



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 89/PUU-XX/2022

Concerning

Authority to Hold Trial in Human Rights Court for Foreign Citizen

Petitioners	: Marzuki Darusman, et al.
Type of Case	: Judicial Review of Law Number 26 of 2000 concerning the Human Rights Court (Law 26/2000) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: The phrase “by Indonesian citizen” in Article 5 and Elucidation to Article 5 of Law 26/2000 is contrary to the 1945 Constitution
Verdict	: To dismiss the Petitioners’ petition entirely
Date of Decision	: Friday, April 14, 2023
Overview of Decision	:

Whereas Petitioner I and Petitioner II are individual Indonesian citizens (*Warga Negara Indonesia* or WNI) who are active in various processes of upholding the law and human rights (*Hak Asasi Manusia* or HAM), while Petitioner III qualifies himself as a private legal entity in the form of an association, namely the Aliansi Jurnalis Independen (AJI or Alliance of Independent Journalists) who is also fighting for justice for victims of human rights violations in the regional area. The Petitioners believe that the article being petitioned for review of its constitutionality has harmed the constitutional rights of the Petitioners because it has caused the interest of protecting universal human rights as mandated by Articles 28A to Article 28J of the 1945 Constitution to become very individualistic and monism, because it only provides protection for Indonesian citizens.

Regarding the authority of the Constitutional Court, because the object of the Petitioners' petition is a judicial review, *in casu* the phrase “by an Indonesian citizen” in Article 5 and Elucidation of Article 5 of Law 26/2000 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court considers that Petitioner I and Petitioner II have fulfil the qualifications as individual Indonesian citizens who often put in the effort, fight, and work to realize the provision, protection, fulfilment of human rights and law enforcement against human rights violations. In addition to that, Petitioner I and Petitioner II have also explained their constitutional rights which, according to them, have been harmed by the enactment of the norms of the law being petitioned for review, *in casu* the norms of the phrase “by Indonesian citizen” in Article 5 and Elucidation of Article 5 of Law 26/2000. The presumption of the loss of constitutional rights is potential since the *a quo* article and the elucidation have the potential to hinder the law enforcement efforts by Petitioner I and Petitioner II against human rights violations committed by non-Indonesian citizen. Therefore, the presumption of the loss of constitutional rights as described by

Petitioner I and Petitioner II has a causal relationship (*causal verband*) with the enactment of the article being petitioned for review of its constitutionality.

Furthermore, the Court considers that Petitioner III has also fulfil the qualification as a private legal entity in the form of an association, in this case a journalist professional organization committed in fighting for justice for victims of human rights violations in regional area. In addition to that, Petitioner III has also explained its constitutional rights which, according to its opinion, have been harmed by the enactment of the norms of the law being petitioned for review, *in casu* the norms of the phrase "by Indonesian citizen" in Article 5 and Elucidation of Article 5 of Law 26/2000. The presumption of that loss of constitutional rights is potential since the *a quo* article being petitioned for review has the potential to hinder the law enforcement efforts by Petitioner III as well as hinder the fulfilment of the right to fair legal certainty for Indonesian reporters/journalists who become the victims of human rights violations committed by anyone who is not Indonesian citizen. Thus, the presumption of the loss of the constitutional rights as explained by Petitioner III has a causal relationship (*causal verband*) with the enactment of the norms being petitioned for review of its constitutionality.

Therefore, regarding the legal standing of the Petitioners, the Court is of the opinion that regardless of whether the argument is proven or not regarding the unconstitutionality of the norms of the phrase "by Indonesian citizen" in Article 5 and Elucidation of Article 5 of Law 26/2000, the Petitioners have the legal standing to submit the *a quo* petition.

Furthermore, regarding the subject matter of the petition, the Court considers that the background of the formation of Law 26/2000 cannot be separated from the "role" of the international community in pushing the Indonesian government to immediately try the perpetrators of crimes against humanity that occurred in East Timor. The establishment of this human rights court is one of Indonesia's efforts to fulfil its international obligations by maximizing the national legal mechanism in handling the human rights violations domestically (exhaustion of local remedies). This is intended to prevent the entry of any international legal mechanisms to try Indonesian citizens who are suspected of committing gross human rights violations because at the international law, the international courts cannot immediately replace the role of the national courts without passing through the role of the country's national court. In addition, in the process of formulating Law 26/2000, the legislators only accommodated personal jurisdiction addressed to Indonesian citizens, not including the foreign citizens.

Furthermore, the Court also considers that in order to accommodate universal jurisdiction in law enforcement related to gross human rights violations, it is heavily influenced by various factors outside of the law, such as politics, socio-culture and economy. Therefore, in fighting for the law enforcement in the field of international human rights, it cannot only be oriented towards punishing perpetrators of gross human rights violations, but also it must pay attention to the impact on the national interests of a country. Therefore, a state authority responsible for carrying out the investigation may assess whether universal jurisdiction will have a disproportionate impact on access to justice and also the interests of the country. The Court is of the opinion that universal jurisdiction is not something that is absolute in nature, but it must be in balance with international obligations as well as other interests of a country, so that a country may refuse to exercise universal jurisdiction if it is not possible to do so due to the global political, social and economic dynamics or due to any other needs and interests (rapidly changing situations). On the one hand, this is even more so if it has the potential to disrupt the national interests of a country, and on the other hand, it

is also uncertain whether it can effectively provide a sense of justice for the victims of gross human rights violations.

Based on all of the aforementioned legal considerations, the Court is of the opinion that the provision of the norms of the phrase “by Indonesian citizen” in Article 5 and Elucidation of Article 5 of Law 26/2000 is evidently not contrary to the right to live, the right to recognition, security, protection and fair legal certainty as well as equality before the law and it does not give rise to legal discrimination as guaranteed in the 1945 Constitution. Therefore, the petition of the Petitioners is legally unjustifiable entirely.

Accordingly, the Court subsequently passes down a decision in which the verdict states to dismiss the petition of the Petitioners entirely.