



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 75/PUU-XX/2022**

Concerning

Rights of Homeworkers in the Manpower Law

Petitioner	: Muhayati, et al.
Type of Case	: Judicial review of Law 13 of 2003 concerning Manpower (Law 13/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	: Judicial review of the constitutionality of Article 1 point 15 and Article 50 of Law 13/2003 against the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition entirely.
Date of Decision	: Tuesday, 31 January 2023
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens with the status of homeworkers who are harmed due to the enactment of the norms of the *a quo* article, namely Article 1 point 15 and Article 50 of Law 13/2003.

Regarding the authority of the Court, because the Petitioners petition for the Judicial Review of Law 13/2003 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Petitioners are Indonesian citizens who work as homeworkers and they believe that their constitutional rights have been harmed due to the enactment of Law 13/2003, particularly in relation to the regulation of rights for homeworkers as regulated in Law 13/2003, the Petitioners believe that they have the right to obtain legal certainty and equal treatment as guaranteed under the 1945 Constitution. Thus, it is evident that there is a causal relationship (*causal verband*) between the Petitioners' presumption regarding the loss of constitutional rights and the enactment of the norms of the law being petitioned for judicial review so that if the petition is granted, the presumption of such loss will no longer occur. Therefore, regardless of whether or not the Petitioners' argument is proven regarding the constitutionality of the legal norms being petitioned for review, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas concerning the subject matter of the petition, the Court in its considerations states the following:

- Whereas Article 1 point 15 of Law 13/2003 is part of Chapter I concerning General Provisions, which contains the boundaries of meaning or definition, abbreviations or acronyms used in regulations, and other matters of a general nature which form the basis for the enactment of the subsequent articles. The importance of regulating general provisions in a statutory regulation is meant, among other things, to clarify the boundaries of meaning or definition, abbreviations or acronyms used in the regulation so that it shall not give rise to a double meaning [*vide* point 98 Appendix II of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations]. Therefore, the Court is of the opinion that if the Petitioners question the boundaries of meaning, abbreviations or other matters of a general nature which is used as the basis/foundation for subsequent articles in the *a quo* Law, they must have strong arguments that can prove the existence of legal ambiguity in Article 1 point 15 of Law 13/2003. This is because the boundaries of meaning or definition within the general law provisions shall become a reference for other articles in the law, including a reference to the implementing regulation, if any.
- Whereas the Court is of the opinion that the provisions of Article 1 point 15 of Law 13/2003, which states, “An employment relation is a relationship between an entrepreneur and a worker/labourer under a work agreement, which contains the elements of job, wages and work order” which also proves to be very closely related to Article 50 which states “Employment relation exists because of the existence of a work agreement between the entrepreneur and the worker/labourer”, which is also being petitioned for review by the Petitioners, has provided a clear description of what is meant by an employment relation, what and who is the legal subject and object as well as what elements must be included in a work agreement. In this regard, the Court can understand the concerns of the Petitioners as a result of *a quo* norm, which seems to have limited the parties that can be involved in an employment relation so that the Petitioners do not have the same rights as workers or labourers who carry out employment relations with employers under work agreements as stipulated in the *a quo* Law. However, it is inappropriate to eliminate this concern by simply inserting the phrase “employer” into the norms of Article 1 point 15 of Law 13/2003. In addition, the Court is of the opinion that Article 1 point 15 and Article 50 of Law 13/2003 are indeed constructed to regulate employment relations between entrepreneurs and workers/labourers referring to work agreements which are in principle made in writing, but it is possible to be made verbally, given the various conditions in the society [*vide* Article 51 and the Elucidation of Law 13/2003]. The work agreement contains the rights and obligations of both parties. Law 13/2003 has stipulated in detail what provisions must be included in a work agreement, namely that a written work agreement between an entrepreneur and a worker/labourer shall at least include the name, address and line of business of the company, the name, sex, age and address of the worker/labourer, the occupation or the type of job, place of work, the amount of wages and how the wages shall be paid, job requirements stating the rights and obligations of both the entrepreneur and the worker/labourer, the date the work agreement starts to take effect and the period during which it is effective, the place and the date where the work agreement is made and the signatures of the parties involved in the work agreement [*vide* Article 54 paragraph (1) of Law 13/2003]. The elements of the amount of wages and how the wages shall be paid, as well as job requirements stating the rights and obligations of both the entrepreneur and the worker/labourer in the work agreement, are material contents

- which must not be against the company regulations, the mutual work agreement, and prevailing laws and regulations [*vide* Article 54 paragraph (2) of Law 13/2003].
- Whereas the provisions of work agreement under Law 13/2003 are carried out between the entrepreneurs, whether individuals, partnerships or legal entities running the business and the workers/labourers and shall create an employment relation between the parties as referred to in Article 50 of Law 13/2003. In this regard, if the Petitioners' *petitum*, which wishes for a work agreement between employers and homeworkers, is considered, then it is not prohibited as long as the parties mutually agree to bind themselves in an agreement in accordance with the principle of freedom of contract [*vide* Article 1320 and Article 1338 of the Indonesian Civil Code]. However, such wishes of the Petitioners do not have to be carried out by amending the construction of the norm of Article 1 point 15 and Article 50 of Law 13/2003. Because if this is granted, then the need to get a job and the need for labour would be increasingly unmet. In fact, the availability of labours and jobs is still unbalanced. In addition, if the definition of entrepreneur in Article 1 point 15 and Article 50 of Law 13/2003 is interpreted as petitioned by the Petitioners, the Court is of the opinion that this will be detrimental to workers/labourers, especially those who have entered into work agreements with entrepreneurs and are bound by employment relations. This is because the employer who provides the job to the homemaker is not necessarily an entrepreneur who owns a company, so this will have an impact on the non-implementation of the work agreement, especially between the worker/labourer and the company, which in this case is represented by the entrepreneur as stipulated in Article 1 point 5 and point 6 of Law 13/2003. Moreover, even though the Court did not find formal evidence proving that the Petitioners has entered into a work agreement with the employer who has provided jobs to the Petitioners, however, the Petitioners should also have the same rights as the workers/labourers who work for the entrepreneurs who own the business. The existence of the fact that specific requirements are required to make a work agreement cannot be interpreted as causing unfair treatment for the Petitioners so that they are considered to have eliminated the constitutional rights of the Petitioners, in fact, the existence of specific requirements or provisions in the work agreement ultimately aims to provide protection and guarantee legal certainty for the workers/labourers. Meanwhile, for the protection of homeworkers such as the Petitioners, who obtain the jobs from the employer, where the employer is not necessarily the owner, but the entrepreneur is definitely the employer who has an employment relation with the workers/labourers as referred to under Law 13/2003, the Court is of the opinion that for this purpose a particular regulation is needed. It cannot be done by inserting the phrase "employer" in interpreting the general provisions of Article 1 point 15 of Law 13/2003. In accordance with all of the above considerations, the argument of the Petitioners stating that Article 1 point 15 and Article 50 of Law 13/2003 has created legal ambiguity resulting in no legal recognition, guarantees, protection and certainty, resulting in unfair treatment for the workers who do not work for entrepreneurs because they are considered to be outside of the employment relations so that they are in contrary to Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution is not proven, therefore the *a quo* argument is legally unjustifiable.

Whereas the Petitioners further argued that the definition of Employment Relation in Article 1 point 15 and Article 50 of Law 13/2003 has resulted in legal discrimination and absence of the equality of legal status for workers who do not work for entrepreneurs because such relation is considered to not fulfil the criteria as an

employment relation and has caused the loss of workers' fundamental rights for workers who have worked for any parties other than entrepreneurs and the loss of the right to a decent living because the legal relationships of such workers do not fulfil the criteria as employment relations, so according to the Petitioners Article 1 point 15 and Article 50 are contrary to Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution as long as it is not interpreted as "employment relation is a relationship between an entrepreneur or an employer and a worker/labourer, under a work agreement, which contains the elements of job, wages, and work order", and "Employment relation exists because of the existence of a work agreement between the entrepreneur or employer and the worker/labourer". Regarding the *a quo* arguments of the Petitioners, the Court considered the following:

- Whereas, as has been considered in the previous Paragraph, Law 13/2003 has the objective of, among other things, providing equal opportunities and treatment to workers/labourers in terms of obtaining employment, welfare and a decent living, which must be carried out without discriminating against gender, ethnicity, race, religion, and political choice and adapting to the interests and abilities of workers/labourers, including equal treatment of persons with disabilities by providing entrepreneurs with responsibilities to be able to provide rights and obligations to workers/labourers without discriminating against gender, ethnicity, race, religion, skin colour, and political choice. Furthermore, in the Preamble letter d of Law 13/2003, it has been considered, which in essence states that protection of workers is intended to safeguard the fundamental rights of workers/labourers and to secure the implementation of equal opportunity and treatment without discrimination on whatever basis in order to realize the welfare of workers/labourers and their family by continuing to observe the development of progress made by the world of business. In addition, in Chapter III of Law 13/2003 concerning Equal Opportunities and Treatment, Article 5 of *a quo* Law states, "Any manpower shall have the same opportunity to get a job without discrimination", and Article 6 of *a quo* Law states "Every worker/ labourer shall have the right to receive equal treatment without discrimination from their employer." In the context of the case experienced by the Petitioners, *in casu* as homeworkers who are not under the work agreement as referred to in Law 13/2003 because the employer is not an entrepreneur and therefore, the Petitioners think they do not have the same rights as workers/labourers who work with entrepreneurs, the Court is of the opinion that such presumption is invalid because homeworkers as currently carried out by the Petitioners have different characteristics from workers/labourers working at companies. The differences in these characteristics are visible, for example, starting from the place of work, working time, for whom they work, wages, and working facilities. Therefore, applying different things to different things is not discrimination because discrimination treats the same thing differently. Thus, Article 1 point 15 and Article 50 of Law 13/2003 do not contain discriminatory treatment because the boundaries contained in *a quo* Article apply to every worker/labourer as referred to in Law 13/2003. Inserting the phrase "employer" in Article 1 point 15 and Article 50 of Law 13/2003 as petitioned in the *petitum* of the Petitioners may cause legal ambiguity and uncertainty because it will change the primary substance of Law 13/2003.
- Whereas concerning the argument of the Petitioners who states that the *a quo* Article has caused the loss of fundamental worker rights for workers who have worked for any parties other than entrepreneurs as well as the loss of the right to

decent living because the legal relationships of the workers do not fulfil the criteria as employment relations. Concerning the *a quo* argument, as the Court has considered in the previous Sub-paragraph, Article 1 point 15 and Article 50 of Law 13/2003 are indeed constructed to regulate the employment relation between entrepreneurs and labourers/workers under a work agreement made in writing which contains rights and obligations of both parties. Such an entrepreneur is an employer, but an employer is not always an entrepreneur. Such employment relation only occurs between an entrepreneur and a worker/labourer under a work agreement. In the case as experienced by the Petitioners as homeworkers, there was no employment relation with the employer because the work was obtained from employers or intermediaries who were not bound by work agreements and the jobs were only given through verbal orders. In relation to the rights of the petitioners as homeworkers under the President's Supplementary Statement p. 2-3 without the Court intending to assess its constitutionality and legality, it has been apparent that there are various laws and regulations that have provided protection to homeworkers, including Law Number 40 of 2004 concerning National Social Security System, Government Regulation Number 31 of 2006 concerning National Workforce Training System, Government Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance as amended by Government Regulation Number 76 of 2015 concerning Amendments to Government Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance, Government Regulation Number 33 of 2013 concerning Expansion of Job Opportunities, Government Regulation Number 44 of 2015 concerning the Organization of Occupational Accident Insurance and Death Benefits and Government Regulation Number 25 of 2020 concerning Implementation of Public Housing Savings. Nevertheless, the Court is of the opinion that the thing experienced by the Petitioners, *in casu* homeworkers, is undoubtedly a part to which the Government, *in casu* the ministry in charge of manpower affairs, must pay attention to, so that they can immediately create regulations that are specific or more specific for homeworkers so that the rights of homeworkers can be regulated in them. These regulations can be realized through the regulatory authority of the minister in charge of manpower affairs or through regional regulations so that the rights of homeworkers can be appropriately protected and the welfare of homeworkers can also be maintained in accordance with the conditions of each region. Such regulations are needed because homeworkers have different characteristics from formal workers. Moreover, as stipulated in Article 3 of Law 13/2003 that manpower development shall be carried out in accordance with the basic principle of integration through functional, cross-sector, central, and provincial/municipal coordination so that the duties and responsibilities of the state towards homeworkers can be carried out by both the Central Government and Regional Governments. This should be done immediately as an effort from the state, which in this case is represented by the Central Government and Regional Governments, to provide protection and welfare to homeworkers as part of a strategic policy to expand employment opportunities for the community.

- Whereas in accordance with the entire description of the legal considerations above, the Court is of the opinion that it has been proven that the provisions of the norms of Article 1 point 15 and Article 50 of Law 13/2003 do not cause legal uncertainty and discrimination, unequal legal status, and do not cause the loss of workers' fundamental rights to decent living as guaranteed by Article 27 paragraph

(1) and paragraph (2), Article 28D paragraph (1) and paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution. Thus, the arguments of the Petitioners' petition regarding the review of the norms of Article 1 point 15 and Article 50 of Law 13/2003 are legally unjustifiable.

In accordance with all of the above considerations, the Petitioners' argument is legally unjustifiable entirely. Accordingly, the Court subsequently passes down a decision in which verdict states to dismiss the Petitioners' petition entirely.