



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 108/PUU-XX/2022

Concerning

**Legal Entities as Subjects in the Control of Personal Data and Exceptions  
to Personal Data Processing by Individuals in Personal or Household  
Activities**

<b>Petitioner</b>	:	<b>Leonardo Siahaan</b>
<b>Type of Case</b>	:	Judicial review of Law Number 27 of 2022 concerning the Protection of Personal Data (Law 27/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	:	Judicial review of Article 1 paragraph (4), Article 2 paragraph (2), Article 19 of Law 27/2022 against Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	:	To dismiss the Petitioner's petition entirely
<b>Date of Decision</b>	:	Friday, April 14, 2023
<b>Overview of Decision</b>	:	

Whereas the Petitioner is an Indonesian citizen. What constitutes a constitutional loss to the Petitioner is that Article 1 point 4 and Article 19 of Law 27/2022 do not provide an opportunity for legal entities to participate in controlling personal data, and the exception in Article 2 paragraph (2) of Law 27/2022 does not give the Petitioner protection and guarantees for the inherent freedom in terms of processing personal data.

Regarding the authority of the Court, the Petitioner's petition is a petition to review the constitutionality of norms of law, *in casu* Law Number 27 of 2022 concerning Protection of Personal Data (Law 27/2022) against the 1945 Constitution so that the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, in the Court's opinion, the Petitioner has been able to describe specifically his constitutional rights guaranteed by the constitution, which is presumed to be harmed by the enactment of the norms of the law being petitioned for review, namely the rights to recognition, guarantees, protections, fair legal certainty, and equal treatment before the law as guaranteed in the 1945 Constitution. Therefore, it is evident that there is a causal relationship (*causal verband*) between the presumed loss of his constitutional rights and the enactment of the norms of the law being petitioned for review. Thus, regardless of whether the unconstitutionality of the norms of Article 1 point 4, Article 2 paragraph (2), and Article

19 of Law 27/2022 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 regarding the arguments put forward by the Petitioner in his petition, the Court must answer two main constitutional questions. First, the Petitioner questions the norms of Article 1 point 4 and Article 19 of Law 27/2022, which do not regulate the involvement of legal entities in processing personal data or controlling personal data. Second, the Petitioner questions the norms of Article 2 paragraph (2) of Law 27/2022, which in the Petitioner's opinion, excludes protection against the Personal Data processing by individuals in personal or household activities. Furthermore, in the Petitioner's opinion, the norms of Article 1 point 4, Article 2 paragraph (2), and Article 19 of Law 27/2022 are contrary to the rights to recognition, guarantees, protections, fair legal certainty, and equal treatment before the law as guaranteed in the provisions of Article 28D paragraph (1) of the 1945 Constitution. Regarding the two main constitutional issues in the *a quo* Petitioner's arguments, the Court fully considers as follows:

Whereas the norms of Article 1 point 4 and Article 19 of Law 27/2022 petitioned for review by the Petitioner, when scrutinized by the Court, regulate the same thing, namely the meaning of legal subjects classified as personal data controllers and personal data processors. Whereas what personal data controllers mean in Article 1 point 4 of Law 27/2022 is every person, public body, and international organization that acts individually or jointly in determining goals and exercising control over Personal Data processing. It was further described that the norms of Article 1 point 4 of Law 27/2022 are the norms contained in Chapter I General Provisions, where the matters listed in general provisions regulate the meaning or definition, abbreviations or acronyms contained in the meaning or definition limits and/or other matters of a general nature that will be regulated in the following article or articles, including provisions that reflect the principles, aims, and objectives as stipulated in the *a quo* Law. Likewise, what is meant by personal data controllers and personal data processors, as referred to in Article 19 of Law 27/2022, is every person, public body, and international organization. Whereas the norms of Article 19 of Law 27/2022 are those contained in Chapter VI, which regulates the obligations of personal data controllers and personal data processors in processing personal data.

Whereas in Chapter I General Provisions of Law 27/2022, the definition of who may become a legal subject as meant by every person, public body, and international organization is regulated with the following description: whereas what is meant by every person is an individual or corporation [*vide* Article 1 point 7 of Law 27/2022], and what is meant by a corporation is an organized group of people and/or assets, either having legal entities or not [*vide* Article 1 point 8 of Law 27/2022]. Moreover, what is meant by public body is the executive, legislative, judicial, and other bodies whose main functions and duties are related to the administration of the state, which some or all of the funds are sourced from the State Revenue and Expenditure Budget and/or the Regional Revenue and Expenditure Budget, or non-governmental organizations to the extent that some or all of the funds sourced from the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget, community donations, and/or foreign countries [*vide* Article 1 point 9 Law 27/2022]. Meanwhile, what is meant by international organization is an organization recognized as a subject of international law and has the capacity to make international agreements [*vide* Article 1 point 10 of Law 27/2022].

Whereas in accordance with the description of the legal facts above, if they are related to the Petitioner's arguments stating that Article 1 point 4 and Article 19 of Law 27/2022 do not provide the involvement of legal entities in processing personal data or controlling personal data, in the Court's opinion, the legal subjects playing a role in controlling and processing personal data in the form of a legal entity as intended by the Petitioner has been included in the definition of "Every Person" in General Provisions Article 1 point 7 of Law 27/2022. In this regard, the definition of "Every Person" includes corporations as further regulated in Article 1 point 8 of Law 27/2022, emphasizing that corporations may be in the form of legal entities. Therefore, pursuant to the provisions of these norms, corporations in the form of legal entities can be appointed as Personal Data Controllers or Personal Data Processors.

Whereas it is further described that the Personal Data Controller and the Personal Data Processor are responsible for the Personal Data processing and shall show responsibility in fulfilling the obligation of implementing the principles of personal protection, and if the Personal Data Controller appoints a Personal Data Processor, and then the Personal Data Processor is obliged to carry out the Personal Data processing in accordance with the orders of the Personal Data Controller. Thus, in the Court's opinion, if the Petitioner pays close attention, Law 27/2022 has provided an opportunity for legal entities to be able to act as personal data controllers. Moreover, the provisions of the norms of Article 48 of Law 27/2022 also regulate the mechanism for Personal Data Controller in the form of a legal entity that, when handling the Personal Data processing on personal data subjects, carries out a merger, separation, acquisition, consolidation, or dissolution, then the legal entity must deliver notification of Personal Data transfers to the Personal Data Subject. Hence the *a quo* legal facts prove that Law 27/2022 has involved legal entities as one of the legal subjects that may become personal data controllers. This confirms the Petitioner's arguments stating that legal entities are not involved as personal data controllers, and this harms the Petitioner's constitutional rights to obtain recognition, guarantees, protections, and legal certainty that are protected in Article 28D paragraph (1) of the 1945 Constitution, are not proven. Moreover, if the Petitioner's petition that Article 1 point 4 of Law 27/2022 is granted and declared to be contrary to the 1945 Constitution and does not have binding legal force, this will affect the structure of Law 27/2022 as a whole. In this case, the public will lose the norms governing anyone who may become a legal subject to act as a Personal Data Controller, who has an obligation to protect personal data. Of course, this will also impact the provisions of Article 19 and other articles in Law 27/2022.

Whereas in accordance with the description of the legal considerations above, the Petitioner's arguments regarding the unconstitutionality of the norms of Article 1 point 4 and Article 19 of Law 27/2022 are legally unjustifiable.

Whereas further regarding the Petitioner's arguments relating to the provisions of the norms of Article 2 paragraph (2) of Law 27/2022 petitioned by the Petitioner stating, "This Law does not apply to the Personal Data processing by individuals in personal or household activities." In the Petitioner's opinion, Article 2 paragraph (2) of Law 27/2022 does not provide protection for Personal Data processing in business activities carried out at home, especially in the booming of e-commerce, business individuals or households carry out many business activities and no protection or weak protection of individual personal data in personal or household activities.

Whereas regarding the Petitioner's arguments, the Court considers that protecting personal data is a form of protection of human rights due to the development of information and communication technology that allows humans to connect without recognizing national borders. This information technology causes a person's data easily collected and transferred from one party to another without the Personal Data's knowledge. Therefore, this can threaten the Personal Data Subject's constitutional rights. This is relevant because Personal Data Protection is needed because of concerns about violations of Personal Data that can be experienced by every person and/or legal entity, leading to human rights violations. Thus, the formulation of rules regarding the Protection of Personal Data is essential due to the need to protect individual rights in society in connection with Personal Data processing electronically and non-electronically using data processing devices. Thus, adequate and comprehensive protection of Personal Data will bring public trust and protection and provide necessary Personal Data for various public interests without being misused or violating personal privacy rights.

Whereas in accordance with one of the *ratio legis* consideration above, the *a quo* Law 27/2022 was born, which contains provisions of, among others, standards for Personal Data Protection in general, either processed in part or in whole by electronic and non-electronic means, in which each sector can apply for Personal Data Protection according to the characteristics of their respective sectors. However, universally, the Regulation of Personal Data has the same goal, namely, among others, to protect and guarantee the fundamental rights of citizens related to personal self-protection, to guarantee the public to get services from Corporations, Public Bodies, the Government, and International Organizations, to encourage the growth of the digital economy and the industry of information and communication technology, and to support the improvement of domestic industry competitiveness [*vide* General Explanation of Law 27/2022].

Whereas regarding the Petitioner's arguments which also question the exceptions contained in the provisions of the norms of Article 2 paragraph (2) of Law 27/2022, which emphasize that the *a quo* Law does not apply to the Personal Data processing by individuals in personal or household activities, the Court is of the opinion that in understanding the intent of these norms it must first be understood the intent of the Personal Data processing by individuals in personal or household activities. In the Court's opinion, Personal Data processing by individuals in personal or household activities is a form of Personal Data processing activity carried out only in personal activities. In other words, these activities are categorized as activities in the private sphere, and of course, these data processing activities are non-commercial. Therefore, without intending to assess the case experienced by the Petitioner if this exists, personal data processing activities that are carried out in the manner as argued by the Petitioner, namely processing personal data on business activities or e-commerce, even though these activities are personal or household activities and carried out at home, cannot be excluded as stipulated in the norms of Article 2 paragraph (2) of Law 27/2022, but constitute the activities already contained in the provisions that regulated in Article 2 paragraph (1) of Law 27/2022. Thus, these personal data processing activities must meet the requirements and be subject to and comply with all provisions and obligations regulated in Law 27/2022.

Whereas regarding the Petitioner's arguments that the norms of Article 2 paragraph (2) of Law 27/2022 cause the absence of personal data protection of individuals in personal or household activities, in the Court's opinion, the existence of the norms of Article 2 paragraph (2) of Law 27/2022 provides protection for activities that are only carried out within the personal or family sphere or, in other words, private domains. The *a quo* norms provide protection of privacy rights as individuals in the use of personal data limited for personal or household purposes that do not subject to the provisions as stipulated in Law 27/2022, such as provisions regarding the fulfillment of personal data processing principles, the legal basis for personal data processing, along with obligations and other things that burden personal or household activities, unless where the personal or household activities are misused for profit-oriented activities (e-commerce), then the requirements as stipulated in Law 27/2022 must be met. Therefore, in the Court's opinion, the norms of Article 2 paragraph (2) of Law 27/2022 have granted protection to personal data processing carried out by individuals in personal or household activities, and this does not harm the constitutional rights to obtain recognition, guarantees, legal protections, and certainty as protected in Article 28D paragraph (1) of the 1945 Constitution. If the Petitioner's petition that Article 2 paragraph (2) of Law 27/2022 is granted and declared to be contrary to the 1945 Constitution and does not have binding legal force, this will actually eliminate Personal Data protection as the privacy right owned by the data owner and will remove limitations or terminology regarding the Data Controller along with the elements of its legal subject. Thus, the Petitioner's arguments regarding the unconstitutionality of the norms of Article 2 paragraph (2) of Law 27/2022 are legally unjustifiable.

Whereas in accordance with the legal considerations as described above, the Court is of the opinion that the provisions of the norms of Article 1 point 4, Article 2 paragraph (2), and Article 19 of Law 27/2022 have not resulted in the loss of the rights to recognition, guarantees, protections, fair legal certainty, equal treatment before the law guaranteed in the 1945 Constitution as argued by the Petitioner. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Subsequently, the Court passes down a decision in which the verdict is to dismiss the Petitioner's petition entirely.