



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 13/PUU-XXI/2023

Concerning

Interpretation of All Unrecorded Press Reports at the Press Council

Petitioner	: Moch. Ojat Sudrajat S.
Type of Case	: Material Review of Law Number 40 of 1999 concerning the Press (Law 40/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 15 paragraph (1) letter d of Law 40/1999 is contrary to Article 27 paragraph (1), Article 28D paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution
Verdict	: To dismiss the petition of the Petitioner entirely.
Date of Decision	: Thursday, 30 March 2023
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who believes that there is a constitutional loss that is specific (special) and actual or at least potential in nature, as follows: (a) Whereas the Petitioner is a public information activist and public policy observer in Banten Province whose opinion is often asked and he releases publications related to issues of public policy in Banten Province; (b) Whereas the Petitioner has made a complaint regarding the local print media (Press Council version) in Banten Province whose products are in the form of *e-papers* with the initials "BP" in relation to the alleged use of data from *Dapodik 2 sekolah* (basic educational database), namely SMKN 2 (Public Vocational High School) of Serang City and SMAN 2 (Public General High School) of Pandeglang City, Banten Province regarding the data of honorary teachers and administrative staff at schools which were allegedly fake/incorrectly filled along with the involvement of officials at the Provincial Government of Banten, which has been operating for more than 11 years at the Press Council and the Petitioner is also often interviewed as sources by the media and is also a customer of the media; (c) Whereas the Petitioner has also made a complaint regarding the alleged theft of electricity at the event of *Podcasts* at SMAN 2 (Public General High School) of Pandeglang City without permission from the school principal as the person in charge of the school and the Petitioner requested a response from the Press Council regarding the news coverage carried out by the online media "BP" who is not registered at the Press Council, who is suspected of reporting the hoax news on the criminalization of teachers; and (d) Whereas the Petitioner cannot make any report to the Law Enforcement Officers (the Police) for the alleged criminal acts, namely in the form of allegations of spreading fake news (*hoax*) due to the enactment of the *a quo* Article.

Regarding the Authority of the Court, because the Petitioner petitions for a judicial review of the constitutionality of the norms of law, *in casu* Article 15 paragraph (1) letter d of Law 40/1999 against the 1945 Constitution, thus the Court has the authority to hear the petition of the Petitioner.

Regarding the Legal Standing, the Petitioner describes that the causal relationship between the loss of constitutional rights and the enactment of the phrase “the cases related to press reports” in Article 15 paragraph (2) letter d of Law 40/1999 to the extent that it is interpreted as “all press reports including those containing press offenses and carried out by press companies that are not registered at the Press Council” because it may cause a sense of injustice to the members of the press, because their mass media recorded at the Press Council shall receive the same treatment as the mass media which are not recorded at the Press Council. In addition, the Petitioner also do not get fair legal certainty because the provisions of the *a quo* article should only be carried out against mass media that are registered at the Press Council, while for mass media that are not recorded at the Press Council, legal action can be taken immediately, either by civil lawsuits or criminal charges.

Based on the description by the Petitioner in explaining his legal standing above, the Court is of the opinion that the Petitioner has been able to specifically explain his constitutional rights which, according to the Petitioner, either actually or at least potentially harmed by the enactment of the norms being petitioned for review. Therefore, it has been proven that there is a causal relationship (*causal verband*) between the presumption of loss of constitutional rights of the Petitioners and the enactment of the norms being petitioned for review. Thus, if the Petitioner's petition is granted, the presumption of the loss of the Petitioner will no longer occur or will not occur, therefore regardless of whether the unconstitutionality of the norms of Article 15 paragraph (2) letter d of Law 40/1999 being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to submit the *a quo* petition.

Whereas since the *a quo* petition is clear, then the Court is of the opinion that there is no urgency or need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the Petitioner's argument which questions the constitutionality of the phrase “the cases related to press reports” in the norms of Article 15 paragraph (2) letter d of Law 40/1999 which according to the Petitioner is contrary to the 1945 Constitution if it is interpreted as “all press reports including those containing press offenses and carried out by press companies that are not registered at the Press Council”. Regarding the *a quo* argument of the Petitioner, the Court considers the following:

Regarding the *a quo* argument of the Petitioner, it is important for the Court to first emphasize that in order to comprehensively understand the provisions of Article 15 paragraph (2) letter d of Law 40/1999 which is being petitioned for review, it cannot be separated from other norms. In this regard, the *a quo* norm is intertwined with other functions of the Press Council as stipulated in Article 15 paragraph (2) letter e of Law 40/1999 which in principle states that the function of the Press Council is to develop communication between the press, the public and the government. Substantially, the provisions of the *a quo* Article has accommodated what is actually petitioned by the Petitioner, which questions the constitutionality of the function of the Press Council to provide considerations and resolve public complaints on the cases related to press reports. This function is also part of the Press Council's efforts to realize the provisions on community participation which are also guaranteed in Article 17 of Law 40/1999 where one of the intended community activities can be in the form of monitoring and reporting the analysis of violations of law, ethics and technical errors in reporting carried out by the press. In fact, within the framework of monitoring, the public can form media watch organizations [*vide* Article 17 paragraph (2) letter a and Elucidation of Law 40/1999]. In this context, the public's right to monitor press reports is part of the control function which carried out through activities that can guarantee the right to obtain the necessary information. This is because Law 40/1999 has guaranteed that the national press will not be subject to censorship, banning or broadcasting bans [*vide* Article 4 paragraph (2) of Law 40/1999]. Therefore, in carrying out this public control function, the public can propose and provide advice to the Press Council in order to maintain and improve the quality of the national press [*vide* Article 17 paragraph (2) letter b of Law 40/1999]. Public monitoring or control is important to be carried out as a form of building a balance with the obligation of the national press to report events and opinions to the public while respecting the

religious norms and a sense of public decency and the principle of the presumption of innocence [vide Article 5 paragraph (1) of Law 40/1999]. In a country based on *Pancasila* ideological values, the respect for these matters is an important sign in reporting so that the civilized life of the nation is guaranteed. Therefore, with regard to the norms of Article 5 paragraph (1) of the *a quo* Law, it was further explained that in broadcasting information, the national press does not judge or conclude someone's mistakes, especially for the cases that are still under the court proceedings, and it can accommodate the interests of all parties involved in the news [vide Elucidation of Article 5 paragraph (1) of Law 40/1999].

In relation to the legal considerations above, it is important to emphasize the meaning of the function of the Press Council as stipulated in Article 15 paragraph (2) letter d of Law 40/1999 which provides considerations and seeks to resolve public complaints on the cases related to press reports. In this context, in relation to reporting by journalists, in the event of proving the accountability of the news reports before the law, the journalists shall have the right of refusal, namely the right of the journalists due to their profession, to refuse to disclose any names or any other identities of news sources which shall be kept as secret by them [vide Article 1 point 10 and Article 4 paragraph (4) of Law 40/1999]. Therefore, with regard to the function of the Press Council in giving the consideration to the complaints from the public, it shall also be carried out by applying the right of reply, right of correction, and allegations of violations of the journalistic code of ethics. Such right of reply and right of correction are actually part of public control as guaranteed by Law 40/1999 [vide Article 5 paragraph (2) and paragraph (3) of Law 40/1999]. Therefore, it is part of the obligation of the press to serve it, namely to make corrections or revisions to information, data, facts, opinions, or images that are not true that have been reported by the relevant press [vide Article 1 point 13 of Law 40/1999].

In relation to the Petitioner's argument which questions the phrase "the cases related to press reports" in Article 15 paragraph (2) letter d of Law 40/1999 which the Petitioner considers as the basis for the protection of the Press Council in resolving the press report disputes/cases with the right of reply or right of correction without being able to exercise the right to file a civil lawsuits or criminal charges even though those who did it were media whose press companies were not registered with the Press Council, thus it is not in line with the provisions of Article 1 number 5 of Press Council Regulation Number 01/Peraturan-DP/VII/2017 concerning Procedures for Complaint to Press Council. According to the Petitioner, this also creates legal discrimination because if the act is carried out by a person who is not a journalist or not a company engaged in the press sector, if they upload any writing/news on social media/online media, then if such act is *hoax* or contains defamation, they can be reported to the police under the Electronic Information and Transaction Law (ITE Law). Without the intention of the Court to assess the concrete cases experienced by the Petitioner and assess the legality of the Press Council Regulation Number 01/Peraturan-DP/VII/2017, the Court is of the opinion that this is a matter of implementation of norms not a matter of constitutionality of norms, therefore the Court has no authority to review it. Moreover, in elaborating the constitutionality of the norms of Article 15 paragraph (2) letter d of Law 40/1999, the Petitioner was mistaken because he only partially understood the norms or does not read the norms in full/comprehensively by relating them to other norms. If the Petitioner questions all press reports including those containing press offenses, such matter has been regulated separately in Chapter VIII concerning Criminal Provisions, namely in Article 18 of Law 40/1999. Furthermore, the issue includes the press companies that are not registered with the Press Council, the formulation of these norms is an integral part of the provisions of the norms of Article 1 point 2 of Law 40/1999, which states, "Press company is an Indonesian legal entity that organizes press business, including the company of print media, electronic media, and news agency, as well as other media company that specifically organizes, broadcasts, or distributes information. Thus, what is meant by a press company has been clearly described in the General Provisions of Law 40/1999. Furthermore, it is the function of the Press Council to record the press companies [vide Article 15 paragraph (2) letter g of Law 40/1999].

If the norms in Article 15 paragraph (2) letter d of Law 40/1999 are interpreted in accordance with the *petitum* of the Petitioner, then the freedom of communication between the press, the public and the government must be recorded at the Press Council, and this will result in the violation of the rights of citizens as guaranteed in Article 28 and Article 28E paragraph (3) of the 1945 Constitution. Moreover, if one examines the *petitum* of the petition, the Petitioner actually wishes for the provisions of the norms of Article 15 paragraph (2) letter d of Law 40/1999 to be declared as conditionally unconstitutional to the extent that the phrase, “the cases related to press reports” is interpreted as “all press reports including those containing press offenses and carried out by press companies that are not registered at the Press Council”. Thus, this shows that the Petitioner emphasizes that there is no issue of the constitutionality of norms in Article 15 paragraph (2) letter d of Law 40/1999.

Pursuant to the description of the above legal considerations, the Court is of the opinion that the provisions of the norms of Article 15 paragraph (2) letter d of Law 40/1999 have evidently no conflict with the right to recognition, guarantees, protection and fair legal certainty and equality before the law and in the government and they do not cause legal discrimination as guaranteed in the 1945 Constitution. Therefore, the petition of the Petitioner is legally unjustifiable entirely and in respect of other matters and the remainder of the matters will not be considered any further because they are deemed irrelevant.

Whereas in accordance with the above consideration of the facts and law, the Court passes down a decision in which the verdict states to dismiss the petition of the Petitioner entirely.