



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 3/PUU-XXI/2023

Concerning

Submission of Legal Action in the Form of Re-Examination  
of Court Decision More Than Once

<b>Petitioner</b>	: <b>Ihda Misla</b>
<b>Type of Case</b>	: Judicial Review of Law Number 48 of 2009 concerning Judicial Power (Law 48/2009) and Law Number 14 of 1985 concerning Supreme Court as last amended by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning Supreme Court (Supreme Court Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Judicial Review of Article 24 paragraph (2) of Law 48/2009 and Article 66 paragraph (1) of Supreme Court Law against Article 1 paragraph (3), Article 24 paragraph (1), Article 28A, Article 28C paragraph (1), and Article 28D paragraph (1) of 1945 Constitution
<b>Verdict</b>	: <b>On Preliminary Injunction:</b> To dismiss the Petitioner's petition for preliminary injunction <b>On the Merits:</b> To declare that the Petitioner's petition is inadmissible
<b>Date of Decision</b>	: Tuesday, 28 February 2023
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen who is a convict who has filed a legal action in the form of re-examination of court decision.

Whereas in relation to the authority of the Constitutional Court (the Court), because what is being petitioned for review is the law, *in casu* Law 48/2009 and the Supreme Court Law, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Petitioner as an individual Indonesian citizen who is a convict based on Decision of Re-Examination of Court Decision Number 763 PK/Pid.Sus/2022, dated 4 August 2022, in which the verdict stated that the Petition for Re-Examination of Court Decision submitted by the Petitioner is dismissed. The Petitioner believes that his constitutional rights have been harmed because his sense of justice has been eliminated by the provisions limiting the submission of a second petition for re-examination of court decision as stipulated in Article 24 paragraph (2) of Law 48/2009 and Article 66 paragraph (1) of the Supreme Court Law. Currently, the Petitioner has been dishonourably discharged from his place of work and is receiving punishment for an act he never committed. With the granting of this petition, the reputation of the Petitioner will be restored/cleaned from the claims or the Court Decisions.

Whereas with respect to the description of the Petitioner's legal standing, the Court is of the opinion that even though the Petitioner's petition separates the description regarding the

legal standing in the systematics of part “B. legal standing of the Petitioner” and part “E. Legal Standing and Loss of the Petitioner”, however, the Court can understand that these descriptions form an integral part that explains the legal standing of the Petitioner. Therefore, the Court is of the opinion that the Petitioner has been quite clear in describing the presumption of loss of constitutional rights, which according to the Petitioner, specifically, it has the potential to be harmed by the enactment of the norms of Article 24 paragraph (2) of Law 48/2009 and Article 66 paragraph (1) of the Supreme Court Law. In addition, the Petitioner has also been able to describe the existence of a causal relationship (*causal verband*) between the presumed loss and the enactment of the norms of the article being petitioned for review. Therefore, if the petition is granted, the potential loss as referred to by the Petitioner will not occur. Thus, regardless of whether or not there is an issue of unconstitutionality of norms as argued by the Petitioner, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Whereas because the Court has the authority to hear the *a quo* petition and the Petitioner has the legal standing to act in the submission of the *a quo* petition, the Court will then consider the petition for preliminary injunction and the merits.

Regarding the petition for preliminary injunction, the Petitioner in his *petitum* petitions for the Court to prioritize the examination of the *a quo* case, but the *a quo petitum* for preliminary injunction are not preceded by the reasons for the importance of submitting a petition for preliminary injunction. Regarding such *petitum* for preliminary injunction, there is no reason or argument regarding the submission of the petition for preliminary injunction in the reasons for the petition. However, the petition for preliminary injunction suddenly appeared in the *Petitum*. Thus the Court does not know the real reason why the Petitioner wishes the *a quo* petition to be a priority and to be resolved immediately. Therefore, the Court is of the opinion that the petition for preliminary injunction submitted by the Petitioner is legally unjustifiable.

Meanwhile, regarding the merits of the petition, before the Court further considers the arguments of the Petitioner's petition, the Court will first consider the systematics of the petition submitted by the Petitioner pursuant to Article 10 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021). The Court is of the opinion that the revised petition is not prepared in accordance with the systematics as stipulated in PMK 2/2021. The revision of the petition shall consist of A. The Authority of the Constitutional Court, B. The Legal Standing of the Petitioner, C. The Reasons of the Petition, D. The Norms Being Petitioned for Review, E. The Position and Loss of the Petitioner, and F. *Petitum*. Even though in the “Legal Standing of the Petitioner” section and the “Position and Loss of the Petitioner” section are not organized into a single unit in describing the legal standing, the Court can understand it and has considered the legal standing of the Petitioner as contained in Paragraph [3.5]. However, after the Court has carefully examined the petition at the “E. The Position and Loss of the Petitioner” section, it is apparent that in the description of the Position and Loss of the Petitioner there is also a description of the arguments for the petition, such as the principles, theory and comparisons with other countries which should be placed in the reasons for the petition (*posita*). This has actually caused the petition to become ambiguous, because the Petitioner has confused the description of the loss of constitutional rights he experienced with the reasons for the petition. In addition, there are different and disproportionate conditions, on the one hand regarding the “The Position and Loss of the Petitioner”, the Petitioner describes many things, meanwhile in the description regarding the reasons for the petition, the Petitioner argument is very brief and there is also no description of the conflict between the articles being petitioned for review and the 1945 Constitution. The Petitioner only states that the legal action in the form of re-examination of court decision has been taken and there is a provision of SEMA Number 7 of 2014 concerning Submission of Petition for Re-Examination of Court Decision in Criminal Cases (SEMA 7/2014) which limits the Petitioner from submitting a second legal action in the form of re-examination of court decision. The description of the reasons for such petition makes the petition brief and unclear whether the Petitioner is questioning the norms of law or SEMA 7/2014. Moreover, in the petition, the Petitioner wishes for a cumulative-alternative review which is formulated by using the phrase “and/or”, starting from the subject to the

*petitum* of the petition, which seems to encourage the Court either to make a choice or to combine the two norms of the laws being petitioned for review. This shows the ambiguity of the *a quo* petition. Then in the *petitum* section, the Court at the hearing on 16 January 2023, with the Preliminary Examination agenda, has advised the Petitioner to change the *petitum* in accordance with the *petitum* format applicable to the Constitutional Court. However, at the hearing on 30 January 2023, with the hearing agenda to revise the petition, the Petitioner in his revised petition did not amend his *petitum* and still included the sentence "...Moreover, now that there is a Decision of the Constitutional Court of the Republic of Indonesia Number 34/PUU-XI/2013, dated 6 March 2014, regarding the Annulment of Article 268 paragraph (3) of the Law of the Republic of Indonesia Number 8 of 1981, dated 31 December 1981 concerning the Criminal Procedural Code (State Gazette of the Republic of Indonesia of 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209)". The existence of such sentence actually makes the *petitum* of the petition unusual.

In accordance with all of the above legal considerations, the Court is of the opinion that, since the subject matter and the *petitum* of the petition are unclear, thus it causes the *a quo* petition to be unclear (obscure) because it does not fulfil the formal petition requirements as referred to in Article 30 and Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. Accordingly, the Court does not consider the Petitioner's petition any further.

Pursuant to all of the above considerations, the Court subsequently passes down a decision in which the verdict is as follows:

**On Preliminary Injunction:**

To dismiss the Petitioner's petition for preliminary injunction

**On the Merits:**

To declare that the Petitioner's petition is inadmissible.