



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 63/PUU-XXI/2023**

**Concerning**

**Money Lending and Borrowing Agreement with Interest in Loan Agreement**

<b>Petitioners</b>	: <b>Utari Sulistiowati and Edwin Dwiwana</b>
<b>Type of Case</b>	: Judicial Review of the Indonesian Civil Code ( <i>Kitab Undang-Undang Hukum Perdata</i> or <i>KUH Perdata</i> ) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Type of Case</b>	: Article 1765, Article 1766, Article 1767, and Article 1768 of the Indonesian Civil Code are contrary to Article 1 paragraph (1), Article 29 paragraph (2), and Article 33 paragraph (1) of 1945 Constitution
<b>Verdict</b>	: To declare that the Petitioners' petition is inadmissible
<b>Date of Decision</b>	: Monday, 31 July 2023
<b>Overview of Decision</b>	:

The Petitioners are individual Indonesian citizens who work as private sector employees and who are fighting for their right to defend their interests to live in the country in order to obtain the guarantees of freedom to embrace religion and practice worship according to their religion as well as to obtain guarantees of running the economy under the principle of familiarity which is guaranteed in the 1945 Constitution.

Regarding the Court's Authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 1765, Article 1766, Article 1767 and Article 1768 of the Indonesian Civil Code against 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition of the Petitioners.

Regarding legal standing, Petitioner I, as the Central Executive of Partai Masyumi, has entered into a loan agreement under a Notarial Deed Number 12 dated 19 February 2019 before Notary Supriyanto, S.H., M.M., domiciled in Depok, West Java, and bound himself with a loan agreement in the amount of IDR 1,000,000,000 (one billion rupiah), such loan is subject to interest as referred to under Article 1765 and Article 1766 of the Civil Code, an agreement is permitted to collect interest, causing Petitioner I to suffer material losses, namely having to pay interest in accordance with the agreement, which was determined by the creditor in entering such loan agreement. Meanwhile, Petitioner II stated that he suffered losses because he entered into a Cash Loan Facility Agreement through the application *Shoopee* on 22 November 2022 in the amount of IDR 750,000 (seven hundred and fifty thousand rupiah) from PT. Lentera Dana Nusantara, Petitioner II is charged with 3.95% (three point ninety five percent) interest of the total debt (evidence P-8), which pursuant to Article 1767 and Article 1768 of the Indonesian Civil Code has resulted in Petitioner II being required to pay the total value of debt of IDR 1,046,000 (one million forty-six thousand), the amount of which increases compared to the principal debt of such loan.

Pursuant to the descriptions submitted by the Petitioners in describing their legal standing, the Court is of the opinion that the norms being petitioned for review by the Petitioners relate to the provisions governing money lending and borrowing agreement with interest in loan agreement as stated in Article 1765, Article 1766, Article 1767, and Article 1768 of the Indonesian Civil Code. In submitting the petition for judicial review of the provisions of these norms, the Petitioners are individual Indonesian citizens as proven by Resident Identity Card (*Kartu Tanda Penduduk*). The Petitioners explained that they have the constitutional right to life, guarantee of freedom to embrace religion and practice worship, guarantee of running the economy as guaranteed in Article 1 paragraph (1), Article 29 paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution, they believe that their rights are harmed due to the enactment of Article 1765, Article 1766, Article 1767 and Article 1768 of the Indonesian Civil Code, the Petitioners stated that they had suffered material losses, namely having to pay interest in accordance with the agreement determined by the creditor in entering the agreement and paying a total debt value which increases compared to the value of the principal debt of such loan. According to the Petitioners, the collection of interest and the practice of adding interest on debts and receivables constitute usury in Islamic law, which is haram. In accordance with the Constitutional Court Decision which stipulates several conditions for cumulative losses to provide legal standing to the Petitioners, the Petitioners have described the existence of constitutional rights granted by Article 1 paragraph (1), and especially Article 29 paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution. Furthermore, regarding the second conditions, namely the presumption that the constitutional rights as granted by Article 1 paragraph (1), and specifically Article 29 paragraph (2), and Article 33 paragraph (1) of the 1945 Constitution are deemed to be harmed by the enactment of the statutory norms in this case Article 1765, Article 1766, Article 1767, and Article 1768 of the Indonesian Civil Code which are being petitioned for review, in relation to the loss of constitutional rights, a condition is strictly required, namely that the Petitioners' presumed constitutional loss that is deemed to be harmed by the enactment of statutory norms being petitioned for review. Regarding the legal standing of the Petitioners who are Muslims, according to the Petitioners, the *a quo* object of the petition is clearly harmful to the constitutional rights to practice religion in accordance with the teachings of the Islamic religion adhered to by the Petitioners. Regarding such matter, the Court in the preliminary hearing which was held on Tuesday, 4 July 2023 with an agenda of examining the completeness and clarity of the petition material and attended by the Petitioners' legal attorneys; The Panel of Justices has provided advice to revise the petition, so that in the section on the legal standing, the Petitioners are able to describe more carefully whether the Petitioners have experienced potential or actual loss of constitutional rights due to the enactment of the *a quo* articles. Furthermore, the advice of the Panel of Judges emphasized that the Petitioners, who are Muslim, have been accommodated by the state in the fields of economics, banking, etc., namely by establishing a sharia economy and sharia banks that are *lex specialis* in nature. This means that if the Petitioners believe that their constitutional rights have been violated by the implementation of general conventional banking practices, by purely applying the principles of civil legal relations, then with the availability of non-conventional banking practices, one of which is sharia banking, the Petitioners who are Muslim are able to choose a lending and borrowing model that is not based on interest. Moreover, in essence the lending and borrowing relationship is based on the principle of freedom of contract. Therefore, if there is a party who objects to any clause that imposes interest in the agreement, such party is able to avoid it. In practice, the Indonesian banking system has provided two pathways or alternatives, namely through the conventional banking model and the sharia banking model. Anyone who objects to the conventional banking system, *in casu*, the Petitioners, may opt to use the sharia banking system.

Pursuant to the legal considerations above, it would be inappropriate if the Petitioners claimed to have experienced loss of constitutional rights by using the conventional banking model, because the Petitioners are able to use other legal options, namely sharia banking. The loss of constitutional rights could only occur if the Petitioners are not provided with other legal options to accommodate their interests in the form of other banking transactions. With the availability of other legal options, the presumption of loss of constitutional rights due to the enactment of the norms of Article 1765, Article 1766, Article 1767 and Article 1768 of the Indonesian Civil Code is legally unjustifiable. Therefore, the Court is of the opinion that the Petitioners do not have the legal standing to submit the *a quo* petition.

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