



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 69/PUU-XX/2022

Concerning

Formal Judicial Review of the Law on the Formation of Legislation

- Petitioners** : Partai Buruh (the Labour Party), in this case represented by Ir. H. Said Iqbal as President, and Ferri Nuzarli as General Secretary, and Ramidi, et al.
- Type of Case** : Formal judicial review of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (Law 13/2022), against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Formal judicial review of over Law 13/2022 against the 1945 Constitution
- Verdict** : To dismiss the petition of the Petitioners entirely
- Date of Decision** : Monday, October 31, 2022

**Overview of Decision :**

Petitioner I is Partai Buruh which is a legal political party classified as a public legal entity, represented by Said Iqbal and Ferri Nuzarli respectively as President and Secretary General, who believes that it has a direct link with the process of formation process of Law 13/2022, because the *a quo* Law was formed as a follow-up to the Decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021. Petitioner II to Petitioner VII and Petitioner IX are individual Indonesian citizens who are activists and administrators/leaders of trade unions/labour unions and Petitioner VIII is individual Indonesian citizen who is a lecturer, activist and serve as General Chairman of Forum Pegawai Tenaga Honorer Seluruh Indonesia (FPTHSI or Indonesian Honorary Employees Forum), which has direct links with the formation process of the *a quo* law because he had previously submitted himself as a Petitioner or represented his organization in a case for reviewing the Law 11/2020 at the Constitutional Court and has a direct link with the formation process of 13/2022 which is being petitioned for a formal review because the *a quo* Law shall be the basis for the formation of all laws or even legislations in Indonesia which will be binding on Petitioner VI to Petitioner IX in accordance with the principle of "Legal Fiction".

In relation to the Authority of the Court, because the Petitioners petitioned for a formal review of the law, *in casu* Law 13/2022 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Regarding the deadline for submitting a formal review, because Law 13/2022 was promulgated on June 16, 2022, the deadline for submitting a petition shall be July 30, 2022. The Petitioners' petition was received by the Court on June 27, 2022 based on the Deed of Submission of the Petitioner's Petition Number 63/PUU/PAN.MK/AP3/06/2022. Therefore, the petition of the Petitioners was still submitted within the deadline for submitting a petition for a formal review of the law.

In relation to the legal standing, Petitioner I is a manager of Partai Buruh who testified

that they have the right to represent their party both inside and outside of the court. According to Petitioner I, most of the 11 (eleven) organizations supporting Partai Buruh as a result of the Fourth Congress of 2021 are organizations originating from the trade unions/labour unions and farmers' unions that were once the Petitioners in the case Number 91/PUU-XVIII/2020 which was declared in a hearing session open to the public on November 25, 2021. All of these supporting organizations for Partai Buruh, who shall be referred as "Continuing Initiators" for Partai Buruh as stipulated in Article 15 paragraph 10 of the Articles of Association of Partai Buruh [*vide* evidence P-2], believe that they have the interest in the establishment of Law 13/2022 because the *a quo* Law has a direct link with Law 11/2020 which was formed by the omnibus method as stipulated in Law 13/2022. Therefore, Petitioner I has been able to describe his legal standing which is closely related to Law 13/2022, so that there is a relationship between Petitioner I and the law being petitioned for formal review. Petitioners II to Petitioner V are individual Indonesian citizens who were previously the Petitioners in the review over Law 11/2020. Therefore, Petitioner II to Petitioner V have been able to describe the presumed loss of their constitutional rights which is closely related to the formation of Law 13/2022 so that there is a relationship between Petitioner II to Petitioner V and the law being petitioned for formal review. Petitioners VI to Petitioner IX are individual Indonesian citizens, who consider their constitutional rights to have been impaired by the enactment of Law 13/2022, which will become the basis for establishing all legislation that will bind Petitioners VI to Petitioners IX according to the principle of "legal fiction." Petitioners VI to Petitioner IX in describing the presumption that their constitutional rights have been impaired, relate to the requirements that must be fulfilled in the formal review of the *a quo* law. So far, Petitioner VI to Petitioner IX have been able to describe the legal standing related to the formation process of Law 13/2022. Therefore, there has been a causal relationship between Petitioner VI to Petitioner IX with the formal review of the *a quo* Law.

Based on the description of the aforementioned legal considerations, Petitioner I to Petitioner IX have been able to describe the reasons for the loss of their constitutional rights as a political party and individual Indonesian citizens and a causal relationship (*causal verband*) between the presumed loss of constitutional rights in the formal review of the *a quo* law. Therefore, the Court is of opinion that regardless of whether the argument is proven or not regarding the unconstitutionality of the formation process of Law 13/2022, Petitioners I to Petitioners IX (hereinafter shall be referred to as the Petitioners) have the legal standing to file for the *a quo* petition.

In relation to the subject matter of the petition, the Petitioners argued that the formation process of Law 13/2022 had violated the "principle of efficiency and effectiveness" because the amendment material to Law 13/2022 was very limited in providing legitimacy to Law 11/2020. Regarding the *a quo* argument of the Petitioners, the Court considered the following:

1. The elucidation of Article 5 letter e of Law 13/2022 gives the interpretation regarding the term "the principle of efficiency and effectiveness" which means that each legislation is made because it is really needed and useful in regulating the life of society, nation and state;
2. To see carefully how far Law 13/2022 is needed and is also beneficial for the life of the nation and state, the first thing that must be done is to read comprehensively all the documents related to the formation process of Law 13/2022, as well as all parts of the *a quo* Law, starting from the considering section which considers it as a philosophical, sociological, and juridical basis as well as the general elucidation section which describes the background for the formation of a law, whether it is true that it violates this principle;
3. In the Considering section of Law 13/2022, it is determined that the formation of legislation shall be carried out in a planned, integrated and sustainable manner to realize legal certainty and sovereignty in the hands of the people as mandated by the 1945 Constitution in supporting the achievement of the direction and objectives of national

legal development [*vide* Considering Section letter a of Law 13/2022]. Then, the *a quo* law is also established to realize the formation of legislation that are planned, integrated and sustainable so that it is necessary to organize and improve the mechanism for forming the legislation from planning, drafting, discussing, ratifying or enacting to promulgation by adding, among others, the arrangements regarding the omnibus method in forming the legislation and strengthening meaningful community involvement and participation. Based on these considerations, it is necessary to amend Law 12/2011 *jo.* Law 15/2019 [*vide* Considering Section letter b and letter c of Law 13/2022];

Based on the aforementioned description of the considerations, the Court is of the opinion that the substance of the Elucidation of Article 5 letter e of Law 13/2022 is not a new substance because since Law 10/2004 was enacted, then amended by Law 12/2011, it has been determined that there are principles for forming good legislation, one of which is the principle of usability and effectiveness. With regard to this principle, there are at least 2 (two) criteria for assessing whether the formation of a law fulfils the intended principle, namely that it is really needed in regulating the life of society, nation and state, and is useful in regulating the life of society, nation and state. With regard to the criteria of "really needed", the need in the formation of legislation shall be as follows: a further regulation of the 1945 Constitution; the law orders to be regulated further through another law; ratification of certain international agreements; follow-up on the decision of the Constitutional Court; and/or fulfilment of legal needs in society [*vide* Article 10 of Law 12/2011). Specifically, with regard to the follow-up on the decision of the Constitutional Court, the formation of Law 13/2022 is an order from the decision of the Constitutional Court Number 91/PUU-XVIII/2020. In the *a quo* decision of the Constitutional Court, in principal it states that a standard legal basis should be formed immediately to serve as a guide in the formation of legislation using the omnibus law method which has these special properties.

Based on the aforementioned legal considerations, the Court is of the opinion that the argument of the Petitioners that the formation process of Law 13/2022 violates the "principle of efficiency and effectiveness" as stipulated in Article 5 letter e of Law 13/2022 is legally unreasonable.

Furthermore, with regard to the argument of the Petitioners who argue that the formation process of Law 13/2022 violates the "principle of clarity of formulation" because the Elucidation of Article 72 paragraph (1a) describes the "technical writing errors" shall include, among others, incomplete letters, article references or inaccurate paragraphs, typographical errors, and/or inappropriate titles or serial numbers of chapters, sections, paragraphs, articles, phrases, or points, which are insubstantial. Regarding the *a quo* arguments of the Petitioners, the Court considered the following:

1. Whereas the Elucidation of Article 5 letter f of Law 13/2022 provides an interpretation that "principle of clarity of formulation" means that each legislation must meet the technical requirements for drafting the legislation, systematics, choice of words or terms, as well as clear legal language and easy to understand so as not to give rise to various kinds of interpretations in its implementation;
2. Regarding the *a quo* argument of the Petitioners, it is important for the Court to first quote the norms of Article 72 paragraph (1a) of Law 13/2022 which states that "In the case of Bills that have been jointly approved by the DPR (House of Representatives) and the President as referred to in paragraph (1) there are still technical errors in writing, the corrections shall be made by the leadership of the apparatus of DPR who discussed such Bills and the Government which shall be represented by the ministry who discussed such Bills". Furthermore, in the elucidation it is stated that:

"the description of "technical writing errors" shall include, among others, incomplete letters, article references or inaccurate paragraphs, typographical errors, and/or inappropriate titles or serial numbers of chapters, sections, paragraphs, articles, phrases, or points, which are insubstantial."

The norms of Article 72 paragraph (1a) of Law 13/2022 was formed due to the order under the Decision of the Constitutional Court Number 91/PUU-XVIII/2020 which in principal

requires a regulation so that if in the formulation process of any norms in the law there are technical errors in writing, then an error tolerance limit shall be needed. This is because the Decision of the Constitutional Court Number 91/PUU-XVIII/2020 has emphasized the following, "... even if an amendment is forced to be made, it shall only in the formatting or writing due to a typing error (typo) and such amendment may not change the meaning of the norms of the article or the substance of the bills that has been mutually agreed upon". These legal considerations have been accommodated in Article 72 paragraph (1a) and the Elucidation of Law 13/2022.

Based on the aforementioned legal considerations, the Court is of the opinion that the argument of the Petitioners that the formulation of Law 13/2022 violates the "principle of clarity of formulation" as stipulated in Article 5 letter f of Law 13/2022 is legally unreasonable.

Furthermore, regarding the argument of the Petitioners who argue that the formation process of Law 13/2022 violates the "principle of openness", because the amendment process of Law 13/2022 did not implement any community participation in the real sense (meaningful participation) as referred to in the Decision of the Constitutional Court Number 91/PUU-XVIII/2020. This is argued by the Petitioners by discussing the amendment to the law which were relatively fast, by only being discussed for 6 (six) days at the Legislative Body of the DPR RI (Indonesian House of Representatives). Regarding the *a quo* argument of the Petitioners, the Court considered the following:

1. Based on the Elucidation of Article 5 letter g of Law 13/2022, the principle of transparency means that the formation of legislation starting from planning, drafting, discussing, ratifying or enacting and promulgating, including monitoring and reviewing shall provide access to the public who have interests and directly affected to obtain information and/or to provide inputs at each stage in the formation of legislation which shall be carried out verbally and/or in writing via online (inside of the network) and/or offline (outside of the network). Substantially, the material principle of openness has been regulated since the enactment of Law 10/2004. Then, the relevant material is also regulated in Law 12/2011 which states, "the principle of openness means that in the Formation of Legislation starting from planning, drafting, discussing, ratifying or enacting, and promulgating shall be conducted in a transparent and open manners. Thus, all layers of society shall have the widest possible opportunity to provide inputs in the Formation of Legislation" [*vide* Explanation of Article 5 letter g of Law 12/2011]. The Court is of the opinion that the substance of the Elucidation regarding the principle of openness in Law 13/2022 is much broader than Law 12/2011. Such a broader elucidation cannot be separated from the meaning of public participation in the formation process of the law as stated in the Decision of the Constitutional Court Number 91/PUU-XVIII/2020;
2. After the Court has carefully examined the statement of DPR which was presented at the session on September 8, 2022 regarding public participation in the formation process of Law 13/2022, the Court found the following facts:
  - 1) Public discussions and consultations have been carried out at the stage of drafting the *a quo* Academic Papers and Bills which has involved various experts from West Java Province, Lampung Province, East Java Province, Yogyakarta Special Region Province, and South Sulawesi Province;
  - 2) Public consultations have been carried out with the agenda of hearing the presentations from the experts and public discussions were held openly and attended by the community groups that were directly affected by the amendment in the regulatory material related to the bills of amendment to the law regarding the formation of legislation [*vide* DPR Statement Appendix IX, Appendix X , Appendix XII, Appendix XIV, and Appendix XV];
  - 3) Public consultations have been carried out in relation to the issues that have developed in various media and discussions as well as seminars held by various groups, such as Indonesian Centre for Legislative Drafting, Pusat Studi Hukum Konstitusi (Centre for Constitutional Law Studies), and Lembaga Penelitian,

Pendidikan dan Penerangan Ekonomi dan Sosial (Institute for Economic and Social Research, Education and Information);

- 4) The access has been granted for the public to download the initial drafts of academic papers and the *a quo* bills on the web pages <https://pusatpuu.dpr.go.id/simas-puu/detail-na/id/187> and <https://pusatpuu.dpr.go.id/simas-puu/detail-ruu/id/188>;
- 5) A meeting for drafting and discussing Law 13/2022 has been held openly and broadcast live via YouTube channel and the link <https://www.dpr.go.id/uu/detail/id/276>;

Based on the aforementioned legal facts, the statement accompanied by evidence submitted by the DPR has shown that during the formation process of Law 13/2022, it was carried out openly by involving public participation. Moreover, the evidence presented by the Petitioners could not convince the Court that the formation process of Law 13/2022 violates the principle of transparency. The Court's doubts increased because the Petitioners argued that the formation process of Law 13/2022 was only carried out for 6 (six) days at the Legislative Body of the DPR RI (Indonesian House of Representatives).. In fact, the Legislative Body of DPR, in accordance with its duties and functions, one of which is to give consideration to any bills submitted by the members of the DPR [vide Article 105 of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and Regional People's Representative Assembly *juncto* Article 66 of the House of Representatives Regulation Number 1 of 2020 concerning Code of Conduct]. This means that the argument of the Petitioners which states that the Bill 13/2022 discussed at the Legislative Body of DPR is inconsistent with the formation process of a law as stipulated in Article 22A of the 1945 Constitution and its implementing regulations. In addition, it is important for the Court to emphasize that the formation of Law 13/2022 is a follow-up to the Decision of the Constitutional Court Number 91/PUU-XVIII/2020.

Based on the aforementioned description of the legal facts, the Court is of the opinion that the legislators of Law 13/2022 have carried out public participation in accordance with the principle of transparency. Therefore, the argument of the Petitioners regarding the formation of Law 13/2022 was not done in accordance with Article 5 letter g of Law 13/2022 is legally unreasonable.

Accordingly, the Court subsequently passed a decision which verdict states to dismiss the petition of the Petitioners entirely.