



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 21/PUU-XIX/2021

Concerning
Complaints Against the Crime of Obscenity

- Petitioner** : **Leonardo Siahaan and Fransiscus Arian Sinaga**
- Type of Case** : Review of the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 288 and Article 293 paragraph (1) and paragraph (2) of the Criminal Code against Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.
- Verdict** : 1. To grant the petition of the Petitioners in part;
2. To declare that the norm provisions of Article 293 paragraph (2) of the Criminal Code are in contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force, as long as they are not interpreted as **"complaints can be made not only by the victims but also by their parents, guardians, or proxies"**;
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioners' petition for the rest/remainder.
- Date of Decision** : Wednesday, December 15, 2021.
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who have been impaired in relations to the fulfilment of their constitutional rights to uphold and obey the laws that are positive in the Criminal Code, namely by the enactment of the norms in Article 288 and Article 293 of the Criminal Code which are considered to have multiple interpretations and do not provide clear legal certainty;

Regarding the authority of the Court, because the Petitioners are reviewing the Law, *in casu* Article 288 and Article 293 paragraph (1) and paragraph (2) of the Criminal Code against the 1945 Constitution, the Court has the authority to hear and decide on the *a quo* Petition.

In relation to the legal standing of the Petitioners, because the Petitioners have been able to explain the perceived impairment of the Petitioners' constitutional rights guaranteed in the 1945 Constitution, at least the potential impairment with the enactment of the norms of Article 288 and Article 293 of the Criminal Code submitted in the petition for *a quo* review, therefore, according to the Court, the Petitioners have legal standing to act as Petitioners in the *a quo* petition.

The Petitioners in essence request that the Court declares Article 288 paragraph (1) of the Criminal Code along the phrase "it is not yet time for marriage" and Article 293 paragraph (1) of the Criminal Code along the phrase "not yet mature" is in contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "the age limit is 19 years old". Similarly, in Article 293 paragraph (2) of the Criminal Code, the

Petitioners request that the *a quo* norms interpreted conditionally along the phrase "prosecution shall be carried out only on the complaint of the person against whom the crime was committed" (absolute complaint offense) is changed to an ordinary offense.

Against the petition of the *a quo* Petitioners, it is important for the Court to emphasize regarding the "age limit" as the minimum age to be able to carry out a marriage, the Court has confirmed through the Decision of the Constitutional Court Number 22/PUU-XV/2017 dated December 13, 2018 which is in Paragraph [3.17]. Based on the quote from the legal considerations above, regarding the age limit, including in this case the actual marriage age limit, the Court has confirmed that the limit, which Law Number 16 of 2019 concerning Amendment to Law Number 1 of 1974 concerning Marriage, has stated the age limit as referred to is 19 (nineteen) years. Therefore, the phrase "it is not yet time for marriage" as contained in the norms of Article 288 paragraph (1) of the Criminal Code and the phrase "not yet an adult" in Article 293 paragraph (1) of the Criminal Code has been answered with the amendment in the intended norm. However, the amendment related to the determination of the age limit are not within the authority of the Court to determine it. Therefore, through the *a quo* Decision, the Court emphasized that legislators should adjust the age limit in the phrase "not yet time to get married" in Article 288 paragraph (1) of the Criminal Code and the phrase "not yet mature" in Article 293 paragraph (1) of the Criminal Code on the amendment to the Criminal Code to be in accordance with the spirit of the Constitutional Court Decision Number 22/PUU-XV/2017.

Whereas based on the description of the legal considerations above, the arguments of the Petitioners regarding the unconstitutionality of Article 288 paragraph (1) of the Criminal Code, along the phrase "is not yet time for marriage", and Article 293 paragraph (1) of the Criminal Code along the phrase "is not yet an adult" is groundless according to law.

Whereas furthermore, with regard to the Petitioners' argument related to the unconstitutionality of the norms of Article 293 paragraph (2) of the Criminal Code, it must be interpreted conditionally as long as the phrase "prosecution shall be carried out only on the complaint of the person against whom the crime was committed" (absolute complaint offense) is changed to an ordinary offense. In this regard, the Court considers the following:

Whereas with regard to victims of criminal acts in immoral acts, including in this case the crime of obscenity, the victims are not only adults but are highly likely to be experienced by minors. Therefore, in relation to the conditions for the processing of the criminal act, a report is needed regarding the occurrence of a criminal event, which can be done by the community or the victim directly.

Doctrinally, reports of criminal events can be made by the public, especially in ordinary criminal acts that do not require a complaint from the victim (ordinary offense) [vide Article 108 paragraph (1) of the Criminal Procedure Code]. However, there are criminal events that require special requirements to be followed up on these criminal events at the level of investigation on the condition that specifically there must be a report or complaint from the victim, as required in Article 293 paragraph (2) of the Criminal Code. With regard to these requirements, it is important for the Court to state that the age or maturity factor has a role in relation to the presence or absence of the report as a formal requirement for a criminal incident to be followed up. In this case, within the limits of reasonable reasoning, if the victim of a crime is a minor, the minor in question has many limitations in reporting the criminal incident he/she has experienced. Therefore, it is difficult for the law enforcement processes that only rely on conducting investigations based on victims' reports, *in casu* whose victims are minors who in terms of knowledge, psychology, and others have many limitations. Meanwhile, the victims who are minors will have a profoundly serious impact on the future survival of such victims who are minors. However, with regard to the reports or complaints as required in Article 293 paragraph (2) of the Criminal Code, it often creates a dilemma, where not every victim, including the victim's family, wishes to file a report or complaint with the consideration that the disgrace of the criminal incident that befell the victim will be exposed. However, on the other hand, a criminal act as regulated in Article 293 paragraph (2) of the Criminal Code is a serious crime and cannot be justified, both in terms of religion, decency, and public order. Therefore, to balance the protection of victims and law enforcement for crimes that have been committed, the absence of reports or complaints from victims cannot

be used as an excuse for not disclosing these criminal events. Therefore, the Court is of the opinion that in order to overcome the limitations of the victims who are minors, in addition to being able to be reported or complained by the relevant minors, a report or complaint against a criminal incident that occurred can also be made by their parent, guardian, or proxy.

Based on the considerations above, the requirements for reporting or filing complaints regarding victims of minors in criminal acts of Article 293 paragraph (2) of the Criminal Code according to the Court must be adjusted so that they can accommodate the development of legal needs in society as mentioned above. Therefore, the phrase "prosecution shall be carried out only on the complaint of the person against whom the crime was committed" as stated in Article 293 paragraph (2) of the Criminal Code must be declared in contrary to the 1945 Constitution and has no binding legal force as long as it does not mean "complaints can be made not only by the victims but can also by their parents, guardians, or proxies. Therefore, the rest of the arguments of the Petitioners in relation to the norms of Article 293 paragraph (2) of the *a quo* Criminal Code should be interpreted from "absolute complaint offense" to "ordinary offense" is no longer relevant to be considered. Because, in the interpretation of the norms of Article 293 paragraph (2) of the Criminal Code in relation to complaint, it can be made not only by the victims but also by their parents, guardians, or their proxies. Therefore, the absolute complaint offense contained in Article 293 paragraph (2) of the Criminal Code automatically becomes a relative complaint offense.

Whereas based on the description of the legal considerations above, the arguments of the Petitioners regarding Article 293 paragraph (2) of the Criminal Code have created legal uncertainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution and have eliminated the right to protect oneself, one's family, honour and dignity as stated in Article 28G paragraph (1) of the 1945 Constitution, are partially grounded according to law.

Therefore, against the *a quo* petition, The Court has issued a decision with the verdicts as follows:

1. To grant the petition of the Petitioners in part;
2. To declare that the provisions of the norm of Article 293 paragraph (2) of the Criminal Code are in contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force, as long as they are not interpreted as "**complaints can be made not only by the victims but also by their parents, guardians, or their proxies**";
3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioners' petition for the rest/remainder.