



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 10/PUU-XXI/2023**

Concerning

Capital Punishment as a Principal Threat for Corruption Crimes and Criminal Provisions Against Community Actions Conducted Without Notification

| | |
|-----------------------------|---|
| Petitioner | : Andi Redani Suryanata, 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 | : Judicial Review of Article 256, Article 603 and Article 604 of Law 1/2023 against Article 28 and Article 28D paragraph (1) of the 1945 Constitution |
| Verdict | : To declare that the petition of the Petitioners is inadmissible |
| Date of Decision | : Tuesday, February 28, 2023 |
| Overview of Decision | : |

The Petitioners are individual Indonesian citizens who argue that they have constitutional rights as stipulated in Article 28 and Article 28D paragraph (1) of the 1945 Constitution in the form of the right to associate and to assemble, to express written and oral opinions, as well as the right to obtain recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.

Regarding the authority of the Court, since the Petitioners' petition is a petition to review the constitutionality of norms of law, *in casu* Article 256, Article 603 and Article 604 of Law 1/2023 against the 1945 Constitution, the petition of the Petitioners is under the authority of the Court.

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners must first fulfil the requirements as stipulated in Article 51 paragraph (1) of the Constitutional Court Law and Decision of the Constitutional Court Number 006/PUU-III/2005 and Decision of the Constitutional Court Number 11/PUU-V /2007. The Petitioners have fulfilled the requirements as individual Indonesian citizens who are students, but the norms in Law 1/2023 will only come into force 3 (three) years after the date of promulgation (*vide* Article 624 CHAPTER XXXVII Closing Provisions), namely 2 January 2026, thus when this Petition was submitted to the Constitutional Court, the *a quo* Law being petitioned for review is not yet applicable. Another requirement that must be fulfilled by the Petitioners is the existence of actual or potential constitutional loss due to the enactment of the legal norms, this requirement is in accordance with the legal fact that Law 1/2023 will only come into force 3 (three) years after the date of promulgation, such enactment causes a legal consequence that the *a quo* Law does not have any binding legal force yet, so that the second requirement is not fulfilled in terms of the fulfilment of the conditions for the presumption of constitutional loss as referred to in the Decision of Constitutional Court Number 006/PUU-III/2005 and the Decision of the Constitutional Court Number 11/PUU-V/2007. Therefore, the Petitioners do

not fulfil the requirements for the presumption of constitutional loss due to the enactment of the legal norm. Thus, in relation to the remaining requirements, namely the presumption of specific constitutional loss and the existence of a causal relationship (*causal verband*) between the constitutional rights as granted by the 1945 Constitution and the enactment of the norm of the law being petitioned for review, are automatically no longer relevant to be considered, because the requirements for the presumption of such constitutional loss are cumulative in nature.

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 considered it in the Decision of the Constitutional Court Number 1/PUU-XXI/2023, which has also been cited in the Decision of Constitutional Court Number 7 /PUU-XXI/2023, which was declared previously in a session open to the public on 28 February 2023, which among others, has considered the following:

[3.6.5] Whereas in relation to the Court's stance 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 that decision, the Court has granted the legal standing to the Petitioners even though the relevant petition was aimed at the articles of the law that have not been declared as effective, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak* or SPPA Law). In this regard, the Court emphasized that SPPA Law has a very different character from Law 1/2023. SPPA Law is a law that contains norms which are then being petitioned for review by the Petitioners in the relevant case, in relation to criminal penalties 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 Criminal Code that is still in force and the new 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.

[3.6.6] Whereas in addition to the legal considerations mentioned above, such stance is also based on the argument that the Court has other reasons, namely the decisions of the Constitutional Court may undergo refinement, as long as they 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 a legal subject as stipulated in Article 51 of the Constitutional Court Law and the requirements for the presumption of any

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 enactment 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.

Accordingly, the aforementioned legal considerations on the Decision of the Constitutional Court shall *mutatis mutandis* apply to the *a quo* decision. Therefore, based on the description of the 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 start the consideration regarding the subject matter of the petition, however, since the provisions of Article 256, Article 603 and Article 604 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 a premature petition.

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