



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 103/PUU-XX/2022

Concerning

The Authority of Constitutional Complaint, the Power of Binding Legal
Considerations, and the Term of Office of Constitutional Justices

- Petitioner** : Zico Leonard Djagardo Simanjuntak
- Type of Case** : Judicial review of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 10 paragraph (1) letter a, Article 57 paragraph (1) and paragraph (2), as well as Article 87 letter b of the Constitutional Court Law are in contrary to Article 1 paragraph (3), Article 24 paragraph (1), Article 24C paragraph (3), Article 28D paragraph (1), Article 28I paragraph (4), and Article 28J paragraph (2) of the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**
To dismiss the Petitioner's petition for preliminary injunction
On the Merits:
To dismiss the Petitioner's petition entirely
- Date of Decision** : Wednesday, November 23, 2022
- Overview of Decision :**

The Petitioner is an individual Indonesian citizen who works as an Advocate which specializes in the field of state administration who often holds various judicial review cases at the Supreme Court and the Constitutional Court. The Petitioner believes that his constitutional rights have been impaired due to the enforcement of Article 87 letter b of the Constitutional Court Law as a result of the interpretation of the People's Representative Council (*Dewan Perwakilan Rakyat* or DPR) on the confirmation letter from the Constitutional Court in relation to the interpretation of the *a quo* article and has no platform to complain about this issue because the authority of the Court in Article 10 paragraph (1) letter a of the Constitutional Court Law is not included as constitutional complaint. Moreover, the Petitioner believes that he has a legal standing since he often provides legal services and legal consultations, the provisions of Article 57 paragraph (1) and paragraph (2) of the Constitutional Court Law have caused constitutional harm in the form of loss of confidence in the Petitioner's legal opinion which states that the Considerations in the Constitutional Court Decision are binding;

In relation to the authority of the Court, because the Petitioner's petition is a petition to examine the constitutionality of the norms of the Law, *in casu* Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) against the 1945 Constitution, therefore based on Article 24C

paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Power Law, the Court has the authority to adjudicate the petition *a quo*;

Whereas regarding the legal standing of the Petitioner, the Court considered that the Petitioner was indeed an individual Indonesian citizen who works as an Advocate who is active in filing petitions to be reviewed by the Constitutional Court. With regard to Article 10 paragraph (1) letter a of the Constitutional Court Law filed by the Petitioner, it regulates one of the authorities of the Court as an institution holding judicial power. In the qualifications of the Petitioner as described above, the Petitioner has described specifically the presumption of constitutional rights loss of the Petitioner because he did not get justice through an independent judicial power because the Court's decision was not carried out as intended and the Court did not have the authority to adjudicate the matter within a constitutional complaint case, therefore the Petitioner did not obtain fair legal protection. Meanwhile, regarding Article 57 paragraph (1) and paragraph (2) of the Constitutional Court Law, in addition to the qualifications of the Petitioner above and the duties of the Petitioner as a provider of legal services and legal consultations, the Court is of the opinion that the Petitioner has explained specifically his constitutional rights which, in his opinion, have the potential to be harmed by the enactment of the norms being petitioned for a review, namely among others, the right to obtain fair legal certainty over non-compliance on the legal considerations of a binding Court decision thus weakening the power of an independent judiciary. Furthermore, with regard to Article 87 letter b of the Constitutional Court Law, based on the qualifications of the Petitioner who did not question the requirements as a justice, but explained the presumption that his constitutional right to obtain fair legal certainty was impaired which is factually or at least potentially true because there is no guarantee for the Court to administer free/independent judicial power which shall no longer recognize term periodization based on the Constitutional Court Decision Number 96/PUU-XVIII/2020. Thus, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the review the constitutionality of the norms of Article 10 paragraph (1) letter a, Article 57 paragraph (1) and paragraph (2), as well as Article 87 letter b of the Constitutional Court Law.

On Preliminary Injunction

The Petitioner petition for a preliminary injunction which in principal states that the Petitioner's petition urgently needs to be decided since it is related to the independence of the Constitutional Justices because it is related to the actions of the People's Representative Council (*Dewan Perwakilan Rakyat* or DPR) which carried out the replacement of the Constitutional Justices who were serving in a manner or procedure that are not in accordance with the provisions of Article 23 of the Constitutional Court Law, therefore the examination for this *a quo* case needs to be prioritized and immediately decided to suspend all actions aimed at changing the Constitutional Justices. Regarding the reasons for the Petitioner's petition for Preliminary Injunction, the Court is of the opinion that the *a quo* case has been examined and decided quickly, however the Court does not agree that the reason for such acceleration is because there are concrete cases related to the dismissal of justices which are not in accordance with the provisions in Article 23 of the Constitutional Court Law. In addition, the Court is of the opinion that preliminary injunctions have been granted due to any urgent needs to suspend the enactment of any norms so as not to prevent any further impact of such norms if they are allowed to remain in effect. Therefore, the Petitioner's petition for Preliminary Injunction must be declared as legally unreasonable.

Whereas since the *a quo* petition is sufficiently clear, thus based on Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

On the Merits

With regard to the Petitioner's argument regarding the norms of Article 10 paragraph (1) letter a of the Constitutional Court Law, in principal, the Court is of the opinion that the legal

considerations in the Constitutional Court Decision Number 28/PUU-XVII/2019 have comprehensively answered the issue of constitutionality questioned by the Petitioner. However, the Court is aware that the constitutional complaint is one of the efforts that can be made to provide protection for the constitutional rights of citizens.

Whereas the matters concerning constitutional complaints are not regulated in the 1945 Constitution at all. Although in practice, a number of facts show that several cases for reviewing the laws submitted to the Court are, in principal, constitutional complaints. However, because the 1945 Constitution and the Constitutional Court Law include a number of laws regarding the judicial power that do not regulate the authority to resolve the cases of constitutional complaints, the Court declared that it had no authority to examine the aforementioned petitions.

Whereas since there are a number of decisions of the Constitutional Court which in principal have held the opinion that the Court is not authorized to examine constitutional complaints, on the one hand it has created a legal vacuum to fulfil and to answer such need. Meanwhile, on the other hand, the need to settle the cases of constitutional complaints is a necessity in protecting the constitutional rights of citizens and at the same time as one of the concrete manifestations of fulfilling the rule of law principle. Such a necessity cannot be separated from the provisions and the mandate carried in the norms of Article 1 paragraph (3) of the 1945 Constitution which states that the State of Indonesia is a country based on rule of law. Therefore, a clear and firm legal basis is needed with regard to such constitutional complaints.

Whereas with regard to the Petitioner's *a quo* argument, for now the Court is of the opinion that it would be better if the aforementioned authority to decide on constitutional complaints were added by the legislators by revising the Constitutional Court Law. Such a choice makes sense because deciding on any constitutional complaints are not merely regarding the additional authority but must also comprehensively consider any possible consequences in the overall design of law enforcement and judicial power. Based on the legal considerations above, the Court is of the opinion that the Petitioner's argument regarding the norms of Article 10 paragraph (1) letter a of the Constitutional Court Law, which in principal requires the Court's authority to review the laws against the 1945 Constitution, to include the interpretation to decide on any constitutional complaints are legally unreasonable.

With regard to the Petitioner's argument regarding the phrase "verdict" in Article 57 paragraph (1) and paragraph (2) of the Constitutional Court Law, if any law, both its content and formulation, is proven to be in contrary to the 1945 Constitution then in order to uphold the principle of constitutional supremacy that is carried out through a free and independent court, the Constitutional Court is authorized to declare that the law is in contrary to the 1945 Constitution and it shall not have binding legal force.

Whereas in relation to the Verdict, in deciding whether the Verdict is final and binding, the basis for the decision shall be required which lies in legal considerations. There are two types of legal considerations, the first is *ratio decidendi*, namely legal opinion which is directly related to the conclusion and verdict so that it cannot be separated from the verdict and shall have legally binding force and the second is *obiter dictatum*, namely legal opinion which is not directly related to the case or to the verdict and shall not be binding. Therefore, in the event that within the legal consideration, it is found that there is a problem of constitutionality of norms then it shall be in contrary to the 1945 Constitution and it shall not have any binding legal force. Therefore, the Petitioner's argument regarding the norms of Article 57 paragraph (1) and paragraph (2) of the Constitutional Court Law is legally unreasonable.

With regard to the Petitioner's argument regarding Article 87 letter b of the Constitutional Court Law, the *a quo* norm of Article is still declared as constitutional through Decision Number 96/PUU-XVIII/2020. Through the consideration of the Court in the *a quo* decision, the legal politics that formed the Constitutional Court Law from the term of office of a justice who recognizes periodization to non-periodization of the justice position is something that is constitutional. Such legal politics are in line with the Constitutional Court

Decision Number 53/PUU-XIV/2016, which was declared in a plenary session open to the public on July 19, 2017, which among others declared that the liberty and/or independence of the judicial powers, among others, was determined by the selection process (the manner of the appointment or the mode of appointing the justices) and tenure (terms of office or the tenure of the justices). Therefore, in the Constitutional Court Decision Number 53/PUU-XIV/2016 it is further emphasized that the tenure of office of the Constitutional Justices should only serve one term with a longer deadline. As stated in the intent and substance of the Constitutional Court Decision Number 53/PUU-XIV/2016, as part of efforts to realize the independence of judicial power, *in casu* the Constitutional Court, the former of the Constitutional Court Law abolished the periodization regime, namely the term of office of 5 (five) years and the justices can only be re-elected once for the next term of office.

Whereas with the abolition of the periodization regime, sometime after the declaration of the Constitutional Court Decision Number 96/PUU-XVIII/2020, the Court sent a letter to the proposing institution (namely the DPR, the President and the Supreme Court), with the subject "Notification of the Constitutional Court Decision Number 96/PUU -XVIII/2020", dated July 21, 2022. The Notification letter requires the Court to carry out legal actions in the form of confirmation to the institution nominating and proposing the constitutional justices who are currently serving. In addition, the letter also notifies the term of office of each constitutional justice based on Law 24/2003 as well as the amendments and the end of the term of office of each constitutional justice after there is no periodization based on the Constitutional Court Law.

Even though the Court has explained and confirmed the end of the term of office of each of the aforementioned constitutional justices, this does not mean that the constitutional justices cannot be dismissed before the end of their term of office, namely before reaching the age of 70 (seventy) years or before their entire term of office do not exceed 15 (fifteen) years. In this case the dismissal of constitutional justices during their term of office can be carried out in accordance with the provisions of the Constitutional Court Law.

Whereas if there is a reason for any dismissal during the term of office, the dismissal by the President will only be carried out after a letter of request from the Chief Justice of the Constitutional Court has been issued. Such an affirmation needs to be stated explicitly because the process of replacing the constitutional justices by the proposing institution will only be followed up after a presidential decree regarding the dismissal of the constitutional justices before the end of their term of office is issued. Within the limits of reasonable reasoning, the existence of clear and firm regulations regarding the possibility of dismissing a constitutional justice before the end of his term of office is intended to maintain independence and to protect the liberty and independence of the judicial power. This means that any actions taken outside of the provisions of the norms of Article 23 of the Constitutional Court Law are not in line with the 1945 Constitution.

Whereas in relation to the Petitioner's argument, the Court's legal considerations in other decisions have binding legal force, therefore a Constitutional Justice who is currently in office can only be dismissed before the end of his term of office as long as it is carried out in accordance with the norms in Article 23 of the Constitutional Court Law. Therefore, the norms of Article 87 letter b of the Constitutional Court Law are unnecessary and irrelevant in the interpretation as requested by the Petitioners. Apart from having been confirmed and considered in the Constitutional Court Decision Number 96/PUU-XVIII/2020, providing direct affirmation to the norms of Article 87 letter b of the Constitutional Court Law, as petitioned by the Petitioner, may shift the meaning of the *a quo* norms as a transitional norms that are *einmalig* in nature. Therefore, the Petitioner's argument is legally unreasonable.

Based on all the aforementioned legal considerations, the Court considers that there is no issue in the constitutionality of norms regarding fair legal certainty in upholding an independent judicial power as guaranteed by Article 1 paragraph (3), Article 24 paragraph (1), Article 24C paragraph (3), Article 28D paragraph (1), Article 28I paragraph (4), and Article 28J paragraph (2) of the 1945 Constitution in Article 10 paragraph (1) letter a, Article 57 paragraph (1) and paragraph (2), as well as Article 87 letter b of the Constitutional Court

Law, therefore the Petitioner's petition is legally unreasonable. with regard to any other things, they shall not be considered further because they are seen as irrelevant;

Accordingly, the Court passed on a decision whose verdict is as follows.

On Preliminary Injunction:

To dismiss the Petitioner's petition for preliminary injunction.

On the Merits:

To dismiss the Petitioner's petition entirely.

Dissenting Opinion

Whereas regarding the *a quo* Constitutional Court Decision, there are dissenting opinions from Constitutional Justice Anwar Usman, Constitutional Justice Manahan M.P. Sitompul, and Constitutional Justice Suhartoyo as far as it relates to the legal position of the Petitioner in reviewing the norms of Article 87 letter b of the Constitutional Court Law, as follows:

1. Constitutional Justice Anwar Usman and Constitutional Justice Manahan M.P. Sitompul

Whereas the Petitioner in principal petition for the Constitutional Court to conduct a material review over the norms of Article 57 paragraph (1) and paragraph (2) and Article 87 letter b of Law 7/2020 which reads as follows:

Article 57 paragraph (1):

"The Decision of the Constitutional Court whose verdict states that the substance of the paragraphs, articles and/or parts of the law that are in contrary to the 1945 Constitution of the Republic of Indonesia, such material contained in the paragraphs, articles and/or parts of the law shall have no binding legal force."

Article 57 paragraph (2):

"The decision of the Constitutional Court whose verdict states that the formation of law that does not comply with the provisions for the formation of laws under the 1945 Constitution of the Republic of Indonesia, such law shall have no binding legal force."

Article 87 letter b:

"Constitutional justices who are in office at the time this Law is promulgated shall be deemed to fulfil the requirements according to this Law and shall end their term of office until the age of 70 (seventy) years as long as their entire term of office does not exceed 15 (fifteen) years."

Before entering the subject matter of the Petitioner, the Court must first confirm whether the Petitioner has fulfilled the legal standing requirement in the *a quo* case.

Whereas the Petitioner in his petition position himself as an individual citizen who has the profession of an advocate specializing in cases in the field of state administration, who has, is currently and plans to hold and conduct judicial review cases at the Supreme Court and the Constitutional Court, both as the Petitioner and as an attorney. Therefore, the Petitioner argued that he has an interest for the judiciary to be free and independent.

Whereas according to the Petitioner the act of replacing the Constitutional Justices by the House of Representatives (Dewan Perwakilan Rakyat or DPR) is an act that undermines the independence of the Constitutional Court and it constitutes a form of violation of the Petitioners' constitutional rights to obtain protection, promotion, enforcement and fulfilment of human rights as the responsibility of the state, one of which is through the Court as a free and independent constitution.

Whereas the Petitioner further stated that the DPR's actions were actually very unconstitutional, but because the legal remedy against such action through a manner of constitutional complaint is not yet available, then in the absence of such legal forum, the Petitioner suffers a serious constitutional disadvantage. Accordingly, the Petitioner has the legal standing to review Article 10 paragraph (1) of the *a quo* Law in order to achieve fair

legal protection for the Petitioner with Constitutional Complaint as the legal remedy being within the authority of the Constitutional Court.

Against such legal standing argument of the Petitioner, we consider as follows:

Whereas based on Article 51 paragraph (1) of the Constitutional Court Law and its elucidation, the Petitioners in any review of the laws against the Constitution are those who consider their constitutional rights and/or authorities as granted by the 1945 Constitution have been impaired by the enactment of the law being petitioned for review, namely :

- a. Individual (including groups of people who have the same interests) Indonesian citizens;
- b. indigenous community units as long as they are still existing and in accordance with community development and the principles of the Unitary State of the Republic of Indonesia as regulated in the law;
- c. Public or private legal entity; or
- d. State institutions.

Therefore, the Petitioner in the review of the law against the 1945 Constitution must first explain and prove two things, namely:

- a. His legal standing as a Petitioner as referred to in Article 51 paragraph (1) of the Constitutional Court Law;
- b. The loss of constitutional rights and/or authorities granted by the 1945 Constitution caused by the enactment of the law being petitioned for review.

Whereas regarding the loss of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of the Constitutional Court Law, the Court since Decision Number 006/PUU-III/2005 dated May 31, 2005, and Decision Number 11/PUU-V/2007 dated September 20, 2007, as well as any subsequent decisions have required the existence of 5 (five) conditions that must be met, namely:

- a. there are constitutional rights and/or authorities of the Petitioner granted by the 1945 Constitution;
- b. the constitutional rights and/or authorities are considered by the Petitioner to have been harmed by the enactment of the law being petitioned for review;
- c. such loss of constitutional rights and/or authorities must be specific and actual or at least potential, which according to any reasonable reasoning can be ascertained to occur;
- d. there is a causal relationship (*causal verband*) between such loss of constitutional rights and/or authorities and the enactment of the law being petitioned for review;
- e. there is a possibility that by granting the petition, the loss of the constitutional rights and/or authorities as argued will not or will no longer occur;

However, the Petitioner's description or argument regarding his legal standing in the review of Article 87 letter b turned out to be irrelevant and without strong legal reasons, as well as had no relation to the DPR's actions regarding the replacement of Constitutional Justices, which according to the Petitioner was an unconstitutional action and undermined the independence of the Constitutional Court. In addition, the DPR's action as referred to by the Petitioner was a response to the Constitutional Court's letter dated July 21, 2022 regarding the notification of the Constitutional Court Decision Number 96/PUU-XVIII/2020, of which one of the legal considerations reads as follows:

"Considering whereas after the original intent of the legislators in forming Law 7/2020 has become clear to the Court, the Court is of the opinion that the provisions of Article 87 letter b of Law 7/2020 are not in contrary to Article 28D paragraph (1) of the 1945 Constitution. The Court is of the opinion that the declaration of the formulation of Article 87 letter b of Law 7/2020 must be understood solely as a transitional provision that connect so that the new rules can apply in harmony with the old rules. Whereas in order to affirms that the transitional provision was not made to give hidden privileges to any certain person who is currently serving as a constitutional justice, the Court is of the opinion that legal action is required to affirm this meaning. Such legal action shall be in the form of confirmation by the Court to the institution that nominated the constitutional justice who is currently serving. Such confirmation means that the constitutional justices through the Constitutional Court deliver the notification regarding the continuation of their

term of office which no longer recognizes periodization to each proposing institution (DPR, President and Supreme Court).”

Whereas the emergence of the term "confirmation" in this consideration began at a deliberative meeting of justices who desired a new mandate from the proposing institution, at least for justices who had not met the minimum age requirement of 55 (fifty-five years). However, in his consideration, such confirmation was finally made to all constitutional justices to each proposing institution.

The meaning of the word confirmation according to *Kamus Besar Bahasa Indonesia* (Bahasa Indonesia Dictionary) is: "affirmation, confirmation, justification". That means, any actions taken must be returned to the valid party, who has the authority to provide confirmation, validation, justification for such action being taken. Likewise, in Latin it is known as, "*confirmare nemo potest prius quam jus ei acciderit*", whose meaning is in line with the word confirmation in *Kamus Besar Bahasa Indonesia* (Bahasa Indonesia Dictionary). Whereas the phrase "legal action" in the legal considerations of the *a quo* decision which was followed up with a confirmation letter from the Constitutional Court to 3 (three) proposing institutions, it means that the action of the proposing institution is required in accordance with the interpretation of each of these institutions.

With regard to the review of Article 57 paragraph (1) and Article 57 paragraph (2), we agree with the majority of justices that the Petitioner has the legal standing. However, in relation to the review of Article 87 letter b of Law 7/2020, the Petitioner cannot present any constitutional loss that he has suffered. In addition, the Petitioner has not fulfilled the requirements to become a candidate for Constitutional Justice as required by Article 15 of the Constitutional Court Law. Such as the minimum age requirements for a candidate for Constitutional Justice is 55 (fifty-five) years old and have obtain a doctorate degree, as well as other requirements. In addition, the Constitutional Court Decision Number 96/PUU-XVIII/2020 in relation to Article 87 letter b of the Constitutional Court Law, has been declared constitutional.

Therefore, the Petitioner himself has realized that the actions of state institutions, which according to the Petitioner are unconstitutional, are not considered as the matters within the jurisdiction of the Constitutional Court as stipulated in Article 10 paragraph (1) of the Constitutional Court Law, therefore according to the Petitioner there should be a legal remedy in the form of constitutional complaint to examine the legal action of the state institution. Under such arguments, the Petitioner is actually aware of the absence of his legal standing in the *a quo* case, in fact, within the Petitioner's argument, the petition filed by the Petitioner is not within the jurisdiction of the Constitutional Court, because it already involves a concrete case. Notwithstanding these considerations, because the Petitioner has no legal standing in reviewing Article 87 letter b of the Constitutional Court Law, the petition of the Petitioner must be declared as inadmissible (*niet ontvankelijke verklaard*).

2. Constitutional Justice Suhartoyo

A. Concerning:

Review over Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court, Article 57 paragraph (1) and paragraph (2), and Article 87 letter b of Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court against the 1945 Constitution of the Republic of Indonesia

B. Petitioner:

Zico Leonard Djagardo Simanjuntak, S.H. (Advocate)

C. Norms being reviewed:

Article 10 paragraph (1) letter a of Law 24/2003:

"the review over law against the 1945 Constitution of the Republic of Indonesia".

Article 57 paragraph (1) and paragraph (2) of Law 7/2020:

- “1. The Decision of the Constitutional Court whose verdict states that the substance of the paragraphs, articles and/or parts of the law that are in contrary to the 1945 Constitution of the Republic of Indonesia, such material contained in the paragraphs, articles and/or parts of the law shall have no binding legal force.
2. The decision of the Constitutional Court whose verdict states that the formation of law that does not comply with the provisions for the formation of laws under the 1945 Constitution of the Republic of Indonesia, such law shall have no binding legal force.”

Article 87 letter b of Law 7/2020:

"Constitutional justices who are in office at the time this Law is promulgated shall be deemed to fulfil the requirements according to this Law and shall end their term of office until the age of 70 (seventy) years as long as their entire term of office does not exceed 15 (fifteen) years."

D. Norms as the Basis for Review:

Article 1 paragraph (3), Article 24 paragraph (1), Article 24C paragraph (3), Article 28D paragraph (1), Article 28I paragraph (4), and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia:

E. Authority of the Constitutional Court

1. Whereas Article 24C paragraph (1) of the 1945 Constitution further states:
“The Constitutional Court shall have the authority to adjudicate at the first and final levels whose decisions shall be final to review the laws against the Constitution, to decide on any disputes over the authority of state institutions whose authorities are granted by the Constitution, to decide on the dissolution of political parties and to decide on any disputes regarding the results of general elections”;
2. The Constitutional Court shall have the authority to adjudicate the *a quo* case.

F. The Petitioner's Argument Regarding the Petitioner's Legal Standing

1. Whereas Article 51 paragraph (1) of the Constitutional Court Law states that the Petitioner is any party who considers that his constitutional rights and/or authorities have been impaired by the enactment of any law, namely:
 - a. individual Indonesian citizens;
 - b. indigenous community units as long as they are still existing and in accordance with community developments and the principles of the Unitary State of the Republic of Indonesia as regulated in the law;
 - c. public and private legal entities, or;
 - d. state institutions".
2. Whereas the Constitutional Court Decision Number 006/PUU-III/2005 and the Constitutional Court Decision Number 11/PUU-V/2007 affirmed that the capacity of the Petitioner, in filing any petition for any review over law against the constitution, is as follows:
 - a. The existence of the constitutional rights of the Petitioners as granted by the 1945 Constitution of the Republic of Indonesia.
 - b. Whereas the constitutional rights of the Petitioner are considered by the Petitioner to have been harmed by the Law being reviewed.
 - c. Whereas the constitutional loss as referred to by the Petitioner is specific or particular and actual or at least potential, which according to reasonable reasoning can be ascertained to occur.
 - d. There is a causal relationship between the loss and the enactment of the Law being petitioned for review.
 - e. There is a possibility that by granting the petition, the argued constitutional loss will not or will no longer occur.
3. Whereas the Petitioner is an Indonesian citizen who works as an Advocate which specializes in handling the state administration cases, who has, is and plans to

continue holding various judicial review cases at the Supreme Court and the Constitutional Court, both as the Petitioner and an attorney, where before the Supreme Court, such cases are review over the Fiduciary Guarantee Law, the Job Creation Law, and the Advocate Law;

4. The Petitioner argues that he has a legal standing to review Article 87 letter b of the *a quo* Law because according to the Petitioner there is a constitutional loss that arises as a result of the DPR's arbitrary interpretation of the confirmation letter from the Constitutional Court which is based on the Legal Considerations related to the interpretation of Article 87 letter b of the *a quo* Law, because the constitutional rights of the Petitioner to obtain justice through an independent judicial power have been violated;
5. The Petitioner argues with the absence of fair legal protection due to the absence of Constitutional Complaint, the Petitioner suffered a serious constitutional loss, because in a country based on rule of law, there is a high state institution that clearly commits unconstitutional acts but cannot be prosecuted. However, if there is a Constitutional Complaint mechanism, according to the Petitioner, he may challenge the DPR's actions so that they are terminated and declared as unconstitutional actions. The Petitioner argues that he has a legal standing to review Article 10 paragraph (1) of the *a quo* Law in order to achieve fair legal protection for the Petitioner with the Constitutional Complaint as a legal remedy under the authority of the Constitutional Court;
6. The Petitioner argues that he has a legal standing to review Article 57 paragraph (1) and paragraph (2) of the *a quo* Law in order to obtain fair legal certainty with a binding force rather than merely Legal Considerations in the Constitutional Court's decision. According to the Petitioner, with the granting of the *a quo* case, the credibility of the Petitioner, who firmly believes that the considerations in the Constitutional Court's decision are binding, will not be disputed by the Petitioner's clients, as well as when he becomes a speaker in any related forums.

G. Dissenting Opinion Regarding the Petitioner's Legal Standing

- Against the provisions of the norms of Article 10 paragraph (1) letter a of Law 24/2003 which states "the review over any law against the 1945 Constitution of the Republic of Indonesia", and Article 57 paragraph (1) and paragraph (2) of Law 7/2020 which states "The Decision of the Constitutional Court whose verdict states that the substance of the paragraphs, articles and/or parts of the law that are in contrary to the 1945 Constitution of the Republic of Indonesia, such material contained in the paragraphs, articles and/or parts of the law shall have no binding legal force" and "The decision of the Constitutional Court whose verdict states that the formation of law that does not comply with the provisions for the formation of laws under the 1945 Constitution of the Republic of Indonesia, such law shall have no binding legal force", in my opinion the Petitioner has the legal standing to file the *a quo* petition because the Petitioner is able to describe his constitutional loss in relation to the norm being petitioned for review and the Petitioner has the constitutional rights as guaranteed by the 1945 Constitution to obtain justice in fighting for his constitutional rights. Regarding this matter, I agree with the legal considerations of the Court which dismisses the *a quo* petition;
- Regarding the provisions of the norm in Article 87 letter b of Law 7/2020 which states "Constitutional justices who were in office at the time this Law was promulgated shall be deemed to fulfil the requirements according to this Law and shall end their term of office until the age of 70 (seventy) years as long as the entire term of his duties do not exceed 15 (fifteen) years", the Petitioner has no legal standing to file the *a quo* petition because the Petitioner did not fulfil the requirements as a constitutional justice and did not have the experience in the field of law as required by the Constitutional Court Law. The provisions in the norm of Article 87 letter b of Law 7/2020 regulates the constitutional justices who are currently in office, while the Petitioner is an individual Indonesian citizen who works

as an advocate and does not yet meet the requirements as a constitutional justice as referred to in the Constitutional Court Law. Therefore, the Petitioner has no legal standing to file for reviewing the *a quo* norms. However, the Court can consider the Petitioner's legal standing together with the subject matter of the petition. Therefore, in my opinion, as long as the review of the norms of Article 87 letter b of Law 7/2020 applies to the Petitioner's petition, it should be declared as inadmissible.