



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

**SUMMARY OF DECISION
FOR CASE NUMBER 49/PUU-XX/2022**

Concerning

**Preparation of Academic Papers in the Formal Examination
of the State Capital Law**

- Petitioner** : **SM Phiodias Marthias**
Type of Case : Formal Examination of Law Number 3 of 2022 concerning the State Capital (Law 3/2022) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Subject Matter : The formation of Law 3/2022 is in contrary to the 1945 Constitution.
Verdict : To dismiss the Petitioner's petition in its entirety.
Date of Decision : Wednesday, July 20, 2022.

Overview of Decision :

The Petitioner is an individual Indonesian citizen who believes that his constitutional rights as stipulated in Article 28C and Article 28D of the 1945 Constitution are prejudiced due to the promulgation of Law 3/2022 because it does not fulfil the provisions of the 1945 Constitution, it is not in accordance with the principle of the establishment of legislation as stated in Article 5 of Law Number 12 of 2011 concerning the Establishment of Legislation (Law 12/2011), and it does not fulfil the provisions for the preparation of Academic Papers in accordance with Attachment I of Law 12/2011.

Regarding the authority of the Court, because the Petitioner petitions for a formal examination of the law *in casu* Law 3/2022 against the 1945 Constitution, which is one of the authorities of the Court, thus based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a and Article 51 paragraph (3) of the Constitutional Court Law, as well as Article 29 paragraph (1) of Judicial Powers Law, the Court has the authority to hear the *a quo* petition.

Regarding the fulfilment of the deadline for submitting a formal examination, the Court is of the opinion that the petition for a formal examination of the law against the 1945 Constitution shall be filed within 45 (forty-five) days since the promulgation of the law in the State Gazette of the Republic of Indonesia and the Supplement to the State Gazette of the Republic of Indonesia. Meanwhile, the Petitioner submitted the petition for a formal examination of Law 3/2022 to the Constitutional Court on March 30, 2022 based on the Deed of Submission of the Petitioner's Petition Number 46/PUU/PAN.MK/AP3/03/2022 and recorded in the Electronic Constitutional Case Registration Book (*Buku Registrasi Perkara Konstitusi Elektronik* or e-BRPK) on April 1, 2022 under the Number 49/PUU-XX/2022. Meanwhile, Law 3/2022 was promulgated on February 15, 2022, thus the petition was submitted on the 44th (forty-fourth) day since Law 3/2022 was promulgated in the State Gazette of the Republic of Indonesia of 2022 Number 41 and Supplement to the State Gazette of the Republic of Indonesia Number 6766. Therefore, the petition for a formal examination of Law 3/2022 is submitted within the specified time limit.

Regarding the legal standing, because the Petitioner submitted a petition for a formal examination of the Law concerning the State Capital which affects the interests of all citizens

of Indonesia or the law that will have an impact on the aspects of people's lives and the fulfilment of the constitutional rights of every citizen, in this regard the Petitioner has proven that he is an individual Indonesian citizen, so that he has a relationship in the formation of Law 3/2022. Therefore regardless of whether the argument of the Petitioner that there is an unconstitutionality in the formation process of Law 3/2022 is proven or not, the Court is of the opinion that the Petitioner has been able to describe his legal standing which has a relationship with Law 3/2022 and has also described specifically and potentially a causal relationship between his perceived loss of rights and the formation process of Law 3/2022 which was not in accordance with the 1945 Constitution. Therefore, if this petition is granted, such loss of the constitutional rights will not occur. Therefore, the Petitioner has the legal standing to act as the Petitioner in the formal examination of the *a quo* Law 3/2022.

Regarding the subject matter of the petition, because it is deemed by the Court to be sufficiently clear, there is no urgency and relevance for the Court to request the statements and/or minutes of meetings in relation to the Petitioner's petition to the parties as referred to in Article 54 of the Constitutional Court Law. Moreover, in the formal examination of Law 3/2022, there are Case Number 25/PUU-XX/2022 and Case Number 34/PUU-XX/2022 which have been declared to have completed their trials [*vide* Summary of the Court Hearings Number 25/PUU-XX/2022 and Number 34/PUU-XX/2022 dated May 18, 2022, page 25], thereby it is convincing for the Court that there is no need to hold a trial in order to request the statements and/or minutes of meetings from the legislators in the *a quo* case.

Regarding the subject matter of the Petitioner's petition in relation to the preparation and content of the Academic Papers of Law 3/2022 which are not in accordance with the principles of establishing the legislation, therefore the formation of Law 3/2022 is in contrary to the 1945 Constitution, the Court considers the following:

1. Whereas the preparation of the academic papers shall be a reference in the formation of the Bill (RUU), so that the background section of the academic papers explains why the formation of the Bill requires an in-depth and comprehensive study of scientific theories or thoughts in relation to the content of the Bill to be formed. This scientific thinking leads to the preparation of philosophical, sociological, and juridical arguments to support whether or not there is a need to draft a bill [*vide* Attachment I of Law 12/2011]. Because of the position of the academic papers is as a reference, in the development of the discussion of a bill, in order to obtain mutual approval from the legislators, it is not necessarily that the things contained in the academic papers shall be included in the material of the law. In other words, even though it has been contained in the academic papers and later in the discussion of the bill, in the event that there is any amendment, such amendment does not necessarily cause the formation process of the law to be unconstitutional.
2. Whereas the existence of the academic papers is indeed required in the formation of laws. Article 43 paragraph (3) of Law 12/2011 states, "a Bill which comes from the DPR (House of Representatives), the President, or the DPD (Regional Representative Council) must be accompanied by an Academic Papers". In the *a quo* case, there has been an academic papers of Law 3/2022 as proposed by the Petitioner, so that at the stage of preparation in the formation of Law 3/2022, it is evident that the preparation was accompanied by an academic papers.
3. Whereas regarding the content of the Academic Papers of Law 3/2022 which constitutionality is questioned, by considering that the preparation of the academic papers is at the stage of preparation of the law, it must go through the stage of discussion of the formation of the law, where developments or amendments are possible. The Petitioner should be questioning the process or procedure for the formation of Law 3/2022 which he considered to be in contrary to the 1945 Constitution. Meanwhile, the process or procedure for the formation of Law 3/2022 has been assessed by the Court in the Decision of the Constitutional Court Number 25/PUU-XX/2022 and the Decision of the Constitutional Court Number 34/PUU-XX/2022 which have been declared before the declaration of the decision of the *a quo* case, which basically state that the formation process of Law 3/2022 is not in contrary to the 1945 Constitution. Therefore, the

arguments of the Petitioner for both cases are legally unjustifiable. Therefore, regarding the *a quo* argument of the Petitioner, because it relates to the formation process of Law 3/2022, *in casu* the academic papers of Law 3/2022, it must also be declared as legally unjustifiable.

Based on all the legal considerations as described above, the Court is of the opinion that the subject matter of the Petitioner's petition is entirely legally unjustifiable. Accordingly, the Court subsequently issued a decision which verdict states that the Petitioner's petition is entirely dismissed.