CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 38/PUU-XIX/2021

Concerning

Function of the Press Council to Facilitate the Preparation of Press Regulations

Petitioners	:	**Heintje Grontson Mandagie, et al.**
Type of Case	:	Judicial review of Law Number 40 of 1999 concerning the Press (Law 40/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial review of Article 15 paragraph (2) letter f and Article 15 paragraph (5) of Law 40/1999 are in contrary to the principle of freedom of association and assembly, the principle of legal certainty, and the principle of being free from discrimination under Article 28, Article 28C paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution
Verdict	:	To dismiss the Petitioners' petition entirely.
Date of Decision	:	Wednesday, August 31, 2022
Overview of Decision	:	

The Petitioners are individual Indonesian citizens who work as journalists and are members of an organization of journalists. As a result of Article 15 paragraph (2) letter f and Article 15 paragraph (5) of Law 40/1999, they suffered a constitutional loss because the press organizations of the Petitioners were not facilitated by the Press Council to draw up organizational regulations in the press sector independently, and also not appointed as Member of the Press Council by Presidential Decree.

Regarding the authority of the Court, because the *a quo* petition is for reviewing the constitutionality of legal norms, *in casu* Article 15 paragraph (2) letter f and Article 15 paragraph (5) of Law 40/1999 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

With regard to the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have been able to explain their constitutional rights and also the presumed loss as a result of the enactment of Article 15 paragraph (2) letter f and Article 15 paragraph (5) of Law 40/1999 which according to the Petitioners is related to the profession of the Petitioners as a journalist. Therefore, regardless of whether there are any issues of constitutional norms as argued by the Petitioners, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the constitutional basis of the press in Indonesia is based on Article 28 of the 1945 Constitution which states, "Freedom to associate and to assemble, to express thoughts verbally and in writing and so on is stipulated by law". Freedom of the press is a manifestation of people's sovereignty and is a very important element in creating a democratic life in society, nation and state, so that the freedom to express thoughts and opinions as stated in Article 28 of the 1945 Constitution must be guaranteed.

The history of the press in Indonesia records that MPRS RI Decree No. XXXII/MPRS/1966 at the beginning of the New Order was the forerunner to the birth of regulatory provisions regarding the press. MPRS RI Decree No. XXXIII/MPRS/1966 regulates the Development of the Indonesian Press. Subsequently, a Law was passed that regulated the press, namely Law Number 11 of 1966 concerning Basic Provisions for the Press (hereinafter shall be referred to as Law 11/1966) which was an elaboration of the MPRS RI Decree Number XXXII/MPRS/1966. Law 11/1966 was amended by Law Number 4 of 1967 concerning Additions to Law Number 11 of 1966 concerning Basic Provisions of the Press, and then Law 11/1966 was amended by Law Number 21 of 1982 concerning Amendments to Law Number 11 of 1966 concerning Basic Provisions of the Press as Amended by Law Number 4 of 1967 (hereinafter shall be referred to as Law 21/1982). During the enactment of Law 11/1966 and its amendment, namely Law 21/1982, the control of the life of the press by the government was evident in the presence of several provisions, among others, namely:

1) The Chairperson of the Press Council is the Minister of Information [*vide* Article 7 paragraph (1) of Law 11/1966];
2) Members of the Press Council shall consist of representatives of press organizations, representatives of the Government and representatives of the public, in this case experts in the press sector and experts in other fields [*vide* Article 6 paragraph (2) Law 21/1982];
3) Every press publication organized by a press company shall require a Press Publishing Business License (*Surat Izin Usaha Penerbitan Pers* or SIUPP) issued by the Government [*vide* Article 13 paragraph (5) of Law 21/1982];
4) Criminal punishments and or fines for those who organize press publications without SIUPP [*vide* Article 19 paragraph (2) of Law 21/1982];

Meanwhile, Article 4 of Law 11/1966 did state that the National Press shall not subject to censorship and banning, but the government at that time could still revoke the SIUPP for any mass media, which also meant as banning. Moreover, even though the provisions regarding SIUPP are regulated by the Government after hearing the opinion of the Press Council [*vide* Article 13 paragraph (5) of Law 21/1982], in accordance with the provisions of Law 11/1966 and Law 21/1982, the Press Council must be chaired by Minister of Information as the representative of the government.

The existence of reformation and the replacement of the new order in 1998 became a moment of change in the life of the press in Indonesia. There was an amendment/change to the 1945 Constitution so that there are other articles, in addition to Article 28 of the 1945 Constitution, which relate to the press, namely Article 28E which states, "Everyone shall have the right to freedom of association, assembly and expression of opinion", and Article 28F which states, "Everyone shall have the right to communicate and obtain information to develop his personality and social environment, and shall have the right to seek, obtain, possess, store, process and convey information using all types of available channels". The existence of these articles of the 1945 Constitution adds and reinforces the guarantee of freedom of the press in Indonesia after the reformation. Simultaneously after the 1998 reformation, a new law regarding the press was also born, namely Law 40/1999 which brought changes to the politics of press law in Indonesia which originally placed full control of the press in the hands of the government/executive, into legal politics that is guaranteeing the freedom of the press. Law 40/1999 which was promulgated on September 23, 1999 became a milestone in the birth of independence and freedom of the press in Indonesia. In *memorie van toelichting,* the Press Law states that the freedom of the press is an effort to improve the quality of democracy in a better direction so that it can expand people's rights to express opinions in the life of the nation and state, to improve social education for the community, to increase social control of society in all sectors of national and state life, as well as to increase the creativity of the community by increasing insight through a broader information. Therefore, freedom of the press can create an orderly and just society, which will ultimately accelerate the development of the nation's welfare. Several provisions in Law 40/1999 which regulate the guarantee of freedom of the press are:

1) Freedom of the press is one of the forms of people's sovereignty based on the principles of democracy, justice, and legal supremacy [*vide* Article 2 of Law 40/1999].

2) Freedom of the press is guaranteed as a human right of citizens [*vide* Article 4 paragraph (1) of Law 40/1999].
3) The national press shall not subject to censorship, banning or broadcasting restriction [*vide* Article 4 paragraph (2) of Law 40/1999];
4) To guarantee freedom of the press, the national press shall have the right to seek, obtain and disseminate ideas and information [*vide* Article 4 paragraph (3) of Law 40/1999];
5) As a responsibility in the reporting before the law, the journalists shall have the Right of Refusal [*vide* Article 4 paragraph (4) of Law 40/1999];
6) Journalists are free to choose any journalist organizations [*vide* Article 7 paragraph (1) of Law 40/1999];
7) In carrying out their profession, journalists shall receive legal protection [*vide* Article 8 of Law 40/1999];
8) The Press Council is free from any government intervention as seen from the composition of the Press Council which has no government representatives [*vide* Article 15 paragraph (3) of Law 40/1999];
9) Self-regulation in the preparation of regulations in the press sector by providing space for press organizations to formulate their own regulations in the press sector facilitated by an independent Press Council [*vide* Article 15 paragraph (2) letter f of Law 40/1999].

Although Law 40/1999 has guaranteed freedom of the press as well as the implementation of self-regulation, but now there is a tendency for the press to be too free. Therefore, the Court needs to remind that it is not enough for the press to merely adhere to the principles of liberty, freedom and independence, but also to be able to carry out its function as one of the pillars of democracy in a responsible manner. The national press is obliged to report the events and opinions with respect to religious norms and a sense of decency in society as well as the principle of the presumption of innocence [*vide* Article 5 paragraph (1) of Law 40/1999]. In addition, in carrying out their profession, journalists shall have and comply with the Journalistic Code of Ethics [*vide* Article 7 paragraph (2) of Law 40/1999]. The spirit of press reformation in Indonesia shall require the press to be able to speak for the interests of the people in a democratic legal state in accordance with the 1945 Constitution and Pancasila ideology, not a press that is as free as possible as the press in countries that adhere to individualistic-liberalistic views.

In the life of a democratic society, nation and state, the freedom to express thoughts and opinions in accordance with one's conscience and the right to obtain information are essential human rights that are necessary to uphold justice and truth, to improve public welfare and to educate the nation's life. The national press as a vehicle for mass communication, information dissemination and opinion formation must be able to carry out its principles, functions, rights, obligations and roles as well as possible based on a professional freedom of the press, so that it must receive legal guarantees and protection, and be free from any interference and coercion from anywhere. The national press is also expected to play a role in maintaining the world order based on freedom, lasting peace and social justice [*vide* preamble Considering section of Law 40/1999].

Whereas the Petitioners argued that the function of the Press Council as stipulated in Article 15 paragraph (2) letter f of Law 40/1999, especially the word "facilitating" has led to ambiguity of interpretation so that the Press Council has a monopoly on the formation of regulations in the press sector. Regarding the arguments of the Petitioners, the Court considers that the purpose of forming the Press Council is to develop the freedom of the press and to increase the quality and quantity of the national press [*vide* Article 15 paragraph (1) of Law 40/1999]. This goal shall be achieved, among others, by the enactment of regulations in the field of the press that serve as a reference and standardization. However, in order to keep the independence and freedom of the press, regulations in the field of the press shall be drawn up in such a way without any intervention from the government or the Press Council itself. In this case, Article 15 paragraph (2) letter f of Law 40/1999 stipulates that the Press Council shall perform certain functions, one of which is facilitating the press organizations in drafting the regulations in the press sector and improving the quality of the journalistic profession. The

meaning of "facilitating" is to emphasize that the Press Council only organizes it without participating in determining the contents of the regulations in the press sector. The Court is of the opinion that the function of "facilitating" is in line with the spirit of independence and freedom of the press organization.

The background and aspirations for the formation of Law 40/1999 require that the institution, structure, membership and activities of the Press Council be adapted to the spirit of reformation, and shall be independent in nature. The role and function of the Press Council in facilitating the press organizations in drafting the regulations in the press sector is so that each press organization does not form its own regulations which shall create a potential for conflict between one regulation and another. Through this facilitating function, the rights of press organizations shall be guaranteed to express their thoughts and opinions on the substance of the regulations to be established in the press sector.

In addition to these legal considerations, without the Court intending to evaluate a concrete case, the Court found within the facts revealed in court that there were statements from press organizations registered with the Press Council which explained that the Press Council has facilitating the making of regulations related to the press as a result of joint discussion by involving press organizations in forming the regulations in the press sector and has never monopolized the making of regulations, let alone taking over the role of a press organization as argued by the Petitioners as supported by the testimony of the Related Parties Expert at the Press Council. This means that the Press Council acts as a facilitator in drafting the regulations in the press sector, and not as a regulatory body (regulator). Even if it is true that there are press regulations whose formation is monopolized by the Press Council for the benefit of the Press Council, or are drafted not in accordance with the functions of the Press Council, as argued by the Petitioners, this is a matter of implementing the norms and not a matter of the constitutionality of the norms, therefore it is not under the authority of the Court to examine them. Likewise, with the arguments of the Petitioners regarding the implementation of competency tests or competency certification, the Court is of the opinion that this is a concrete issue that has also been resolved through Decision of the Central Jakarta District Court Number 235/Pdt.G/2018/PN.Jkt.Pst *juncto* DKI Jakarta High Court Decision Number 331/PDT/2019/PT DKI.

Based on the aforementioned legal considerations, the Petitioners' argument that Article 15 paragraph (2) letter f of Law 40/1999 creates an ambiguity in the interpretation of the word "facilitating" so that the Press Council has a monopoly on regulations in the press sector, is legally unreasonable.

Whereas regarding the argument of the Petitioners which states that Article 15 paragraph (5) of Law 40/1999 has led to ambiguity in interpretation that resulted in the Petitioners not being appointed as Member of the Press Council through a Presidential Decree. Regarding such argument of the Petitioners, the Court considers that the membership of the Press Council as stipulated by a Presidential Decree does not reduce the independence of the Press Council considering that the selection process for the members of the Press Council has been stipulated in Article 15 paragraph (3) of Law 40/1999 which states that the Members of the Press Council shall consist of:

1. journalists selected by the organization of journalists;
2. the chairperson of the press company chosen by the press company organization;
3. community leaders, experts in the field of press and/or journalist communication and press company organizations.

Furthermore, the determination of the Chairman and Deputy Chairman of the Press Council shall be chosen from and by the members [*vide* Article 15 paragraph (4) of Law 40/1999]. Through such an election process, it means that members of the Press Council are determined by the members of the press who are involved in the world of the press. The existence of a Presidential Decree is only as validation and decision (*beschikking*) that are individual, concrete, and valid once (*einmalig*) against the elected members of the Press Council. This means that the President cannot intervene in the process of determining the membership and chairman of the Press Council.

As for the *petitum* of the Petitioners which petitioned for the Court to interpret Article 15 paragraph (5) of Law 40/1999 as "Presidential decisions are administrative in nature according to the proposals or applications from press organizations, press companies and journalists who were elected through the mechanism of a democratic press congress", in fact it shall potentially cause disharmony when each press organization administers its own election of members of the Press Council individually. Even if the Petitioners have objections to the fact that they are not appointed as members of the Press Council through a Presidential Decree, then this is a concrete problem and not a matter of constitutionality of norms. Moreover, the Presidential Decree, issued by the President, is only administrative in nature for validating the Membership of the Press Council which has been selected through the process as stipulated in Article 15 paragraph (3) of Law 40/1999.

Based on the aforementioned legal considerations, the Petitioners' argument regarding Article 15 paragraph (5) of Law 40/1999 gave rise to an ambiguity of interpretation which resulted in the Petitioners not being appointed as members of the Press Council, is legally unreasonable.

Whereas based on all of the aforementioned legal considerations, the Court is of the opinion that the provisions of the norms of Article 15 paragraph (2) letter f and Article 15 paragraph (5) of Law 40/1999 have evidently not violated the freedom of association and assembly and have not created legal uncertainty and discrimination as argued by the Petitioners pursuant to Article 28, Article 28C paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the1945 Constitution.

Therefore, the Petitioners' petition is entirely legally unreasonable, accordingly, the Court passed down a decision whose verdict states that it dismisses the Petitioners' Petition entirely.