CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 93/PUU-XX/2022

Concerning

Reinterpreting "Unintelligent, Mentally Unhealthy or Experiencing Rage Blackout" Terms in relation to the Requirement of Guardianship

Petitioners	:	**Indonesian Mental Health Association Foundation, represented by Chairperson Jenny Rosanna Damayanti, and Treasurer Ira Askarina, et al.**
Type of Case	:	Judicial Review of the Indonesian Civil Code against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter	:	According to the Petitioner, Article 433 of the Indonesian Civil Code which requires guardianship for the people who are "unintelligent, mentally unhealthy or experiencing rage blackout" is contrary to the 1945 Constitution because it eliminates the human rights of people with disabilities
Verdict	:	1. To grant the Petitioners' petition in part; 2. To declare that the terms "unintelligent, mentally unhealthy or experiencing rage blackout" and the word "requires" in Article 433 of the Indonesian Civil Code are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force to the extent that the terms "unintelligent, mentally unhealthy or experiencing rage blackout" are not interpreted as "constitutes a person with mental disabilities and/or intellectual disabilities", and to the extent that the word "requires" is not interpreted as "may", so that the provisions of Article 433 of the Indonesian Civil Code in full become "Every adult, who is always under the condition of unintelligent, mentally unhealthy or experiencing rage blackout, constitutes a person with mental disabilities and/or intellectual disabilities, may be put under guardianship, even if he/she is sometimes able to think straight. An adult may also be put under guardianship due to his/her extravagance." 3. To order the placement of this Decision in the State Gazette of the Republic of Indonesia; 4. To dismiss the remainder of the Petitioner's petition.
Date of Decision	:	Monday, 31 July 2023
Overview of Decision	:	

Petitioner I is a private legal entity which operates in the field of advocacy for people with psychosocial disabilities as well as two individual Indonesian citizens with mental disabilities. Petitioner II works as a book writer and former researcher while Petitioner III works in the field of commerce. The Petitioners submitted a judicial review of the constitutionality of Article 433 of the Indonesian Civil Code. According to the Petitioners, Article 433 of the Indonesian Civil Code which requires guardianship for people who are "unintelligent, mentally unhealthy or experiencing rage blackout" is contrary to the 1945 Constitution because it eliminates the human rights of people with disabilities. In addition, the terms "unintelligent, mentally unhealthy or experiencing rage blackout" are very outdated terms, they tend to be derogatory, and are not in accordance with developments in health science, especially in the field of mental health.

Regarding the Court's authority, because the Petitioners submit a judicial review of the constitutionality of statutory norms, *in casu* Article 433 of the Indonesian Civil Code against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court considers that the Petitioners have been able to explain the causal relationship (*causal verband*) between the presumed loss of the Petitioners' constitutional rights, both actual and potential, and the enactment of the legal norms petitioned for review. The Court is of the opinion that the Petitioners have also been able to explain the specific nature of the causal relationship as argued in outlining their legal standing. Therefore, the Petitioners have also been able to show the possibility that if the Petitioners' petition is granted then the presumed actual and potential losses will not occur and will no longer occur. Therefore, regardless of whether the arguments of the Petitioners' petition regarding the unconstitutionality of the legal norms being petitioned for review are proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* case;

Regarding the arguments of the Petitioners' petition, the Court interpreted guardianship as placing a person under a guardian because by the court deems that the said person is incapable of acting and being legally responsible for his/her own behalf before the law, especially in relation to the scope of civil law. The person placed under guardianship will be referred to as the ward or *curandus*, while the person who represents him/her will be referred to as the guardian or *curator*. In the context of the *a quo* case, namely the judicial review of Article 433 of the Civil Code, the meaning of guardianship refers to guardianship in the civil sector.

The concept of guardianship contains two dimensions, namely the dimension of restricting rights and the dimension of protecting rights. For any party who apply/request for protection, especially anyone who has been declared to be placed under guardianship (*curandus*), *in casu* anyone with mental disability and/or intellectual disability, the perceived dominant dimension is restrictions on rights.

Meanwhile for any party who does not have mental disabilities and/or intellectual disabilities, the legal protection is needed to eliminate any concern that any legal relations entered into by the said person may in the future be null and void, or at least may not be executed because the counterparty does not have rational capabilities.

The Court is of the opinion that guardianship does not hinder or eliminate a person's independence, in fact guardianship becomes a means of strengthening to create equality people with disabilities with non-disabled people in a civil legal relationship so that the relationship may not cause any material losses.

The Court is of the opinion that guardianship remains necessary as long as it emphasizes on respect, equality, as well as protection for all parties in relation to mental or intellectual disabilities. The parties referred to are the people with disabilities as well as any other people who have or at least will have civil legal relations with any people with mental disabilities and/or intellectual disabilities who may be affected by the existence of civil legal

relations.

In this decision, the Court emphasized that the implementation of guardianship needs to be evaluated continuously. Accordingly, the Court highlighted that the loose/careless implementation of guardianship without being accompanied by clear guidelines has the potential to further burden the people with mental disabilities and/or intellectual disabilities.

Pursuant to this, the district court as an institution that has the authority to determine the guardianship must be truly careful and prudent in giving any decision/determination on application for guardianship. Such decision/determination must be truly based on the legal facts obtained in the trial, including the most essential thing being paying attention to the results of examinations by authorized experts and considering, among others, information and/or evidence from doctors, psychologists and/or psychiatrists, as regulated in Article 33 of Law 8/2016 *juncto* Articles 436 to Article 446 of the Indonesian Civil Code. The Court is of the opinion that the provisions of Article 433 of the Indonesian Civil Code must be reinterpreted by aligning it with the spirit contained in Law 8/2016, especially Article 32 of Law 8/2016. Such reinterpretation aims to ensure the realization of the effects or impacts of legal protection efforts for the people with mental disabilities and/or intellectual disabilities while maintaining the existing guardianship in Article 433 of the Civil Code.

The reinterpretation shall be carried out by declaring that the condition of “unintelligent”, “mentally unhealthy”, or “experiencing rage blackout” is part of mental disabilities and/or intellectual disabilities, and the word “requires” in Article 433 of the Civil Code shall be interpreted as “may”. With such alignment, Article 433 of the Indonesian Civil Code in full shall be read, “Every adult, who is always under the condition of “unintelligent”, “mentally unhealthy” or “experiencing rage blackout”, constitutes a person with mental disabilities and/or intellectual disabilities, may be put under guardianship, even if he/she is sometimes able to think straight. An adult may also be put under guardianship due to his/her extravagance.”

Therefore, the Court handed down a decision whose verdicts are as follows:

1. To grant the Petitioners’ petition in part;
2. To declare that the terms “unintelligent, mentally unhealthy or experiencing rage blackout” and the word “requires” in Article 433 of the Indonesian Civil Code are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force to the extent that the terms “unintelligent, mentally unhealthy or experiencing rage blackout” are not interpreted as “constitutes a person with mental disabilities and/or intellectual disabilities”, and to the extent that the word “requires” is not interpreted as “may”, so that the provisions of Article 433 of the Indonesian Civil Code in full become “Every adult, who is always under the condition of unintelligent, mentally unhealthy or experiencing rage blackout, constitutes a person with mental disabilities and/or intellectual disabilities, may be put under guardianship, even if he/she is sometimes able to think straight. An adult may also be put under guardianship due to his/her extravagance.”
3. To order the placement of this Decision in the State Gazette of the Republic of Indonesia;
4. To dismiss the remainder of the Petitioner’s petition.