



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 64/PUU-XXI/2023**

**Concerning**

**Determination of Advocate as Suspect for Obstructing Investigation**

<b>Petitioner</b>	: <b>H. Marion</b>
<b>Type of Case</b>	: Judicial Review of Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Law 31/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Type of Case</b>	: Article 21 of Law 31/1999 is contrary to Article 28D paragraph (1), Article 28I paragraph (1), paragraph (2), paragraph (4), paragraph (5), and Article 28J paragraph (1) and paragraph (2) of the 1945 Constitution
<b>Verdict</b>	: To declare that the Petitioner's petition is inadmissible
<b>Date of Decision</b>	: Monday, 31 July 2023
<b>Overview of Decision</b>	:

The petitioner is an individual Indonesian citizen, working as an advocate. According to the Petitioner, the provision of Article 21 of Law 31/1999 is contrary to Law Number 18 of 2003 concerning Advocates, specifically Article 5 paragraph (1) and paragraph (2). *juncto* Article 31 *juncto* Article 16, resulting in the failure to realize the values of constitutionalism of advocates.

Regarding the authority of the Court, even though this sentence is written in the *a quo* petition, "Petition in the Material Review Case of Article 21 of Law No.31 of 1999 concerning the Eradication of Corruption Crimes which Violates Article 5 paragraph (1) and paragraph (2) in conjunction with Article 31 in conjunction with Article 16 Law No.18 of 2003 concerning Advocates is contrary to Article 28D paragraph (1) in conjunction with Article 28I paragraph (1) and paragraph (2) and paragraph (4) and paragraph (5) in conjunction with Article 28J paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia", such manner of writing is unusual in a petition for judicial review because it appears to be in conflict between two laws, namely Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (State Gazette of the Republic of Indonesia 1999 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 3874, hereinafter referred to as Law 31/1999) and Law Number 18 of 2003 concerning Advocates (State Gazette of the Republic of Indonesia of 2003 Number 49, Supplement to the State Gazette of the Republic of Indonesia Number 4288). However, the Court is able to understand that what is actually being petitioned for review is the constitutionality of Article 21 of Law 31/1999 against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition;

Whereas before considering further the arguments of the Petitioner's petition, the Court considered the Petitioner's petition, which in principle have complied with the format of the petition for judicial review as regulated in Article 31 paragraph (1) and paragraph (2) of the Constitutional Court Law and Article 10 paragraph (2) letters a, letter b, letter c, and letter d of the Constitutional

Court Regulation 2/2021. However, after the Court carefully examined the legal standing section, the Petitioner was unable to clearly describe the connection between the Petitioner's potential losses and the presumed loss of constitutional rights and the enactment of Article 21 of Law 31/1999. The description in the legal standing section only describes the implementation of popular sovereignty represented by the members of the House of Representative (Dewan Perwakilan Rakyat or DPR) whose duties and functions include, among other things, forming and establishing the laws. As for the DPR, in carrying out its duties, functions and roles, which are filled by human resources, it is considered to tend to deviate from its products. Therefore, the Constitutional Court was established as a legal institution/agency capable of assessing the legislative products of DPR. In addition, the Petitioner has not specifically described the causal relationship between the enactment of Law 31/1999 being petitioned for review and which is considered detrimental or at least potentially detrimental to the Petitioner's constitutional rights as an Indonesian citizen and as an Advocate related to the *a quo* article. Therefore, the Court is of the opinion that there is an ambiguity in the description of the Petitioner's legal standing;

Whereas in the reasons for the petition (*posita*), the Petitioner did not at all describe the arguments regarding the conflict between the article being petitioned for review and the articles which are used as the basis for review in the 1945 Constitution. In this case, the Petitioner is more focused on describing the concrete problems experienced by Dr. Stefanus Roy Rening, S.H., M.H. as an advocate, he was named as a suspect in obstructing investigations in a corruption case against the suspect or defendant, Lukas Enembe (inactive Governor of Papua Province), therefore the Court is of the opinion that such legal standing is irrelevant for the Court;

Whereas in the *petitum* section, *Petitum* number 2 stated, "To Declare That Article 21 of Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes violates Article 5 paragraph (1) And Paragraph (2) In Conjunction With Article 31 In Conjunction With Article 16 of Law No. 18 of 2003 concerning Indonesian Advocates from the State of Law, It Is Contrary Not Only to Article 28D Paragraph (1) But Also To Article 28I Paragraphs (1) And Paragraph (2) And Paragraph (4) And Paragraph (5) In Conjunction With Article 28J Paragraph (1) And Paragraph (2) of the 1945 Constitution of the Republic of Indonesia" and *Petitum* number 3 stated, "To Declare That Article 21 of Law No.31 of 1999 Concerning the Eradication of Corruption Crimes Does Not Have Special Binding Legal Force Against Advocates as Law Enforcers with Equal or Identical Status with Other Law Enforcement Officials in Legal State of Indonesia." The Court is of the opinion that the second formulation of the *a quo petitum* is an unusual formulation of *petitum*. Because, on the one hand, the Petitioner petitioned the Court to declare that the norms of Article 21 of Law 31/1999 contrary to the 1945 Constitution, while on the other hand, the Petitioner petitioned the Court to declare that the norms of Article 21 of Law 31/1999 did not have conditionally binding legal force. Within the limits of reasonable reasoning, the formulations of these two *petitums* contradict each other and it is impossible for the Court to grant them simultaneously. Such *petitums* are only able to be justified as long as they are formulated alternatively;

Moreover, *Petitum* number 4 stated, "To Declare Advocates as an Honourable Profession (*officium nobile*) Who, In Carrying Out Their Profession, Are Under the Protection of Law and Human Rights, Laws and Codes of Ethics, Have Freedom Based On The Honour and Personality of Advocates Adhering to Independence, Honesty, Confidentiality and Openness", *Petitum* number 5 stated, "To Declare that the Advocate Profession As a Law Enforcer Who Is On Par With Other Law Enforcement Officials Must Have Respect Among Other Law Enforcers", *Petitum* number 6 stated, "To Declare that Advocates Must Not Be Declared As Criminal Suspect Directly by the Law Enforcement Officials of the Corruption Eradication Commission or Other Law Enforcers Who Are Equal or Equivalent In Position With The Advocates Before (*Lex Pra evia*) Such Advocates Are Subject To Action By The Decision of The Honorary Council of The Advocate Profession In Accordance With The Provisions of the Law of the Republic of Indonesia Number 18 of 2003 concerning Indonesian Advocates from the State of Law", and *Petitum* number 7, "To Order the Publication of this Decision in the State Gazette within a period of no later than Thirty Business Days Since the Declaration of the Decision". The entire formulation of the *petitum* is unclear or at least not in accordance with the usual *petitum* in judicial review cases. This *petitum* has been reconfirmed to the Petitioner during the Preliminary Examination hearing with an agenda of the Petition Revision Examination on 24 July 2023 [*vide* Minutes of Case Hearing Number 64/PUU-XXI/2023, Monday, 24 July 2023, p. 11-12] and the Petitioner remains in his position. Formally, such *petitum* is not a *petitum* formulation as intended in Article 10 paragraph (2) letter d of the Constitutional Court Regulation 2/2021;

Whereas even though the Court has the authority to hear the *a quo* petition, however, since the legal standing is unclear, the *posita* is irrelevant, and the *petitum* is unusual, these things has caused the Petitioner's petition to be unclear or obscure (*obscuur*). Therefore, the Petitioner's petition does not fulfil the formal requirements for the petition as intended in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of the Constitutional Court Regulation 2/2021.

Furthermore, the Court handed down a decision whose verdict states that the Petitioner's petition is inadmissible.