



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 25/PUU-XXI/2023

Concerning

Accessing Electronic Information or Electronic Document  
Containing Insult-Defamation

<b>Petitioner</b>	: Tedy Romansah
<b>Type of Case</b>	: Judicial Review of Law Number 11 of 2008 concerning Electronic Information and Transaction as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transaction ( <i>Informasi dan Transaksi Elektronik</i> or EIT Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
<b>Subject Matter</b>	: Article 27 paragraph (3) and Article 45 paragraph (3) of the EIT Law are contrary to Article 28D paragraph (1), Article 28G paragraph (1), Article 28J paragraph (1) of the 1945 Constitution.
<b>Verdict</b>	: To declare that the petition of the Petitioner is inadmissible.
<b>Date of Decision</b>	: Friday, 14 April 2023.
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen, namely a party who has been questioned by the Police at the *Harda Sat Reskrim* Unit of the Kuningan Police under the Letter Number B/103/II/2023/Reskrim dated 16 February 2023 regarding alleged defamation through electronic transactions and insult committed by Ramlan Setiawan, the cousin of the Petitioner, against Mr. Dadang Kurniadi. According to the Petitioner, the provisions of Article 27 paragraph (3) and Article 45 paragraph (3) of the EIT Law have the potential to be used as a tool to criminalize the Petitioner and these articles are articles with multiple interpretations that often cause unrest and legal uncertainty, obscurity and ambiguity both normatively and in implementation so that they threaten the constitutional rights of the Petitioner

In relation to the authority of the Court, because the Petitioner petitions for judicial review of the constitutionality of the norms of the Law, *in casu* 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (EIT Law) against the 1945 Constitution, then pursuant to Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petitions;

Whereas regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has been able to describe the presumption of loss of constitutional rights, which according to the Petitioner, are potentially harmed due to the enactment of the norms of Article 27 paragraph (3) and Article 45 paragraph (3) of the EIT Law. The Petitioner has also been able to describe the presumed loss of constitutional rights which has a causal relationship

(*causal verband*) with the enactment of the norms and elucidation of the law being petitioned for review. Therefore, if the *a quo* petition is granted, the presumption of such constitutional harm as described will no longer occur and will not occur. Thus, regardless of whether it is proven or not regarding the unconstitutionality of the norms being petitioned for review by the Petitioner, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* Petition.

Whereas before further considering the arguments of the petition of the Petitioner, the Court first considers the systematic revision of the Petition in accordance with Article 10 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021). Regarding the systematic revision of such petition, in principal, it is already in accordance with the format of the petition for judicial review as stipulated in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of PMK 2/2021. However, after the Court has carefully examined the reasons for the petition (*posita*) of the *a quo* petition, The Petitioner does not elaborate on the legal reasons or arguments why Article 27 paragraph (3) and Article 45 paragraph (3) of the EIT Law are contrary to the articles of the 1945 Constitution which were used as the basis for the review. The Petitioner elaborates more on the Joint Decrees of the Minister of Communication and Information of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Head of the National Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021 and Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which are used by the law enforcement officers to process any criminal acts committed related to the *a quo* Article. In addition to causing ambiguity, the description of the petition of the Petitioner also causes inconsistency between the *posita* and the *petitum* of the Petitioner.

Whereas regarding the *petitum* of the Petitioner, the Court in the session on 16 March 2023, with the Preliminary Examination agenda, has advised the Petitioner to consider the appropriate *petitum* in order to prevent a legal vacuum [*vide* Minutes of Case Session Number 25/PUU-XXI/2023, Thursday, dated 16 March 2023, p. 12 and p. 17]. In this case, after being advised by the Panel Assembly, the *petitum* number 2 "To declare that Article 27 paragraph (3) of Law Number 11 of 2008 (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to State Gazette of the Republic of Indonesia Number 4843) as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions (State Gazette of the Republic of Indonesia of 2016 Number 251, Supplement to the Gazette of the Republic of Indonesia Number 5952) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted by the Joint Decrees of the Minister of Communication of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Chief of National Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021 and Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, the letter K in the Implementation SECTION which states that **'IT SHALL NOT BE A FORM OF INSULT AND OR DEFAMATION IN THE EVENT THAT THE CONTENT IS SHARED THROUGH CLOSED OR LIMITED CONVERSATION GROUP SUCH AS FAMILY CONVERSATION GROUP, FRIENDSHIP GROUP, PROFESSIONAL GROUP, INTERNAL OFFICE OR EDUCATIONAL INTUITION GROUP'** And the letter d states that in the event that the alleged fact is an act that is currently in legal proceedings, then such fact shall first be proven prior to the Law Enforcement Officers process the complaints and/or defamation suit under the EIT Law' and the *petitum* number 3 "To declare that Article 45 paragraph (3) of Law Number 11 of 2008 (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to State Gazette of the Republic of Indonesia Number 4843) as amended by Law Number 19 of 2016 concerning Information and

Electronic Transactions (State Gazette of the Republic of Indonesia of 2016 Number 251, Supplement to the Gazette of the Republic of Indonesia Number 5952 ) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent that it is not interpreted by the Joint Decree of the Minister of Communication of the Republic of Indonesia, the Attorney General of the Republic of Indonesia and the Chief of National Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021 and Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, the letter K in the Implementation SECTION which states that **'IT SHALL NOT BE A FORM OF INSULT AND OR DEFAMATION IN THE EVENT THAT THE CONTENT IS SHARED THROUGH CLOSED OR LIMITED CONVERSATION GROUP SUCH AS FAMILY CONVERSATION GROUP, FRIENDSHIP GROUP, PROFESSIONAL GROUP, INTERNAL OFFICE OR EDUCATIONAL INTUITION GROUP'** And the letter d states that **in the event that the alleged fact is an act that is currently in legal proceedings, then such fact shall first be proven prior to the Law Enforcement Officers process the complaints and/or defamation suit under the EIT Law**". The entire formulation of the *petitum* is unclear or at least not in accordance with the prevalence of *petitum* in judicial review cases. This *petitum* was reconfirmed to the Petitioner during the Preliminary Examination session with the agenda for Examination of the Revised Petition on 29 March 2023 [*vide* Minutes of Case Session Number 25/PUU-XXI/2023, Wednesday, 29 March 2023, p. 9] and the Petitioner kept his stance. Formally, such *petitum* is not a *petitum* formulation as referred to in Article 10 paragraph (2) letter d of PMK 2/2021.

Considering whereas in accordance with all of the above legal considerations, although the Court has the authority to hear the *a quo* petition and the Petitioner has legal standing, however since the inconsistency between *posita* and *petitum* as well as since the *petitum* is unusual, the petition of the Petitioner becomes unclear or obscure (*obscuur*). Therefore, the petition of the Petitioner does not fulfil the formal requirements of the petition as referred to in Article 31 paragraph (1) of the Constitutional Court Law as well as Article 10 paragraph (2) of PMK 2/2021. Therefore, the Court does not consider the petition of the Petitioner any further. Accordingly, the Court passes down a decision in which the verdict states that the petition of the Petitioner is inadmissible.