



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 36/PUU-XXI/2023

Concerning

**The Absence of Potential Constitutional Losses Because  
the “New” Indonesian Criminal Code is Not Yet in Force**

<b>Petitioners</b>	: <b>Leonardo Siahaan and Ricky Donny Lamhot Marpaung</b>
<b>Type of Case</b>	: Judicial Review of Law Number 1 of 2023 concerning the Indonesian Criminal Code (Law 1/2023 or the Indonesian Criminal Code) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: According to the Petitioners, Article 100 paragraph (1), Article 237 letter c, and Article 256 of Law 1/2023 are contrary with the 1945 Constitution because they make the capital punishment lose its deterrent effect, limit the right of citizens to use the state symbol, and hinder the public from holding demonstrations
<b>Verdict</b>	: To declare that the petition of the Petitioners is inadmissible
<b>Date of Decision</b>	: Thursday, May 25, 2023
<b>Overview of Decision</b>	:

The Petitioners submitting this petition are individual Indonesian citizens.

The Petitioners petition for a judicial review of the constitutionality of Article 100 paragraph (1), Article 237 letter c, and Article 256 of Law 1/2023. According to the Petitioners, Article 100 paragraph (1) of Law 1/2023 which regulates the capital punishment with a probationary period of 10 (ten) years, will make the capital punishment lose its deterrent effect for potential criminal offenders.

According to the Petitioners, Article 237 letter c of Law 1/2023 limits the right of citizens to use the state symbol, especially since such formulation has previously been regulated as a norm in Article 57 letter d of Law Number 24 of 2009 concerning National Flag, Language, Emblem and Anthem, the *a quo* norms of Article 57 letter d has been revoked by the Court through Decision of the Constitutional Court Number 4/PUU-X/2012, dated 15 January 2013. According to the Petitioners, Article 256 of Law 1/2023 will hinder the public from holding demonstrations as a means of conveying public disappointment to the state.

Regarding the petition, the Court is of the opinion that during the period of judicial review for the *a quo* law, the law being petitioned for judicial review or Law 1/2023 or what is also referred to as the “new” Indonesian Criminal Code has not yet come into force. Law 1/2023 has indeed been passed as law on 2 January 2023, but in Chapter XXXVII concerning Closing Provisions, especially in Article 624, it is stated that the *a quo* Law or the *a quo* Indonesian Criminal Code shall be in effect 3 (three) years after the date of promulgation. In other words, the *a quo* Indonesian Criminal Code will come into effect on 2 January 2026.

Pursuant to such legal facts, in the context of assessing the legal standing of the Petitioners, the Court is of the opinion that the Petitioners do not meet the requirements for any constitutional loss due to the enactment of the norms of law, and do not meet the requirements for a causal relationship (*causal verband*) between the presumption of such constitutional loss and the enactment of the norms of the law being petitioned for judicial review. That is because the law being petitioned for judicial review has not yet come into force.

In accordance with these legal considerations, the Court is of the opinion that the petition of the Petitioners is premature, and therefore in its verdict the Court declares that the petition of the Petitioners is inadmissible.