



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 61/PUU-XIX/2021**

Concerning

The Prosecution Office of the Republic of Indonesia

- Petitioner** : **Jovi Andrea Bachtiar, S.H., et al.**
- Type of Case** : Examination of Law Number 16 of 2004 concerning Prosecution Office of the Republic of Indonesia (Law 16/2004) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 1 point 1, Article 2 paragraph (1), Article 17, Article 19 paragraph (2), and Article 20 of Law 16/2004 are considered to be in contrary to the 1945 Constitution.
- Verdict** : To declare that the Petitioners' petition is inadmissible.
- Date of Decision** : Tuesday, January 25, 2022.

Overview of Decision :

The Petitioners consist of individual citizens who respectively work as Prosecution Analysts, lecturers, advocates, legal consultants, and students but also collectively as activists who have the same interests, namely the wishes that the Prosecution Office of the Republic of Indonesia normatively have a clear position in the state structure. According to the Petitioners, the promulgation of the provisions of Article 1 point 1, Article 2 paragraph (1), Article 17, Article 19 paragraph (2) of Law 16/2004 opens the opportunity for interference with the principle of independence of the Prosecution Office as a law enforcement agency which shall have a negative impact on the Petitioners (regardless of profession) as part of the society in general to gain access to justice.

Regarding the authority of the Court, because the Petitioners petition for a judicial review of the Law, *in casu* Law 16/2004 against the 1945 Constitution, which is one of the authorities of the Court, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, the Court is of the opinion that Petitioner I has been able to explain his constitutional rights which are considered to be prejudiced by the promulgation of the legal norms for which judicial review is petitioned, such losses has arisen because of a causal relationship (*causal verband*) between the norm for which the review is petitioned and the perceived constitutional loss as experienced by Petitioner I. Therefore, if the petition is granted, such loss will not occur. Therefore, regardless of whether or not the unconstitutionality of the norm petitioned for review by Petitioner I is proven, the Court is of the opinion that Petitioner I has the legal standing to file the *a quo* petition. Meanwhile, regarding Petitioner II to Petitioner XIII, the Court is of the opinion that the Petitioners are unable to describe their constitutional rights, whether specifically, actually, or potentially, which according to the Petitioners' opinion, have been prejudiced by the promulgation of the provisions being petitioned for review in relation to the Prosecution Office of Indonesia.

Regarding the arguments of the Petitioners to strengthen their legal standing by using the qualifications as activists and students who have concern for the law enforcement, the Court in the trial did not obtain sufficient convincing evidence that Petitioners II to Petitioners XIII are actually activists and students who had concern for the law enforcement. Therefore it is difficult for the Court to find a causal relationship between the norms being petitioned for review and the perceived loss or potential loss of the Petitioners as law enforcement activists and students as in their arguments. Likewise, regarding the arguments of the Petitioners that some of the Petitioners, namely Petitioner I, Petitioner VIII, Petitioner IX, and Petitioner X are actively involved as both the Petitioners and the Petitioners' attorney in the Judicial Review activity of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission which has been decided in the Decision of the Constitutional Court Number 77/PUU-XVII/2019, the Court is of the opinion that the granting of legal standing in a case does not automatically makes the Petitioners obtain the legal standing for any other cases, because each case has different characteristics, including its relationship to the perceived constitutional loss of each Petitioner. Therefore, based on the aforementioned legal considerations, the Court is of the opinion that Petitioner II, Petitioner III, Petitioner IV, Petitioner V, Petitioner VI, Petitioner VII, Petitioner VIII, Petitioner IX, Petitioner X, Petitioner XI, Petitioner XII, and Petitioner XIII do not have legal standing to file for the *a quo* petition;

Regarding the Petitioners' argument, the Court first considers the matters in relation to the law which is the subject matter of the petition, namely that on December 31, 2021, the government has apparently ratified and promulgated Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecution Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755, hereinafter shall be referred to as Law 11/2021). In this case, Law 11/2021 was promulgated as an amendment to Law 16/2004 which was the subject matter of the *a quo* petition.

Since the promulgation of Law 11/2021, some of the material norms in Law 16/2004 have been amended and some norms have been declared as invalid. Therefore, the law that was petitioned for by the Petitioners, namely the law concerning the Prosecution Office of the Republic of Indonesia, shall be referred to in full as Law Number 16 of 2004 concerning the Prosecution Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecution Office of the Republic of Indonesia. Therefore, the Law 16/2004 which was used as the subject matter of the petition by the Petitioner is different from the applicable Law 16/2004, because the law to be used as the subject matter should have been Law 16/2004 as amended by Law 11/2021 as a single unit. Therefore, the subject matter of the petition filed by the Petitioner is no longer the substance of the law for which the review is being petitioned. In fact, most of the norms in the articles being petitioned for by the Petitioner have been amended in Law 11/2021. Therefore, based on the legal facts that have been considered above, the Court is of the opinion that the Petitioners' petition has lost its subject matter and the Court issued a decision which verdict states that the Petitioners' petition is entirely inadmissible.