



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 7/PUU-XXI/2023**

Concerning

**Criminal Act of Assaulting Honour, Respectability and Dignity
and Insulting President, Vice President, Government and State Institutions**

Petitioners	: Fernando M. Manullang, et al.
Type of Case	: Judicial Review of Law Number 1 of 2023 concerning Indonesian Criminal Code (Law 1/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law 1/2023 against Article 28D paragraph (1) of the 1945 Constitution
Verdict	: To declare that the petition of the Petitioner is inadmissible
Date of Decision	: Tuesday, February 28, 2023
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens who have constitutional rights to recognition, guarantees, protection and fair legal certainty and equal treatment before the law.

Regarding the authority of the Court, because the Petitioners petition for a review of the constitutionality of the norms of law, *in casu* Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law 1/2023 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the legal standing of the Petitioners in submitting the petition for judicial review of the provision of criminal act of assaulting the honour or dignity of the President and/or Vice President as well as criminal act of insulting the Government or State Institution *in casu* Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law 1/2023, the Court considers the following matters:

- a. Whereas the norms of the *a quo* Articles are contained in Law 1/2023 which was ratified and promulgated on 2 January 2023. Nonetheless, pursuant to Article 624 CHAPTER XXXVII Closing Provisions, the *a quo* Law shall come into force 3 (three) years after the date of promulgation. That means, the *a quo* Law will come into force on 2 January 2026. The Petition of the Petitioners was submitted on 9 January 2023 and registered to the Registrar's Office of the Court on 12 January 2023, therefore when this Petition was submitted to the Constitutional Court and examined as a judicial case against the 1945 Constitution, the *a quo* Law submitted for review is not yet come into force.
- b. Whereas in accordance with the Decision of the Court which stipulates several cumulative requirements for constitutional losses in order to provide legal standing to the Petitioners, the Petitioners have been able to describe the existence of constitutional rights provided by

Article 28D paragraph (1) of the 1945 Constitution. Furthermore, in relation to the second requirement, namely the presumption that the constitutional rights granted by Article 28D paragraph (1) of the 1945 Constitution are harmed due to the enactment of a law, in this case Law 1/2023, the Court is of the opinion that in relation to the *a quo* matter, an express requirement is imperative, namely the presumption that the constitutional rights of the Petitioners were harmed due to the enactment of the norms of the law being petitioned for review. Therefore, if this matter is linked to the legal facts existed at the trial, what was experienced by the Petitioners, it turned out that there is no relations between the constitutional rights of the Petitioners and the enactment of norms of law, *in casu* Law 1/2023. In other words, the articles contained in Law 1/2023 that were submitted for review by the Petitioners are contained in a Law that has not yet come into force and automatically it does not yet have binding legal force, as referred to in Article 87 of Law Number 12 of 2011 concerning Formation of Laws and Regulations as last amended by Law Number 13 of 2022. Therefore, the *a quo* Law has not yet had an impact on the presumption of constitutional harm, both potentially and, even more so, actually to the Petitioners.

- c. Whereas both the presumption of actual and potential constitutional losses should be based on the existence of applicable legal norms. Therefore, pursuant to the legal fact that Law 1/2023 will only come into force 3 (three) years after the date of promulgation [*vide* Article 624 CHAPTER XXXVII Closing Provisions of Law 1/2023], such enactment has legal consequences that the *a quo* Law does not yet have binding legal force. Thus, it causes the requirements for presumption of constitutional loss to be unfulfilled as referred to in the Decision of the Constitutional Court Number 006/PUU-III/2005 and the Decision of Constitutional Court Number 11/PUU-V/2007. Accordingly, it has been proven that the Petitioners have not fulfilled the requirements for the presumption of constitutional harm due to the enactment of the norms of law.
- d. Whereas in addition to the aforementioned legal facts, the Petitioners also do not provide sufficient evidence to describe their legal standing. In fact, if the presumed constitutional loss of the Petitioners is linked to Indonesian Criminal Code that is currently in force, there is not sufficient evidence regarding the activities of the Petitioners which could be threatened by the enactment of Indonesian Criminal Code, especially the articles related to insult and defamation, because in fact the existing Indonesian Criminal Code, without intention to review the constitutionality of the norms of the articles of the existing Indonesian Criminal Code, still regulates some forms of protection for the President, Vice President, the Government, and State Institution from insult and defamation, as well as the protection of the rights of citizens.

Whereas regarding the description of the legal standing of the Petitioners in relation to the Decision of the Constitutional Court Number 110/PUU-X/2012, the Court has taken into account the Decision of the Constitutional Court Number 1/PUU-XXI/2023 which was previously declared in a session open to the public on 28 February 2023, which, among others, has considered the following:

- a. Whereas in the Decision of the Constitutional Court Number 110/PUU-X/2012 which was declared in a trial open to the public on 28 March 2013, in that decision the Court granted the legal standing to the Petitioners, the Court shall emphasize that the SPPA Law has a very different character with Law 1/2023. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak* or SPPA Law) is a law which contains the norms which were then being petitioned for review by the Petitioners, it relates to criminal threats for the law enforcers who are carrying out their duties which are not regulated in the norms of the previous relevant law, namely Law Number 3 of 1997 concerning Juvenile Courts. Therefore, even though the SPPA Law had not been enacted at the time the petition was submitted, the Court considered that there was an urgent situation for an immediate decision on such case, so that there would be no feeling of concern or even fear for the law enforcers in carrying out the law enforcement duties, especially in adjudicating the cases involving minors as suspects/defendants.

Such concerns may occur because the criminal case process may take a long time and it may go through pre-processes and post-processes when the SPPA Law comes into force. Therefore, it is very likely that the norms of the relevant articles is used to convict the law enforcers. Thus, these legal facts were able provide opportunities for legal uncertainty in the implementation of the norms of the articles being petitioned for review in the SPPA Law, if the norms were to be declared as constitutional. These legal facts are different from the character of Law 1/2023, where in fact, even though the existing norms have not been enforced, this does not create any legal vacuum, because there is an existing Criminal Code that is still in force, so there will be no potential for legal uncertainty. In other words, if the norms in Law 1/2023 are declared as in force, it would be the same as the Court allowing the application of two Criminal Codes (i.e. the existing Criminal Code that is still in force and the new Criminal Code that will be in force) at the same time. If this is justified, it will create legal uncertainty in the criminal law enforcement.

- b. Whereas in addition to the aforementioned legal considerations, the Court has other reasons, namely the decisions of the Constitutional Court may undergo refinement, to the extent that these matters are related to community relations and development. Therefore, in the perspective of granting the legal standing to the petitioner, the Court must consider the absolute and cumulative conditions, namely the existence of legal subject as stipulated in Article 51 of the Constitutional Court Law and the requirements for presumption of constitutional loss as stipulated in the Decision of the Constitutional Court Number 006 /PUU-III/2005 and the Decision of the Constitutional Court Number 11/PUU-V/2007. Moreover, in considering and assessing the requirements for the legal standing of the Petitioner at the Constitutional Court, the issue of constitutionality and the applicability of the norms of the law being petitioned for review cannot be separated. Thus, it is possible that in granting the legal standing between one petition and another, the Court may give different considerations.

Thus, the aforementioned legal considerations for the Decision of the Constitutional Court Number 1/PUU-XXI/2023 *mutatis mutandis* applies to this decision. Therefore, in accordance with the description of the aforementioned legal considerations, the Court concludes that the Petitioners do not have the legal standing to submit the *a quo* petition. Even if the Petitioners have the legal standing to submit the *a quo* petition, *quod non*, and the Court may then consider the subject matter of the petition, however since the provisions of Article 218 paragraph (1), Article 219, Article 240 paragraph (1), and Article 241 paragraph (1) of Law 1/2023 are provisions that have not yet been in force and they do not yet have binding legal force, accordingly, against such matter the Court will be of the opinion that the petition of the Petitioners is premature.

Whereas in accordance with the entire description of the legal considerations above, the Court is of the opinion that the Petitioners do not have the legal standing to submit the *a quo* petition, even if the Petitioners have the legal standing, *quod non*, the subject matter of the petition of the Petitioners is premature.

Accordingly, the Court subsequently passes down a decision in which the verdict states that the petition of the Petitioners is inadmissible.