



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

**SUMMARY OF DECISION
FOR CASE NUMBER 10/PUU-XX/2022**

Concerning

**Authority of the State Administrative Court in Handling
Silent Consent Petitions**

- Petitioner** : **Viktor Santoso Tandiasa, et al.**
- Type of Case** : Examination of Law Number 11 of 2020 concerning Job Creation (Law 11/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Examination of Article 175 number 6 of Law 11/2020 which contains the amendment to Article 53 paragraph (4) of Law Number 30 of 2014 concerning Government Administration (Law 30/2014) against Article 1 paragraph (3), Article 28D paragraph (1), and Article 24 paragraph (2) of the 1945 Constitution.
- Verdict** : To declare the Petitioners' petition is inadmissible.
- Date of Decision** : Tuesday, March 29, 2022
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who work as advocates, researchers, and students. The Petitioners believe that their constitutional rights have been prejudiced by the promulgation of the provisions of Article 175 number 6 of Law 11/2020 which contains the amendments to Article 53 paragraph (4) of Law 30/2014, because the provisions of the *a quo* norms has eliminated the authority of the State Administrative Court (*Pengadilan Tata Usaha Negara* or PTUN) in examining, adjudicating and deciding on Silent Consent petitions.

Whereas regarding authority of the Constitutional Court (*Mahkamah*), because what is petitioned for is a review of the law *in casu* Law 11/2020 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas Petitioner I is an individual Indonesian citizen who works as an advocate at the Indonesian Advocates Congress (*Kongres Advokat Indonesia*) organization. Petitioner I has received a power of attorney from the Client to submit the petition to the Directorate General of General Legal Administration of the Ministry of Law and Human Rights to apply for the issuance of the PTUN decision, but the application letter was not replied to, on the grounds that he has passed the 10-day deadline based on Article 53 of Law 30/2014, which was later changed to a 5-day deadline in Article 175 number 6 of Law 11/2020. Furthermore, Petitioner I received another Power of Attorney from the Client to submit a Silent Consent attempt to PTUN, but after Petitioner I studied the Article 175 number 6 of Law 11/2020 which contains the amendments to the provisions of Article 53 of Law 30/2014, Petitioner I considered that PTUN could no longer examine, adjudicate and decide on the Silent Consent petition, due to the provisions of the *a quo* norms has eliminated the authority of the

Administrative Court in handling the Silent Consent petitions. The *a quo* norm does not regulate where a person have to submit the petition to obtain a decision on the acceptance of the petition, because the *a quo* provisions have eliminated the Court as the party that decides the acceptance of the petition which has been considered legally granted, thus creating a legal vacuum and legal uncertainty and Petitioner I being unable to take the Silent Consent efforts to defend the interests of the Client. Furthermore, Petitioner II is an individual Indonesian citizen who works as a Researcher at the Centre for the Study of Constitutional Law (*Pusat Studi Hukum Konstitusi*), Faculty of Law, Universitas Islam Indonesia, which focuses on the organization of administration, including the efforts to control public services, as well as the principles of constitutionality through research and advocacy as well as being an active team drafting the regional regulations in various regional governments in various regions in Indonesia. The uncertainty regarding the promulgation of Law 11/2020 has made it difficult for Petitioner II to explain to the team in the regional government when they formulate the regional regulations as instructed by the Minister of Home Affairs. Meanwhile, Petitioner III is an individual Indonesian citizen who is a student and serves as the Chairman of the Semi-Autonomous Body of the Women's Indonesian Islamic Student Movement Corps (*Korps Pergerakan Mahasiswa Islam Indonesia Putri*), the Commissariat of Universitas Nahdlatul Ulama Indonesia for the 2021-2022 period who has the responsibility to carry out advocacy, especially in the scope of government administration affairs, which in reasonable reasoning will resort to Silent Consent efforts. Petitioner III will suffer a constitutional loss with the removal of the court's authority, *in casu* PTUN in the provisions of the *a quo* norm.

Whereas the Petitioners have explained that their constitutional rights are guaranteed by the 1945 Constitution. However, regarding to the presumption of constitutional loss in relation to the legal standing as described by the Petitioners, the Court will consider the matter together with the subject matter of the petition.

Regarding the subject matter of the petition, the Petitioners in principal argue that the amendment to the provisions of Article 53 of Law 30/2014 is based on the wishes of the legislators to include an electronic system in submitting the petitions to Government Agencies and/or Officials in relation to the licensing system in order to achieve an efficient licensing system issued by the Government Agencies and/or Officials. However, there is an issue of a legal vacuum, after being amended in Article 175 number 6 of Law 11/2020 which resulted in the elimination of the role of the court, *in casu* PTUN to decide on the acceptance of the petitions which has been considered legally granted.

Whereas after the Court carefully read the petition of the Petitioners along with the evidence submitted by the Petitioners, the Court is of the opinion that regarding the judicial review of Law 11/2020, the Court needs to reaffirm the verdict regarding Law 11/2020 which the Court has decided on for its formal review in the Decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021. Meanwhile regarding the Petitioners' argument, the Court reaffirmed the legal considerations in the Decision of the Constitutional Court Number 64/PUU-XIX/2021, dated January 25, 2022, Paragraph [3.11]. Based on the two decisions, it is clear that the petition of the Petitioners for a material examination of Law 11/2020 is premature because it was submitted during the grace period of 2 (two) years for the formal corrections of Law 11/2020, and there is still a possibility of amendments or improvements in substance made by the legislators. Meanwhile, regarding the argument that there is a legal vacuum due to the elimination of the court's authority, *in casu* PTUN to issue the decisions and/or actions which shall be deemed as legally granted, the Court is of the opinion that this matter can still be related to Article 175 number 6 of Law 11/2020 concerning Amendments to Article 53 paragraph (5) of Law 30/2014 which states, "Further provisions regarding the form of determination of Decisions and/or Actions which shall be deemed legally granted as referred to in paragraph (3) shall be regulated in a Presidential Regulation". Because Law 11/2020 is still declared valid, but as long as a material examination is carried out, the Court is of the opinion that the constitutionality examination must wait for a period of 2 (two) years for the corrections of Law 11/2020 to end. Therefore,

in fact there is no legal vacuum as argued by the Petitioners, even if the Presidential Regulation has not regulated it or the material is in contrary to the above regulations, then it is not within the authority of the Court to examine it.

After the Court has considered the subject matter of the petition, the Court will then consider the legal standing of the Petitioners. Whereas regarding the arguments of the Petitioners in explaining their legal standing, after the Court has examined the evidence presented by Petitioners I, Petitioners II and Petitioners III, the Court considers that Petitioner I in explaining his legal standing has considered himself to have suffered actual losses with the promulgation of norms for which examination is petitioned for. However, after the Court carefully examined the evidence submitted by the Petitioners, especially regarding Petitioner I, it turned out that there was no special power of attorney granted by the principal (client) to file a petition for a judicial review of the law to the Constitutional Court. The Court only obtained an evidence of a special power of attorney from the principal (client) of Petitioner I to be used to submit an application to the Directorate General of General Legal Administration of the Ministry of Law and Human Rights as well as a special power of attorney to file a Silent Consent attempt to PTUN. Therefore, Petitioner I as an advocate who does not directly suffer a constitutional loss, cannot directly use the principal's (client's) loss as a constitutional loss, except with a special power of attorney to represent the interests of his principal (client) to submit a petition to the Constitutional Court. An advocate cannot use the reason for the constitutional loss of the principal (client) as the reason for the constitutional loss of Petitioner I as the Court has confirmed in previous decisions used as the basis for considering the legal standing proposed by the advocate based on certain cases that have been experienced by his principal (client) [*vide* the Decisions of the Constitutional Court, among others: Number 10/PUU- VIII/2010, Number 17/PUU-VIII/2010, Number 72/PUU-XII/2014 and Number 32/PUU-XIV/2016]. This is because the legal subject who suffers a constitutional loss is in fact is the principal (client), while the relevant advocate does not necessarily experience a specific or actual loss with the promulgation of the law petitioned for review. Based on the description of the aforementioned legal considerations, the Court is of the opinion that Petitioner I does not have the legal standing to file the *a quo* petition. Likewise, Petitioner II and Petitioner III, although they have described their constitutional losses, but because these losses are not specific and actually occur to Petitioners II and Petitioners III, the Court is of the opinion that Petitioners II and Petitioners III have no legal standing to file for the *a quo* petition. Therefore, the Court is of the opinion that the Petitioners do not have the legal standing to act as Petitioners in the *a quo* petition. Even if the Petitioners have the legal standing, *quod non*, it has turned out to be the subject matter of the Petitioners' petition is premature.

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