CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 109/PUU-XX/2022

Concerning

Protection of Experts from Lawsuits

Petitioner	:	**Muh. Ibnu Fajar Rahim**
Type of Case	:	Judicial review of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (Law 31/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial review of Article 10 paragraph (1) and the Elucidation of Article 10 paragraph (1) of Law 31/2014 against Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution
Verdict	:	To dismiss the Petitioner's petition entirely
Date of Decision	:	Tuesday, January 31, 2023
Overview of Decision	:	

Whereas the Petitioner is an individual Indonesian citizen who works as a Lecturer at the Law Study Program of Universitas Presiden.

Whereas regarding the authority of the Court, because the Petitioner's petition is a petition for review of the constitutionality of the norms of law, *in casu* Article 10 paragraph (1) along with the Elucidation of Article 10 paragraph (1) of Law 31/2014, the Court has the authority to hear the *a quo* petition.

Whereas regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner has been able to descibe the existence of a direct relationship with the law, in particular, between the enactment of the norms of Article 10 paragraph (1) along with the Elucidation of Article 10 paragraph (1) of Law 31/2014 and the Petitioner's presumption of constitutional loss as stipulated in Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution, namely that the Petitioner feels threatened, afraid and not free to fulfil the summons as an expert or give information as a criminal law expert in the judicial process because of potential lawsuits, criminally and civilly, for the statement that the Petitioner gives as an expert in the judicial process even though the statement given by the Petitioner is based on good faith. This happens because Article 10 paragraph (1) of Law 31/2014 protects against being legally prosecuted only to witnesses, victims, perpetrator witnesses, and/or whistle-blowers to the extent that

the testimony or report is not given in good faith. Thus, the potential for such constitutional loss will not occur if the *a quo* Petitioner's petition is granted. The Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas because the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance to requesting information from the parties as stated in Article 54 of the Constitutional Court Law.

Whereas Law 31/2014 is a statutory provision that is *lex specialis*, which can be seen in the title of the law itself, namely "the Protection of Witnesses and Victims", which means that the statutory provisions specifically regulate matters related to the terms and procedures for providing protection and assistance to witnesses and/or victims which were previously regulated separately in some regulations. This is also confirmed in Article 2 of Law 31/2014. The *a quo* norms remains the same, even though Law 13/2006 was amended by Law 31/2014. Therefore, the main nomenclature, as mentioned in the general provisions of the *a quo* Law according to the title of the Law, are “witnesses” and “victims”.

The systematic arrangement of meaning/definition in Law 31/2014 is in line with Law 12/2011, which stipulates that “general provisions” contain: a) limits of meaning or definition; b) abbreviations or acronyms used in the regulation set forth in the limits of meaning or definitions; and/or c) other matters of a general nature which form the basis for the enactment of the subsequent articles, including provisions that reflect the principles, aims and objectives without being formulated separately in an article or chapter [*vide* point 98 Appendix II of Law 12/2011]. Because Law 13/2006 focuses on witnesses and victims, in the regulation of the *a quo* Law, there are no provisions regarding the protection of “experts”. The regulation with respect to “experts” appeared later in the amendment to Law 13/2006, namely Law 31/2014.

Whereas the norms of Article 10 paragraph (1) of Law 31/2014 are norms regulating the protection of witnesses, victims, perpetrator witnesses, and/or whistle-blowers against being legally prosecuted (criminal or civil) to the extent that the information/testimony is given in good faith, namely not giving false statements, false oath, and conspiracy. Such protection is important to be granted because of their role and position in the criminal justice process, which significantly contributes to uncovering criminal acts. Even though Law 31/2014 emphasizes its regulation on witnesses and victims as part of an effort to seek and find clarity about criminal acts committed by perpetrators of criminal acts, it is also necessary that *a quo* Law grants protection to the whistle-blowers so that the whistle-blowers cannot be legally prosecuted either criminally or civilly for the testimony that will be, is being or has been given in good faith.

Whereas the existence of witnesses in relation to giving testimony is to provide clarity on the existence of a crime act which is known to the witness concerned (based on facts). So, in this case, witnesses must provide information on the facts that happened. In other words, witnesses' testimony must be based on the spirit of uncovering material truth in every criminal justice process so that during the examination process, the actual actions committed by the accused and the degree of guilt of the accused can be revealed. A witness can be sentenced when it is proved that the witness refuses to be a witness to a matter that involves him and/or gives false testimony or adds elements of lies in his testimony at the trial. In this condition, protection for witnesses at all stages of the judicial process is necessary, both physically and psychologically, and protection from lawsuits so that witnesses can provide information about a criminal case they know safely without any pressure from any party.

Whereas, unlike witnesses, the definition of experts is not explicitly described in

the Code of Criminal Procedure and Law 31/2014. So there are no clear criteria on who can be called an expert. The Code of Criminal Procedure only states that there is significant particular expertise related to the ability to knowledge which is gained explicitly due to education or work experience. Because experts are needed in every trial process, including criminal cases, to shed light on a particular legal event. For this reason, experts must at least have criteria or validity, including: (1) being educated and having specific experience with the field that has been involved; (2) there is formal evidence regarding the expertise possessed; (3) there is a good track record in terms of their integrity in conveying their expertise. These things are essential so that the information given by experts comes from competent, objective, and independent experts who have high integrity and therefore, the information that has been given cannot be influenced by the party requesting him as an expert or influenced by other parties and can be accounted for to the nation and the state, as well as God Almighty. Pursuant to these considerations, an expert is given the freedom to express his opinion according to his expertise but not in the context of conveying facts so that the expert's statement has no relevance to urgency or feelings of threat as is felt or experienced by witnesses, victims or whistle-blowers.

Whereas the essence of the contents of Article 10 paragraph (1) of Law 13/2006, which was amended by Law 31/2014, is to emphasize the protection of witnesses, victims, perpetrator witnesses, and/or whistle-blowers so that they cannot be prosecuted legally, both criminally and civilly, for the testimony and/or reports that will, are being, or have been given, unless the testimony or report is given not in good faith, as intended by the formation of Law 31/2014. The said emphasis is regulated in Article 10 paragraph (2) of Law 31/2014. Therefore, if the norms of Article 10 of *a quo* Law are amended by inserting the word "experts" as in the Petitioner's *petitum*, this would damage the organization and primary substance in the norms of *a quo* Article related to other articles in Law 31/2014.

Whereas the main essence of Law 31/2014, even though it has been amended, is still the protection of witnesses and victims, which is decisive in revealing criminal acts in the criminal justice process. The additional regulation element other than witnesses and victims, namely by including experts, is only related to efforts to reveal special criminal acts, namely organized transnational criminal acts. Therefore, in the amendment to Law 13/2006, there is an expansion of the subjects protected by the Protection of Witnesses and Victims Agency (LPSK), but this expansion only applies to parties related to the effort to reveal organized transnational criminal acts, the parties referred to which are experts under LPSK Decision.

Whereas in principle, as a country of law, the principle of due process of law as a manifestation of the recognition of human rights in the criminal justice process is a principle that all parties must uphold. The constitution has emphasized that every Indonesian citizen is protected from feeling safe and given protection from threats of fear to do or not do something, which is a human right [vide Article 28G paragraph (2) of the 1945 Constitution]. In this regard, the state's duty is to protect all parties involved in the criminal justice process, including experts, but with different conditions, procedures and regulations.

Whereas pursuant to the entire legal considerations above, the Court is of the opinion that the Petitioner's arguments regarding the review of the norms of Article 10 paragraph (1) of Law 31/2014 have not raised the issue of legal uncertainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution so that they are legally unjustifiable. As a juridical consequence, the Petitioner's argument regarding the Elucidation of Article 10 paragraph (1) of Law 31/2014 must also be declared legally

unjustifiable.

Subsequently, the Court passed down a decision in which the verdict was to dismiss the Petitioner's petition entirely.

Dissenting Opinion

Whereas against the *a quo* Constitutional Court decision, 2 (two) Constitutional Justices, namely Constitutional Justice Manahan MP Sitompul and Constitutional Justice M. Guntur Hamzah, have a dissenting opinion as follows:

In our opinion, by understanding the urgency of protecting experts from legal prosecution and by considering the preamble letter b and the General Explanation of the *a quo* Law, there is sufficient reason to know the original intent because the legislators intended the expansion of legal subjects protected in the *a quo* Law including experts. Thus, in accordance with the said original intent, philosophical, systematic interpretation, and according to reasonable reasoning, the “experts” norms to be inserted in Article 10 of the *a quo* Law, along with the elucidation as desired by the Petitioner, can be legally justified and is justifiable.

In accordance with the above considerations and framework, once again, the Petitioner's petition should be granted because it is legally justifiable.