



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 47/PUU-XXI/2023**

**Concerning**

**Constitutionality of the New Indonesian Criminal Code**

<b>Petitioner</b>	<b>:</b>	<b>Mohamad Anwar</b>
<b>Type of Case</b>	<b>:</b>	Judicial Review of Law Number 1 of 2023 concerning Indonesian Criminal Code (Law 1/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	<b>:</b>	Judicial Review of Article 509 of Law 1/2023 against the 1945 Constitution
<b>Verdict</b>	<b>:</b>	To declare that the petition of the Petitioner is inadmissible
<b>Date of Decision</b>	<b>:</b>	Thursday, June 15, 2023
<b>Overview of Decision</b>	<b>:</b>	

Whereas the Petitioner is an individual Indonesian citizen who works as an Advocate who is harmed due to the enactment of the norms of the *a quo* article, namely Article 509 of Law 1/2023.

Regarding the authority of the Court, because of the Petitioner petitions for Judicial Review of Law 1/2023 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Petitioner believes that his constitutional rights have been harmed due to the enactment of Law 1/2023, specifically in relation to Article 509 regarding the potential for criminal prosecution of advocates who do not provide factual information. According to the Petitioner, there is a potential that in every case that handled by the Petitioner, it would result in the Petitioner being subject to a criminal act as a result of any incorrect statement made by his client.

Whereas according to the Petitioner, there has been a Decision of the Constitutional Court Number 110/PUU-X/2012 concerning judicial review of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (*Sistem Peradilan Pidana Anak* or SPPA Law ) which granted the petition regarding the criminal threats for law enforcement officer in the SPPA Law which has resulted in constitutional harm to the law enforcement officer. Thus, according to the Petitioner, Article 509 of Law 1/2023 is similar to the decision of the Constitutional Court.

Subsequently, before further considering the subject matter of the petition, the Court considers the legal standing of the Petitioner as follows:

- Whereas the norms of the Article submitted for *a quo* review are contained in Law 1/2023 which was ratified and promulgated on 2 January 2023. Nonetheless, pursuant to Article 624 CHAPTER XXXVII Closing Provisions, the *a quo* Law shall come into force 3 (three) years after the date of promulgation. That means, the *a quo* Law will come into force on 2 January 2026. The Petitioner's petition was submitted on 26 April 2023 and registered to the Registrar's Office of the Court on 3 May 2023, so that at the time this petition was submitted to the Constitutional Court and examined as a judicial review case against the 1945 Constitution, the law being petitioned for review is not yet applicable;

- Whereas in accordance with the Decision of the Court which stipulates several requirements for cumulative constitutional loss to grant the legal standing to the Petitioner as described in the Paragraph above, in this case the Petitioner has been able to describe the existence of constitutional rights granted by Article 28C paragraph (2) and Article 28D paragraph (1) of 1945 Constitution. Furthermore, in relation to the second requirement, namely the presumption that the constitutional rights granted by Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution are harmed due to the enactment of a law, in this case Law 1/2023, the Court is of the opinion that in relation to the *a quo* matter, an imperative requirement is expressly required i.e. the presumption that the constitutional rights of the Petitioner is harmed due to the enactment of the norms of the law being petitioned for review. Therefore, when the legal facts in the trial and the things experienced by the Petitioner are linked, it has become clear that the constitutional rights of the Petitioner have nothing to do with the enactment of the norms of the law, *in casu* Law 1/2023. In other words, Article 509 contained in Law 1/2023 which the Petitioner petitions for review is contained in a Law that has not yet come into force and automatically it does not yet have binding legal force, as referred to in Article 87 of Law 12 of 2011 concerning Formation of Laws and Regulations as last amended by Law Number 13 of 2022 (Law 12/2011) which states, “the Laws and Regulations shall come into force and have binding legal force on the date of promulgation, unless otherwise specified in the relevant Laws and Regulations”. In this regard, Article 624 of Law 1/2023 states, “This law shall come into force 3 (three) years after the date of promulgation”. Thus, the *a quo* Law has not yet had an impact on the presumption of constitutional harm, either potentially or actually, of the Petitioner.
- Whereas what is meant by the presumption of actual constitutional loss is the presumption of a concrete/real constitutional loss that has ever been experienced due to the enactment of the legal norms. Meanwhile, what is meant by the presumption of potential constitutional loss is a loss that has never been concretely/actually experienced, but one day it is potentially experienced due to the enactment of the legal norms. Therefore, both the presumption of actual and potential constitutional losses are based on the enactment of the legal norms. Thus, pursuant to the legal fact that Law 1/2023 shall only come into force 3 (three) years after the date of promulgation [*vide* Article 624 CHAPTER XXXVII Closing Provisions of Law 1/2023], such enactment results in the *a quo* Law does not yet have binding legal force, thus causing the requirements for presumption of constitutional loss to be unfulfilled as referred in the Decision of the Constitutional Court Number 006/PUU-III/2005 and the Decision of the Constitutional Court Number 11/PUU-V/2007. Accordingly, it has been proven that the Petitioner has not fulfilled the requirements for the presumption of a constitutional loss due to the enactment of the legal norms. Thus, in relation to the remaining requirements, namely the presumption of specific constitutional losses and the existence of a causal relationship (*causal verband*) arising between the constitutional rights granted by the 1945 Constitution and the enactment of the legal norms being petitioned for review, are automatically no longer relevant for consideration, because the requirements for the presumption of such constitutional loss are cumulative in nature.
- Whereas in relation to the Court's stance in considering the legal standing of the *a quo* Petitioner, as the Court has considered the matter in the Decision of the Constitutional Court Number 1/PUU-XXI/2023, Decision of the Constitutional Court Number 7/PUU-XXI/2023, Decision of the Constitutional Court Number 10/PUU-XXI/2023, all of which were declared in a plenary session open for the public on 28 February 2023. In this case, it is important for the Court to relate to the legal considerations of the Court in the Decision of the Constitutional Court Number 110/PUU-X/2012 which was declared in a plenary session open to the public on 28 March 2013. This is because the Petitioner in his petition explained that the petition submitted is not *nebis in idem* (may

be re-submitted) and the provisions of the norms of Article 509 of Law 1/2023 are not premature and may be reviewed, it also relates to the decision, where in the relevant decision the Court granted the legal standing to the Petitioners even though at the time the petition was submitted to review the articles of law that have not been in force, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). In this regard, as has been considered in previous Court decisions, the Court emphasized that the SPPA Law has a very different character from Law 1/2023, where the SPPA Law is a law that contains norms which are then submitted by the Petitioners in the petition for judicial review case, it relates to criminal penalties for law enforcement officers who are carrying out their duties in the law enforcement, which are not regulated in the norms of the previous relevant law, namely Law Number 3 of 1997 concerning Juvenile Courts. Therefore, even though the SPPA Law has not come into force at the time the petition for the relevant case was submitted, the Court considered that there was an urgent situation for an immediate decision on the case, so that there would be no sense of worry or even fear for the law enforcement officers in carrying out their law enforcement duties, especially in dealing with the cases involving minors as suspects/defendants. Such concerns may occur because the criminal case proceeding may take a long time and may go through pre-processes and post-processes at the time the SPPA Law comes into force. Therefore, it is very likely to have an impact in the form of imposing the norms of the relevant articles to convict the law enforcement officers. Thus, these legal facts may provide opportunities for legal uncertainty in the implementation of the norms of the articles being petitioned for review in the SPPA Law, if the norms are declared constitutional. This legal fact is different from the character of Law 1/2023, where in fact the existing norms have not yet in force, however it does not result in a legal vacuum, because there is an existing Indonesian Criminal Code that is still in force, so there will be no potential for legal uncertainty. In other words, if the norms in Law 1/2023 are declared as in force, it is the same as the Court allowing the application of two Indonesian Criminal Codes (i.e. The existing Indonesian Criminal Code that is still in force and the new Indonesian Criminal Code that will be in force) at the same time. If this is justified, it will create legal uncertainty in criminal law enforcement.

- Whereas in addition to these legal considerations, the existence of such a stance is also based on the argument that the Court has another reason, namely that the decisions of the Constitutional Court may undergo refinement provided that these matters are related to community relations and development. Therefore, in the perspective of granting the legal standing to the Petitioner, the Court must consider the absolute and cumulative requirements, namely the existence of legal subject as stipulated in Article 51 of the Constitutional Court Law and the requirements for presumption of constitutional loss as stipulated in the Decision of the Constitutional Court Number 006 /PUU-III/2005 and Decision of the Constitutional Court Number 11/PUU-V/2007. Moreover, in considering and assessing the requirements for the legal standing of the Petitioner at the Constitutional Court, the issue of constitutionality and the applicability of the norms of the law being petitioned for review cannot be separated. Thus, it is possible that the granting of legal standing would be different from one petition to another, the Court may give different considerations.
- Whereas in accordance with the description of the legal considerations above, the Court concludes that the Petitioner does not have the legal standing to submit the *a quo* petition. However, even if the Petitioner has the legal standing to submit the *a quo* petition, *quod non*, and the Court may then begin to consider the substance of the petition, but because the provisions of Article 509 of Law 1/2023 are the norms that have not yet come into force and do not yet have binding legal force, the Court will be of the opinion that the Petitioner's petition is premature.

Accordingly, the Court subsequently passes down a decision in which the verdict states that the petition of the Petitioner is inadmissible.