitution, including the right to work and to have decent living for humanity,

the right to develop oneself through the fulfilment of basic needs, the right to receive education and benefit from science and technology, art and culture, in order to improve the quality of life and for the welfare of mankind, the right to advance oneself in fighting for his rights collectively to build his community, nation and state, the right to recognition, guarantee, protection, and legal certainty that is just and equal treatment before the law, and the right to work and receive fair and proper remuneration and treatment in a working relationship.

Regarding the authority of the Constitutional Court (Mahkamah), since the petition of the Petitioners is a formal review and judicial review of the law, *in casu* Law 11/2020, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the deadline for the submission of the petition, because Law 11/2020 was promulgated on November 2, 2020 and the petition of the Petitioners was accepted by the Court on November 16, 2020 based on the Deed of Receipt of the Petition File Number 237/PAN.MK/2020, therefore the petition of the Petitioners is submitted within the time limit for submission of a petition for a formal review of law, while in relation to the deadline for completing a formal review with regard to the above considerations, the *a quo* case was in the process of being reviewed at trial when the Constitutional Court Decision Number 79/PUU-XVII/2019 was declared. Therefore, for the *a quo* case, the Court has not actually been bound by a time limit of 60 (sixty) business days since the *a quo* case was recorded in the BRPK. Moreover, when the *a quo* petition was submitted, the Court was faced with the national agenda, namely the settlement of the 2020 Regional Head Election Results Dispute which the Court had received since December 2020 and had a time limit to settle within 45 (forty five) business days since the receipt of the petition [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], so that at that time the Court temporarily suspended all case reviews, including the case of the *a quo* Petitioners. In addition, at the time of the reviewing process of the *a quo* case, most countries around the world, including Indonesia are facing the threat of a 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 for the Spread of Corona Virus Disease 2019 (Covid-19) as a 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 review as referred to in the Constitutional Court Decision Number 79/PUU-XVII/2019, the Court in conducting the review of 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 of the Petitioners, in the petition for a formal review, Petitioner I has been able to prove his qualifications as a group of people who have the same interests, and have been able to prove the validity of the management who can represent the Petitioners in the judicial review of the law to the Constitutional Court, and the other Petitioners have been able to prove that each is an individual Indonesian citizen who is also a worker/labourer as referred to in the provisions of Article 1 point 6 of Law 21/2000 and Article 1 number 3 of Law 13/2003.

The Court assessed that there was a link between the process of establishing Law 11/2020 with the interests and functions of the Petitioner as a Trade Union, and as a worker/labourer as described in the reasons for the legal position of the *a quo* Petitioners. In the petition for a judicial review, according to the Court, regardless of whether or not the presumption of constitutional harm as stated by the Petitioners in relation to each of the norms proposed for review, there is a causal relationship. (*causal verband*) between the proposed norms and the interests of the Petitioners as a Trade Union and as workers/labourers. Therefore, the Petitioners have the legal position to act as the Petitioners in the petition for material review of *a quo* norms.

Regarding the petition for a formal review, the Court is of the opinion that in relation 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 the decision regarding the formal review of Law 11/2020, 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 MP Sitompul, 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 *a quo* petition filed by the Petitioner is no longer have the substance of the law petitioned for review. Therefore, the Petitioner's *a quo* petition become a lost object. In addition, 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.

Regarding the petition for a material review, because the Court made a separate review (*spiltsing*) between formal review and material review, the decision on the *a quo* petition cannot be separated from the decision of the Constitutional Court Number 91/PUU-XVIII/2020 regarding the formal review of Law 11/2020. Based on the decision of the Constitutional Court Number 91/PUU- XVIII/2020, it has been stated that Law 11/2020 has been declared conditionally unconstitutional and the decision in question has binding legal force since it was declared. Therefore, the *a quo* petition for material review is no longer relevant to continue, because the object of the petition submitted by the Petitioners no longer have the substance of the law for which the review is being petitioned. Moreover, by considering the principle of fast, simple, and low-cost justice [vide Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power], the *a quo* petition for material review must be declared as lost object.

Therefore, in its decision, the Court has issued a decision which declared that the petition of the Petitioners is inadmissible;