



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 1/PUU-XXI/2023**

**Concerning**

**Criminal Act of Defamation in the New Indonesian Criminal Code**

<b>Petitioner</b>	: <b>Zico Leonard Djagardo Simanjuntak</b>
<b>Type of Case</b>	: 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)
<b>Subject Matter</b>	: Article 433 paragraph (3), Article 434 paragraph (2), and Article 509 letter a and letter b of Law 1/2023 are considered to be contrary to the 1945 Constitution
<b>Verdict</b>	: To declare that the petition of the Petitioner is inadmissible
<b>Date of Decision</b>	: Tuesday, February 28, 2023
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen who works as an Advocate who believes he is harmed by the norm of criminal act of defamation in Article 433 paragraph (3), Article 434 paragraph (2) of Law 1/2023 and he also believes that he is harmed by the norms of criminal act of giving false information in Article 509 letters a and b of Law 1/2023. The petitioner believes that the *a quo* norms are contrary to Article 28D paragraph (1) of the 1945 Constitution.

Regarding the authority of the Court, because the Petitioner petitions for a judicial review of the norms of the Law *in casu* Article 433 paragraph (3), Article 434 paragraph (2), and Article 509 letters a and b of Law 1/2023 against the 1945 Constitution, which is one of the powers of the Court, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, 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. Meanwhile the Petitioner's petition was submitted on 19 December 2022 and registered by the Registrar's Office of the Constitutional Court on 4 January 2023, thus at the time this petition was submitted to the Constitutional Court and examined as a case of judicial review against the 1945 Constitution, the *a quo* Law submitted for review is not yet applicable. Based on the Court Decision which stipulates several requirements for cumulative constitutional loss in order to grant the legal standing to the Petitioner, if it is associated with the second requirement, namely the presumption that the constitutional rights granted by Article 28D paragraph (1) of the 1945 Constitution are harmed by the enactment of the law, in this case the Law 1/2023, the Court is of the opinion that in relation to the *a quo* matters, it is expressly required a requirement that is imperative in nature, i.e. the presumption that the constitutional loss of the Petitioner is due to the enactment of the norms of the law being petitioned for review. Therefore, if this matter is associated to the legal facts that existed during the trial, what was experienced by the Petitioner, it turned out that the constitutional rights of the Petitioner have

nothing to do with the enactment of the norms of law, *in casu* Law 1/2023.

In other words, the articles of Law 1/2023 submitted for review by the Petitioner are contained in a Law that is not yet in effect and automatically they do not have binding legal force, as referred to in Article 87 of Law 12 of 2011 concerning the Formation of Laws and Regulations as last amended by Law Number 13 of 2022 (Law 12/2011) which states that “the Laws and Regulations shall come into force and shall have binding force on the date of promulgation, unless otherwise specified in the relevant Laws and Regulations”. Regarding the matter, Article 624 of Law 1/2023 states, “This law shall come into force 3 (three) years after the date of its promulgation”. Thus, the *a quo* Law has not yet had any impact on the presumption of constitutional loss, either potentially or actually, to the Petitioner.

In addition, what is meant by the presumption of actual constitutional loss is the presumption that a concrete/actual constitutional loss has been experienced due to the enactment of the legal norm. Meanwhile, what is meant by the presumption of potential constitutional loss is any loss that has never been concretely/actually experienced, but one day, it has the potential to be experienced due to the enactment of the legal norm. Therefore, both the presumption of actual and potential constitutional losses are based on the existing legal norms in force. Therefore, in accordance with the legal fact that Law 1/2023 will come into force 3 (three) years after the date of promulgation [*vide* Article 624 CHAPTER XXXVII Closing Provisions of Law 1/2023], such enactment causes the *a quo* law to not yet have any binding legal force, thus the requirement for the presumption of constitutional loss has not been fulfilled as referred to in the Decision of the Constitutional Court Number 006/PUU-III/2005 and the Decision of the Constitutional Court Number 11/PUU-V/2007. Thus, it has been proven that the Petitioner has not fulfilled the requirements for the presumption of constitutional loss due to the enactment of the norms of the law. So, in relation to the remaining requirements, namely the presumption of specific constitutional losses and the existence of a causal relationship (*causal verband*) between the constitutional rights granted by the 1945 Constitution and the enactment of the norms of the law being petitioned for review, are automatically no longer relevant to be considered, because the requirements for the presumption of the relevant constitutional loss are cumulative in nature.

With regard to the stance of the Court in considering the legal standing of the *a quo* Petitioner, it is important for the Court to relate it to the legal considerations of the Court in the Decision of the Constitutional Court Number 110/PUU-X/2012 which was declared in a session open to the public on 28 March 2013. In such decision, the Court granted the legal standing to the Petitioners even when the relevant petition petitioned for the review of the articles of the law that have not been in effect, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). In this regard, the Court emphasizes that the SPPA Law has a very different character from Law 1/2023. The SPPA Law is a law that contains norms which are then being petitioned for review by the Petitioners in the relevant case, which related to criminal threats for the law enforcers who are carrying out their duties in law enforcement, which are not regulated in the relevant previous legal norms, namely Law Number 3 of 1997 concerning Juvenile Courts. Therefore, even though the SPPA Law had not been enacted at the time the relevant petition was submitted, the Court considered that there was an urgent situation for an immediate decision on the relevant case, so that there would be no sense of worry or even fear for the law enforcers in carrying out their law enforcement duties, especially in adjudicating any cases involving minors as the suspects/defendants. Such concern may occur because the criminal case process can take a long time and it may go through pre-processes and post-processes by the time the SPPA Law comes into force. Therefore, it is very likely to have an impact in the form of imposing the norms of the relevant articles to convict the law enforcers. Therefore, these legal facts can 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 are declared as constitutional. These legal facts are different from the characters of Law 1/2023, where factually the existing norms have not come into force, however there is no legal vacuum since the existing Indonesian Criminal Code is still in force, thus there will be no potential for legal uncertainty. In other words, if the norms in Law 1/2023

are declared as applicable, it is the same as the Court allowing the application of two Criminal Codes (i.e. the existing Indonesian Criminal Code that is still in force and the new Indonesian Criminal Code that will be in force) at the same time. If such approach is justified, it will actually create legal uncertainty for the criminal law enforcement. In accordance with the description of the legal considerations, the Court concludes that the Petitioner does not have the legal standing to submit the *a quo* petition. However, even if the Petitioners have the legal standing to submit the *a quo* petition, *quod non*, and the Court may start the consideration regarding the subject matter of the petition, however, since the provisions of Article 433 paragraph (3), Article 434 paragraph (2), and Article 509 point a and point b of Law 1/2023 are norms that have not yet come into force and do not yet have binding legal force, the Court will be of the opinion that the petition of the Petitioners is premature.

Subsequently, in its decision, the Court declares that the Petitioner's petition is inadmissible.