



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 70/PUU-XXI/2023**

Concerning

Authority of the Prosecutor's Office in Investigating Criminal Collusion and Nepotism

- Petitioner** : **Perkumpulan Masyarakat Anti Korupsi Indonesia (MAKI or Indonesian Anti-Corruption Society Association), et al.**
- Type of Case** : Judicial Review of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Law 16/2004) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Type of Case** : the phrase [*sic!*] "corruption" in the Elucidation of Article 30 paragraph (1) letter d, is contrary to the principle of the rule of law in Article 1 paragraph (3), the guarantee of the right to advance, the nation's community and the state in Article 28C paragraph (2), and the guarantee of fair legal certainty in Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To declare that the Petitioners' petition is inadmissible
- Date of Decision** : Monday, 31 July 2023
- Overview of Decision** :

Petitioner I and Petitioner II qualify themselves as non-governmental organizations who have concerns on law enforcement and corruption eradication and wish to increase the authority of prosecutors to investigate cases of corruption, collusion and nepotism to create *fastabiqul khairat* (healthy competition in being good / creating goodness). Petitioner III is an Indonesian citizen, who is also a student at the Faculty of Law of UNS, who aspires to become a prosecutor with the authority to investigate corruption cases and wishes to increase the authority of prosecutors to investigate cases of collusion and nepotism. The Petitioners believe they are harmed by the enactment of the norms of the articles being petitioned for review because such articles are not in accordance with Article 1 paragraph (3), Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution;

Regarding the Court's Authority, because the petition is submitted to review the constitutionality of norms of law, *in casu* Article Law 16/2004 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioners.

Regarding the legal standing of the Petitioners, the Court is of the opinion that Petitioner I and Petitioner II in submitting the petition have been represented by persons who have the right to represent the organization at and outside of the court as appointed in the Deed of Establishment of the organisation Petitioner I is represented by Boyamin as Coordinator and Founder of MAKI and Komaryono, S.H., M.M., SDM., as Deputy and Founder of MAKI, both persons hold the positions which have the right to represent the organization in submitting petitions and proceeding in court, as stated in Article 12 paragraph (4) of the Deed of Establishment of Perkumpulan Masyarakat Anti Korupsi Indonesia Number 175, dated 30 April 2007. Likewise, Petitioner II, pursuant to the Deed of

Establishment of Lembaga Pengawasan dan Pengawasan Penegakan Hukum Indonesia (LP3HI or Indonesian Law Enforcement Supervision and Protection Agency) Number 01, dated 6 September 2014, Arif Sahudi, S.H., M.H. is the Chairman of LP3HI and has the right to represent LP3HI in submitting petitions and proceeding in court. Meanwhile, regarding Petitioner III, in his position as a student at the Faculty of Law, Universitas Sebelas Maret, the Court is of the opinion that he has the potential to become a prosecutor as he aspires to, so he also has the potential to have an interest in the Elucidation of Article 30 paragraph (1) letter d of Law 16/ 2004. The Court considers that the Petitioners have been able to describe the presumed loss of their constitutional rights, specifically according to the Petitioners, their constitutional rights have the potential to be harmed by the application of the word "corruption" contained in the Elucidation to Article 30 paragraph (1) letter d of Law 16/2004. The Petitioners have also been able to describe the presumed loss of constitutional rights which has a causal relationship with the enactment of the elucidation of the law being petitioned for review, namely as institutions and individuals who have concerns in participating in the efforts to prevent and eradicate criminal acts of corruption. Therefore, if the *a quo* petition is granted, the presumed loss of constitutional rights as described will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Before examining the subject matter of the petition, the Court shall first quote Article 10 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021). The Court is of the opinion that the systematic revision of the Petitioners' petition is in principle in accordance with the format of the petition for judicial review as regulated in Article 31 paragraph (1) of the Constitutional Court Law and Article 10 paragraph (2) of Constitutional Court Regulation 2/2021. However, after carefully examining the reasons for the submitting the petition (*posita*) section of the *a quo* petition and in the *petitum* of the Petitioners, the Court found the fact that the law being petitioned for review is Law 16/2004. Meanwhile, the *petitum* of the petition of the Petitioners refers to the word "corruption" in the Elucidation of Article 30 paragraph (1) letter d of Law 16/2004 which according to the Petitioners is contrary to the 1945 Constitution and does not have binding legal force provided that it is not interpreted as "corruption including collusion and nepotism." In fact, the word "Corruption" being petitioned for review by the Petitioners in the Elucidation to Article 30 paragraph (1) letter d of Law 16/2004 is part of the title or name of the Law which in principle states "The authority in this provision is the authority as regulated for example in the Law Number 26 of 2000 concerning Human Rights Courts and Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 (Law 20/2001) *jo.* Law Number 30 of 2002 concerning the Corruption Eradication Commission (Law 30/2002)". This means that the law mentioned in the description is only an example of the Prosecutor's authority in carrying out investigations into certain criminal acts. Therefore, the collusion and nepotism petitioned by the Petitioners in their *petitum* are substances that are not in accordance with the title and scope of criminal offenses as regulated in Law 31/1999 *jo.* Law 20/2001 and Law 30/2002. Moreover, in their *posita*, the Petitioners did not explain that there are provisions governing the criminal elements of the words collusion and nepotism.

The *petitum* being petitioned for review by the Petitioners is an unusual formulation of the *petitum* because the nomenclature in the name or title of the law must in principle describe the contents of the law, as regulated in Appendix II to Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Formation of Laws and Regulations Law), Technical Section for Preparing Laws and Regulations, where number 3 states, "Name of Laws and Regulations shall be made briefly using only 1 (one) word or phrase but essentially its meaning reflects the contents of the Laws and Regulations." Therefore, if the petition is granted, then the name of Law 31/1999 concerning the Eradication of Corruption Crimes, within the limits of reasonable reasoning will become Law 31/1999 concerning the Eradication of Crimes of Corruption, Collusion and Nepotism. Likewise, Law 30/2002 shall become the Commission for the Eradication of Corruption, Collusion and Nepotism. In fact, the contents of both a *quo* laws does not discuss the substance of criminal acts of collusion and nepotism at all. By adding the phrase "collusion and nepotism" in the name or title of Law 31/1999 and Law 30/2002, it causes the *a quo* law to be unclear. Therefore, the Court is of the opinion that the Petitioners' petition in their *petitum* are not in accordance with their *posita*. Therefore, the Court is of the opinion that the Petitioners' petition must be declared unclear or obscure.

Pursuant to the legal considerations above, the Court is of the opinion that because there is an inconsistency between the argued *posita* and the pleaded *petitum* in the petition, and since the Petitioners' *petitum* is unclear, these cause the Petitioners' petition to be unclear or obscure (*obscuur*). Therefore, the Court shall not consider the Petitioners' petition any further. Accordingly, the Petitioners' 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.

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