CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 27/PUU-XIX/2021

Concerning

Provisions for Defending the State and Formation of Reserve Components to Face Various Kinds of Threats

Petitioners	:	**Perkumpulan Inisiatif Masyarakat Partisipatif untuk Transisi Berkeadilan (IMPARSIAL or Association of Participatory Community Initiatives for Equitable Transitions), et al.**
Type of Case	:	Judicial review of Law Number 23 of 2019 concerning Management of National Resources for National Defense (Law 23/2019) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial review of Article 4 paragraph (2) and paragraph (3), Article 17, Article 18, Article 20 paragraph (1) letter a, Article 28, Article 29, Article 46, Article 66 paragraph (1) and paragraph (2), Article 75, Article 77, Article 78, Article 79, Article 81, and Article 82 of Law 23/2019 against Article 1 paragraph (3) of the 1945 Constitution
Verdict	:	**On Preliminary Injunction:** To dismiss the Petitioners' petition for preliminary injunction entirely; **On the Merits:** 1. To declare that the petition of the Petitioners regarding Article 75 and Article 79 of Law Number 23 of 2019 concerning Management of National Resources for National Defence (State Gazette of the Republic of Indonesia of 2019 Number 211, Supplement to the State Gazette of the Republic of Indonesia Number 6413) is inadmissible; 2. To dismiss the remainder of the Petitioners' petition.
Date of Decision	:	Monday, October 31, 2022
Overview of Decision	:	

The Petitioners consist of private legal entities (Petitioner I to Petitioner IV) and individual Indonesian citizens who work as researchers and students (Petitioner V to Petitioner VII) who are concerned with upholding the Human Rights (*Hak Asasi Manusia* or HAM) and exercising control over the existence of human rights violations, as well as encouraging the creation of various policies related to security sector reformation in the framework of strengthening the respect for, fulfilment and protection of human rights.

Whereas in relation to the Authority of the Court, because the Petitioners petitioned

for Article 4 paragraph (2) and paragraph (3) as well as Article 29, Article 17, Article 20 paragraph (1) letter a, Article 28, Article 66 paragraph (1) and paragraph (2), Article 75, Article 79, Article 81 and Article 82, and Article 46 of Law 23/2019 against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2), Article 30 paragraph (2), Article 28G paragraph (1) and Article 28H of the 1945 Constitution, the Court has the authority to adjudicate the petition of the Petitioners.

Regarding the legal standing, Petitioner I to Petitioner IV in principal argued that the articles being reviewed had continuously thwarted various activities carried out by Petitioner I to Petitioner IV in encouraging the creation of various policies related to security sector reformation, in the framework of strengthening respect for, fulfilment and protection of human rights. Meanwhile, Petitioner V to Petitioner VII in principal argued that the articles being review had hampered or even thwarted the efforts of Petitioner V to Petitioner VII to push for reformation of security sector legislation that was in line with the principles and values of the constitution as well as the international human rights law. Regarding the arguments of the Petitioners, the Court is of the opinion that Petitioners I to IV have been able to prove their organization to be able to represent the case before the court. As for the argument regarding constitutional impairment, the Court is of the opinion that Petitioners I to Petitioner IV, who have the duty and role in carrying out activities to contribute to various activities for the promotion, fulfilment and protection of human rights in the context of encouraging the completion of security sector reformation in Indonesia, have been able to describe their constitutional rights as guaranteed by the 1945 Constitution which are deemed to have been harmed by the law being petitioned for review. Petitioner I to Petitioner IV have also been able to explain the existence of a causal relationship (*causal verband*) between the presumption of a potential loss of constitutional rights and the enactment of the legal norms being petitioned for review because Petitioners I to Petitioner IV think that the existence of the articles being petitioned for review is directly or indirectly, and in general has harmed various kinds of efforts and activities that have been carried out continuously by Petitioner I to Petitioner IV in order to encourage the protection, promotion and fulfilment of human rights, particularly in ensuring the implementation of human rights principles and values in security sector reformation. Therefore, the Court is of the opinion that Petitioner I to Petitioners IV have the legal standing to act as Petitioners in the *a quo* petition. Likewise, Petitioners V to Petitioner VII as individual Indonesian citizens with various professions who believe that they have the right and obligation to participate in defending the state in the form of a reserve component as stipulated in Law 23/2019, have been able to describe specifically the presumption of the loss of constitutional rights as well as a direct relationship with the law being petitioned for review and a causal relationship (*causal verband*) with the norms of the articles being petitioned for review. Petitioner V to Petitioner VII believes that the enactment of the articles being petitioned for review have hampered and thwarted the active role of the Petitioners in campaigning the importance of continuing and completing security sector reformation so that it is in line with the principles of protecting human rights, and it has an impact on the occurrence of human rights violations, as well as advocating in the legislative policy formation process in the DPR, either directly by expressing their opinions in official forums at the DPR, or indirectly through making various studies and media campaigns. Therefore, the Court is of the opinion that Petitioner V to Petitioner VII also have the legal standing to act as Petitioners in the a quo petition;

In relation to the Petitioners' petition for preliminary injunction, which in principal petition for the Court to issue a preliminary injunction which declares that the implementation of Law 23/2019, especially those related to the recruitment of reserve components, shall be postponed as long as the *a quo* law is in the process of being reviewed by the Court. The Court is of the opinion that there is no urgency to delay the implementation of Law 23/2019, especially with regard to the recruitment of reserve components, because the Petitioners did not submit strong evidence regarding the recruitment of reserve components and the negative impacts caused by such recruitment. Additionally, if the implementation of the *a quo* law is postponed, there may be a legal

vacuum in the management of national resources to create a defence and security system for the general public, especially in preparing for the procurement of trained reserve components, should they be needed when the country is in a state of threat. Therefore, a ready reserve component is needed, both in terms of basic military capabilities as well as its alertness when any threat occurs. Moreover, the involvement of citizens as a reserve component is voluntary. Therefore, there is no urgency to delay the implementation of Law 23/2019. Therefore, the Court is of the opinion that the Petitioners' petition for preliminary injunction is legally unreasonable.

Regarding the subject matter of the Petitioners' petition, before the Court considered the arguments of the Petitioners as a whole, the Court shall previously consider regarding the review of the norms of Article 75 and Article 79 of Law 23/2019. The Petitioners in their petition argue that Article 75 of Law 23/2019 is in contrary to the principle of division of functions between the central government and regional governments as stipulated in Article 18 paragraph (5) of the 1945 Constitution, and it has created a situation of legal uncertainty that is also in contrary to Article 28D paragraph (1) of 1945 Constitution. Against the arguments of the *a quo* Petitioners*,* before considering them any further, the Court shall first quote Article 74 letter b of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021) which in principal states that the Court may declare a petition as unclear or ambiguous, among other things because: b. the argument is not contained in the *posita*, instead it is contained in the *petitum* or vice versa. Based on the *a quo* provisions, the Court is of the opinion that the arguments of the a quo Petitioners are contained in the Petitioners' *posita* or subject matter, instead of contained in the petitum of the Petitioners' petition. Therefore, the arguments of the Petitioners regarding the review of the norms of Article 75 of Law 23/2019 must be stated as unclear or ambiguous so that they shall not be considered any further.

Whereas with regard to the constitutionality of the norms of Article 79 of Law 23/2019 which was also disputed by the Petitioners, however, in the *petitum* there is a discrepancy between the *petitum*, namely between *petitum* number 5 and number 6 and *petitum* number 7 and number 8, whereas in the *petitum* number 5 and number 6, the Petitioners petition for, among other things, Article 79 of Law 23/2019 to be declared as in contrary to Article 30 paragraph (2), Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution and has no binding legal force as long as it is not interpreted as "Citizen and/or component of human resource reserves". However, in *petitum* number 7 and *petitum* number 8 the Petitioners also petition for, among other things, Article 79 is in contrary to the 1945 Constitution and has no binding legal force. After careful examination, on the one hand the Petitioners petition for the Court to provide a new interpretation to the norms of Article 79 of Law 23/2019 and on the other hand, petition for the Court to declare such norms as in contrary to the 1945 Constitution. The Court is of the opinion that such *petitums* are mutually contradictory *petitums* which can only be justified if the two are made as alternative and not cumulative. Therefore, such petitums becomes unclear or ambiguous, thus the Court shall not consider them any further.

Whereas in relation to the subject matter of the Petitioners' petition, the Court considers each as follows:

1. Whereas with regard to the Petitioners' argument which in principal states that Article 4 paragraph (2) and paragraph (3) and Article 29 of Law 23/2019 have created legal uncertainty so that they are in contrary to the 1945 Constitution, in particular Article 1 paragraph (3), Article 28D paragraph (1), and Article 30 because the formulation is ambiguous and does not accommodate the principle of predictability, especially in relation to the identification of the forms of threats which consist of military, non-military and hybrid so that there is a potential for multiple interpretations in its implementation. The Petitioners also argue that Article 4 paragraph (2) and paragraph (3) and Article 29 of Law 23/2019 are inconsistent or disharmonious with the provisions of Article 7 of Law 3/2002. The Court is of the opinion that the substance of Article 4 paragraph (2) of Law 23/2019, in principle, has accommodated the principle of predictability for the development of the various forms very dynamic threats which of course have different

situations and conditions compared to the type of threats exist when Law 3/2002 was promulgated. The addition of the types of hybrid threats in the provisions of the *a quo* Article is to complete the scope of threats stipulated in Law 3/2002 which does not yet regulate the threats that are mixed in nature and shall constitute integration between military threats and non-military threats. In addition, the addition of the types of threats is also intended to anticipate developments in the threats that are multidimensional and strategic in accordance with global developments. Starting from the definition of threats and types of threats to the state as described above, the Court is of the opinion that the existence of the types of threats to the sovereignty and security of the state, which are not only in the form of military threats and non-military threats, including the hybrid threats, is an identification of the nature of threats which is very dynamic subject to different situations and conditions. The hybrid threats are the type of threats that must also be watched out for in the context of contemporary developments that were not previously regulated in Law 3/2002. If the legislators only accommodate the management of national resources for national defence on the types of military threats and non-military threats as specified in Article 7 paragraph (2) and paragraph (3) of Law 3/2002, then if there is any threat that is not contained in these two types of threats, this shall lead to a legal vacuum in dealing with such threats that are multidimensional and a mixture of military and non-military threats.

2. Furthermore, in relation to the mobilization specified in Article 29 of Law 23/2019 which was also disputed by the Petitioners, the Court is of the opinion that that the mobilization statement is the simultaneous deployment and utilization of national resources and national facilities and infrastructure that have been prepared and established as a component of the national defence force, and must pass through a strict procedure. Mobilization shall be carried out in the event that all or part of the territory of the Republic of Indonesia is in a state of military emergency or a state of war. In declaring mobilization, the President must first obtain the approval from the House of Representative (*Dewan Perwakilan Rakyat* or DPR). In addition, Mobilization shall be imposed on the reserve components, meanwhile for the supporting components that are subject to mobilization, their status must first be upgraded to become the reserve component. The procedure in Law 23/2019 which requires DPR approval in dealing with military threats is also in line with the application of Article 14 of Law 3/2002 and the Elucidation of Article 7 paragraph (2) of Law 3/2002. Because the military threat as referred to in Article 7 paragraph (2) of Law 3/2002 is a threat using organized armed force that is considered to have the capability to endanger the state sovereignty, state territorial integrity, and the safety of the entire nation. Therefore, the Court is of the opinion that the arguments of the Petitioners which states that Article 4 paragraph (2) and paragraph (3) and Article 29 of Law 23/2019 have created legal uncertainty because the formulation is ambiguous and do not accommodate the principle of predictability in the formulation so that there is a potential for multiple interpretations in its implementation and are not in line with or in disharmony with the regulation of threats in the provisions of Article 7 of Law 3/2002 are legally unreasonable.
3. Whereas in relation to the arguments of the Petitioners which in principal state that the term natural resources, man-made resources, as well as national facilities and infrastructure as elements of supporting components and reserve components in Article 17, Article 28, Article 66 paragraph (2), Article 81 and Article 82 of Law 23/2019 has led to a blurring of the meaning of the main force and supporting force as specified in Article 30 paragraph (2) of the 1945 Constitution, it also creates legal uncertainty and violates the principle of conscientious objection for the owners or managers of natural resources, man-made resources for reasons of state defence, the Court is of the opinion that the implementation of the establishment of the reserve component has also been further regulated in Articles 75 to Article 81 of Government Regulation Number 3 of 2021 concerning Implementation of Law Number 23 of 2021 2019 concerning Management of National Resources for National Defence (PP 3/2021). By referring to

the aforementioned provisions, it becomes clear that a universal defence system that involves all citizens, territories and other national resources, apart from having to be prepared early by the government, must also be carried out in a total, integrated, directed and continuous manner, in the context of upholding state sovereignty, territorial integrity, and the safety of the whole nation from all types of threats. In addition, the determination of natural resources, man-made resources and national infrastructure has been carried out through a series of stages or procedures, including verification and classification processes, so that the utilization of these resources is measurable so as not to violate the human rights and private ownership rights over such natural resources. In this way the state may not arbitrarily take over any ownership of citizens' property. In other words, the establishment of a Reserve Component in the form of natural and man-made resources as well as national facilities and infrastructure does not ignore the principle of voluntarism because natural resources and man-made resources as well as national facilities and infrastructure that are properly managed by the citizens have gone through a series of stages conducted by the Ministry of Defence with the owner voluntarily, and shall continue to provide recognition and protection of property rights which are part of the human rights. Therefore, it will not open up the space for potential conflicts over natural resources and land conflicts between the state and the citizens. Therefore, the designation of natural resources and man-made resources as well as national facilities and infrastructure as reserve components do not create any legal uncertainty and do not violate the principle of conscientious objection for the owners or managers of natural resources, man-made resources and other facilities and infrastructure. Thus, the formation of reserve component which is a forum for citizen participation as well as national facilities and infrastructure in the state defence effort carried out by the government (Ministry) must continue to apply a democratic, just and respectful state defence governance system that respects the human rights and in accordance with the legislation. Moreover, the mobilization of the national resources can only be determined by the President after obtaining approval from the House of Representative (*Dewan Perwakilan Rakyat* or DPR) due to any state of military emergency or a state of war [*vide* Article 63 of Law 23/2019]. In the event that the President has declared the mobilization, then the mobilization shall be imposed on the reserve component. The utilization of this reserve component is in order to enlarge and strengthen the main component [*vide* Article 61 of Law 23/2019]. It is important for the Court to emphasize that the existence of citizens as a reserve component is a voluntary service in the state defence effort [*vide* Article 28 paragraph 2 of Law 23/2019]. Furthermore, natural resources, man-made resources, and national facilities and infrastructure that belong to the government and regional governments, private property, and individual property that have been mobilized must be returned to their original function and status through demobilization accompanied by compensation in accordance with the state's capabilities based on the provisions of legislation. This has been determined in Article 72 paragraph (1) to paragraph (3) of Law 23/2019. In relation to the existence of criminal provisions as stipulated in Article 79 to Article 83 of Law 23/2019 which is disputed by the Petitioners because it violates the principle of conscientious objection since the rules are not rigid. Against this matter, as stated in the aforementioned legal considerations, in relation to this criminal provision, it is important for the Court to emphasize that the norms of criminal law are under the administrative penal law category namely legislative product in the form of legislation within the scope of state administration which contain criminal sanctions. This is because the existence of such provisions on obligations that have been regulated in the norms of Article 66 of Law 23/2019 must be accompanied by criminal provisions that aim to protect the interests of the nation and state, because the obligation of the owners and/or managers to surrender the utilization of the natural resources, man-made resources, as well as national facilities and infrastructure have been agreed to be determined as reserve component. Therefore, the threat of criminal sanctions is a logical consequence to avoid denial and deception [*vide* Article 77 to Article 82 of Law 23/2019]. The Court is of

the opinion that with a clear regulation of criminal sanctions in its enforcement, it will accelerate the restoration of the situation and demobilization. Moreover, in the process of establishment, the reserve component has gone through a strict procedure with a presidential statement to mobilize because all or part of the territory of the Republic of Indonesia was in a state of military emergency or a state of war and this statement must first obtain the approval of the DPR [*vide* Article 63 of Law 23/2019]. A state of military emergency or state of war can occur because the country is facing a military threat or a hybrid threat [*vide* Article 29 of Law 23/2019]. In relation to threats, particularly hybrid threats to declare the mobilization, the Court is of the opinion that legislators need to immediately regulate the laws in a more detail and comprehensive manner by way of harmonizing and synchronizing with other laws, including Law 3/2002 and Law 34 /2004. This comprehensive amendment needs to be made immediately considering that as stipulated in Article 4 paragraph (3) of Law 23/2019 there is no clear distinction between military, non-military and hybrid threats. Moreover, in the Elucidation of Article 4 paragraph (2) letter c of Law 23/2019, it is explained that a hybrid threat is a mixed threat and is an integration of military and non-military threats. Such changes are important and they have been designated as one of the bills in the Priority National Legislation Program of 2022 [*vide* Decree of the House of Representatives of the Republic of Indonesia Number 8/DPR RI/II/2021-2022 concerning the Priority Bills National Legislation Program of 2022 and the Third Amendment of Bills of National Legislation Program of 2020-2024]. Therefore, based on these legal considerations, the Court is of the opinion that the arguments of the Petitioners who disputed the constitutionality of the norms of Article 17, Article 28, Article 66 paragraph (2), Article 81 and Article 82 of Law 23/2019 are legally unreasonable.

4. Whereas in relation to the Petitioners' argument which in principal argue that such provisions has made the citizens to directly face the military threats and hybrid threats as stipulated in the provisions of Article 18 and Article 66 paragraph (1), as well as Article 77 and Article 78 of Law 23/2019 and has violated the provisions of Article 28E paragraph (2) and Article 30 paragraph (2) of the 1945 Constitution and is also against the principle of conscientious objection (the citizen's right of refusal based on their beliefs), which is a cardinal principle in involving civilians in defence efforts, which has been recognized by various countries and the international communities, and has become a part of international human rights law. The Court is of the opinion that the formation of Law 23/2019 has further regulated the participation of citizens in the national defence system as mandated by Article 30 of the 1945 Constitution. Citizens can basically participate in the efforts to organize national defence as a supporting component or a reserve component [*vide* Article 17 and Article 18 of Law 23/2019]. Such participation shall be determined by the legislators of the *a quo* Law as voluntary in nature. In the Elucidation of Article 17 paragraph (2) of Law 23/2019, it is explained that what is meant by voluntary is the manner and behaviour of citizens who are inspired by their love for the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution. Therefore, the participation of citizens in defending the country does not violate the principle of conscientious objection (the right of refusal to join military service), because the state does not oblige its citizens to become a reserve component and/or supporting component but voluntarily so in the effort to organize national defence as also stipulated in Article 28 paragraph (2) of Law 23/2019 which states , "The Reserve Component as referred to in paragraph (1) letter a is voluntary service in the national defence effort." In addition, the provisions regarding the recruitment of the reserve component are also regulated in PP 3/2021 which is the implementing regulations of Law 23/2019. By having determined the recruitment procedure of the reserve component as contained in PP 3/2021, it is clear that in terms of recruiting citizens to join the reserve component there is no coercion at all imposed on the citizens. In this regard, the recruitment process must go through several stages, including registering and participating in administrative and competency selection. Therefore, there is no provisions that oblige the citizens to register and join the reserve

component, thus it can be said that the *a quo* Law was in line with the principle of conscientious objection (the citizen's right of refusal based on their beliefs). Meanwhile, in relation to the concerns of the Petitioners with the provisions of Article 18 of Law 23/2019 which basically states that "The supporting components can be used directly or indirectly to deal with military threats and hybrid threats" is in contrary to the principle of conscientious objection and shall subject to criminal sanctions as stipulated in Article 77 and Article 78 of Law 23/2019. The Court is of the opinion that the *a quo* concerns of the Petitioners is understandable, but this has been anticipated with the existence of such arrangements regarding the participation of citizens so that they can be mobilized according to the stages as considered above. The *a quo* law is also in line with the principle of conscientious objection. Moreover, the utilization of national resources in the form of human resources, natural resources, and man-made resources in their position as supporting components to be used for the interests of the nation and the state or the interests of national defence in the context of the defence and security system of the people as a whole, it is not instant. Because the supporting components that are subject to mobilization must first be upgraded to a reserve component [*vide* Article 64 paragraph (2) Law 23/2019]. In the context of a universal system, all national resources can be utilized for national defence efforts, both as supporting components and as reserve components. In this case, the supporting components whose status is not upgraded to reserve components shall be required to provide the support during mobilization, the mechanism of which is coordinated by the relevant ministries/institutions in accordance with their duties and functions [*vide* Article 65 paragraph (1) of Law 23/2019]. The purpose of such arrangements is to provide clear and measurable limits on the utilization of supporting components and reserve components during mobilization. Meanwhile, the regulation of criminal provisions disputed by the Petitioners is related to any reserve components which intentionally makes themselves unable to fulfil the call for mobilization or commit any ruses that cause them avoiding mobilization [Article 77 of Law 23/2019]. Furthermore, Article 78 of Law 23/2019 relates to criminal provisions aimed at employers/businessmen or educational institutions that hinder any mobilization. The provision of criminal sanctions in a state of mobilization has been carried out in accordance with the stages, thus it is not contrary to the 1945 Constitution. Therefore, based on the aforementioned legal considerations, the Court is of the opinion that the arguments of the Petitioners, who disputed the direct involvement of citizens in dealing with the military threats and hybrid threats as stipulated in the provisions of Article 18 and Article 66 paragraph (1) as well as Articles 77 and Article 78 of Law 23/2019 are in contrary to the provisions of Article 28E and Article 30 paragraph (2) of the 1945 Constitution and the principle of conscientious objection, are legally unreasonable.

5. Whereas in relation to the arguments of the Petitioners which in principal argue that Article 20 paragraph (1) letter a of Law 23/2019 has placed the members of the Indonesian National Police (Police) as a Supporting Component which is equivalent to the trained citizens, one of which is the member of a social organization, such formulation of norms is wrong and has created a situation of legal uncertainty, because it has mixed up the main forces and supporting forces in the state defence and security system. The Court is of the opinion that the Police is a state instrument that plays a role in maintaining public order and security, upholding the law, and providing protection, preservation and service to the community in the context of maintenance of internal security. Therefore, in the national defence component, the TNI (military) as the main force is the Main Component which function is to protect against the various military or armed threats outside and inside of the country in upholding the territorial sovereignty and integrity of the Unitary State of the Republic of Indonesia. Meanwhile, even though the Police is also mentioned in the 1945 Constitution as the main force for security and public order, in the national defence system, it is not a main component but a supporting component. This is in line with the new paradigm of Police which is part of civil society. Therefore, in the provisions of Article 20 paragraph (1) of Law 23/2019 and

its Elucidation it states that the Police members are part of the Supporting Component which is intended to strengthen and enlarge the Main Component so that their position in the national defence system is the same as trained citizens, which shall also include: a. retired TNI and Police officers; b. members of student regiments; c. members of civil service police unit; d. special members of the police; e. members of the security unit; f. members of the community protection; and g. members of other social organizations that can be put into the same category with trained citizens [*vide* Elucidation of Article 20 paragraph (1) letter b of Law 23/2019]. Therefore, by placing the Police in the national defence component as Supporting Component which is in the same category as the trained citizens, it is not in contrary to the mandate of Article 30 of the 1945 Constitution. Based on the aforementioned legal considerations, the Court is of the opinion that the argument of the Petitioners, which states that Article 20 paragraph (1) letter a of Law 23/2019 is in contrary to the 1945 Constitution, is legally unreasonable.

6. Whereas regarding the arguments of the Petitioners which in principal states that Article 46 of Law 23/2019 is in contrary to the principles of equality before the law and legal certainty as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, since the reserve components should still be assigned to the civil legal subjects, which shall be fully subject to the system and mechanism of civil court (general court), we must bear in mind that their qualifications are different from the main component, namely members of the TNI (military). Regarding the *a quo* argument of the Petitioners, the Court is of the opinion that based on the Elucidation of Article 46 of Law 23/2019, among other things, it is explained that military law is all national legislation whose legal subjects are members of the military or people who are put into the same category as military based on legislations. In this regard, it is important for the Court to cite the norms of Article 1 number 15 of Law 34/2004 which stipulates that "Voluntary Soldiers are citizens who voluntarily serve in the military service". If the *a quo* norms are associated with the provisions of Article 9 point 1 of Law Number 31 of 1997 concerning Military Court (Law 31/1997). In this context, the norm of Article 46 of Law 23/2019 is an element intended in Article 9 paragraph (1) letter c of Law 31/1997. This means that military court is not only aimed at the Main Component, namely the TNI who commits criminal acts, but also for the Reserve Components both when they are participating in the refresher training and/or when they are mobilized. The Law 23/2019 determines the status of Reserve Components when participating in the refresher training shall be determined as an active period of service that is ready to be utilized for the benefit of national defence. Such refresher training is an exercise to maintain and improve as well as preserve the capabilities in the field of knowledge and skills for the benefit of national defence. The minimum period for participating in the refresher training is 12 (twelve) days and a maximum of 90 (ninety) days and it shall be carried out in stages and in a continuous manners. There are 3 (three) possible locations for training, namely in educational institutions within the TNI, in military training areas and/or in TNI units at the battalion level [*vide* Article 64 and Article 65 paragraph (2) of PP 3/2021]. The military law shall be applied to the Reserve Components in this active period status, namely all national legislation whose legal subject is a member of the military or a person who is put into the same category as military based on the applicable laws. In addition, all laws and regulations that are used as the legal basis for carrying out the duties of the TNI in carrying out the function of national defence shall be categorized as the military law [vide Elucidation of Article 64 of Law 34/2004]. The military law is established and developed by the government for the benefit of implementing national defence. Until today, the military law that is still in effect is Law 31/1997. Regarding the *a quo* Law, the Court is of the opinion that it is necessary to make the comprehensive amendments so that they can accommodate various forms of changes and legal requirements in accordance with the spirit of national reformation and TNI (military) reformation, without neglecting the interests of implementing national defence. The importance of making this amendment immediately is in line with the mandate of the Decree of the People's

Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR) Number VII/MPR/2000 concerning the Role of the Indonesian National Military Forces and the Role of the Indonesian National Police, which requires the law on military court in accordance with the spirit of security reformation. Moreover, the proposed amendment to Law 31/1997 was included in the National Legislation Program of 2010–2014. Therefore, the Court shall remind the legislators to immediately realize the reformation to the law on military court. Therefore, while waiting for the amendment to Law 31/1997 which shall be compiled in a comprehensive manner and in accordance with the spirit of reformation, the Court is of the opinion that the implementation of Law 31/1997 for the Reserve Components in their active period either when participating in the refresher training and/or mobilization, can still be justified because of the status of the Reserve Components are subjects who are put into the same category as military based on the provisions of Law 23/2019. Based on these legal considerations, the Court is of the opinion that the arguments of the Petitioners, who disputed the constitutionality of the norms of Article 46 of Law 23/2019 and who stated that it is in contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, are legally unreasonable.

Whereas based on all of the aforementioned legal considerations, the Court is of the opinion that the arguments of the Petitioners regarding the review of the norms of Article 75 and Article 79 of Law 23/2019 are ambiguous. Meanwhile, in relation to the norms of Article 4 paragraph (2) and paragraph (3), Article 17, Article 18, Article 20 paragraph (1) letter a, Article 28, Article 29, Article 46, Article 66 paragraph (1) and paragraph (2), Article 77, Article 78, Article 81, and Article 82 of Law 23/2019 evidently have not raised any issues of legal uncertainty, unequal treatment before the law and in the defence and security system for the people as a whole as guaranteed by the 1945 Constitution. Therefore, the arguments of the Petitioners are legally unreasonable, and the Court passed down a decision which verdict states,

On Preliminary Injunction:

To dismiss the Petitioners' petition for preliminary injunction entirely;

On the Merits:

1. To declare that the petition of the Petitioners regarding Article 75 and Article 79 of Law Number 23 of 2019 concerning Management of National Resources for National Defence is inadmissible;
2. To dismiss the remainder of the Petitioners' petition.