



CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA
SUMMARY OF DECISION FOR CASE NUMBER 82/PUU-XXI/2023
Concerning
Community Participation in the Establishment of Statutory Regulations

- Petitioner** : **Almizan Ulfa**
- Type of Case** : Judicial Review of Law Number 13 of 2022 concerning Second Amendment to Law Number 12 of 2011 concerning Establishment of Legislative and Regulations (Law 13/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Type of Case** : Article 96 paragraph (6), paragraph (8), and paragraph (9) of Law 13/2022 are contrary to the state's aim to promote the intelligence of the life of the nation as affirmed in the Fourth Paragraph of the 1945 Constitution, the principle of popular sovereignty in Article 1 paragraph (2), the guarantee of equal treatment before the law and in the government in Article 27 paragraph (1), the right to obtain benefits from science in Article 28C paragraph (1), guarantee of the right to advance, national society and state in Article 28C paragraph (2), guarantee of fair legal certainty in Article 28D paragraph (1), guarantee of the right to work in Article 28D paragraph (2), guarantee of the right to equal treatment in the government in Article 28D paragraph (3), and guarantee of the right to protection against discriminatory treatment in Article 28I paragraph (2) of the 1945 Constitution;
- Verdict** : 1. The Petitioner's petition in relation to Article 96 paragraph (9) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Statutory Regulations (State Gazette of 2022 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 6801) is inadmissible;
2. To dismiss the remainder of the Petitioner's petition
- Date of Decision** : Thursday, 14 September 2023
- Overview of Decision** :

The Petitioner qualifies himself as an Indonesian citizen who is a retired State Civil Apparatus, most recently serving as Principal Researcher at the Ministry of Finance. In addition, he is a lecturer in economics and quantitative methods courses at Universitas Persada Indonesia (UPI) Y.A.I Jakarta, and is a content creator in several electronic media. The Petitioner believes that he is harmed by the enactment of the norms of the article being petitioned for review because it is contrary to the Fourth Paragraph of the Preamble to the 1945 Constitution, Article 1 paragraph (2), Article 27 paragraph (1), Article 28C paragraph (1) and paragraph (2), Article 28D paragraph (1), paragraph (2) and paragraph (3), Article 28F and Article 28I paragraph (2) 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 13/2022 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioner;

Regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner has been able to describe specifically his constitutional rights which, according to him, have been impaired by the enactment of the norm being petitioned for review. The Petitioner has also been able to describe the presumed loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the legal norms being petitioned for review, namely as an individual Indonesian citizen, a member of the community who has the right to participate in the process of establishing statutory regulations, both as a former researcher at the Ministry of Finance who was directly involved in the process of establishing legislative regulations several times, and as a lecturer and content creator who shares information and knowledge, in this case regarding the process of establishing statutory regulations. Therefore, if the *a quo* petition is granted, the presumed loss of constitutional rights as described will not or will no longer occur. Therefore, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition.

Whereas since the *a quo* petition is clear, then pursuant to Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law

Regarding the Petitioner's argument in relation to community participation in the establishment of statutory regulations as regulated in Article 96 paragraph (6) of Law 13/2022, it should be mandatory instead of optional, the Court is of the opinion that in understanding the *a quo* norms, it cannot be separated from the norms in other paragraphs in Article 96 of Law 13/2022, including other related articles in Law 12/2011. Article 96 paragraph (1) of Law 13/2022 has determined that the public has the right to provide input verbally and/or in writing. The word "has the right" in such norm must be interpreted as an "obligation" for the legislators to involve public participation in various forms, mechanisms and information media that are easily accessible to the public. The Court is of the opinion that the public should also play an active role in fighting for their involvement in the process of establishing statutory regulations. The most important stages to obtain community input are the planning, discussion and preparation stages. Meanwhile, in relation to Article 96 paragraph (6) of Law 13/2022 which is being petitioned for review, it provides space for the legislators to "be able" to carry out public consultation activities through: a. public hearing; b. work visit; c. seminar, workshop, discussion; and or d. other public consultation activities. In this context, the word "be able" questioned by the Petitioner is related to the type of activity in conducting public consultations, instead of related to the imperative requirement for community participation as confirmed in Constitutional Court Decision Number 91/PUU-XVIII/2020 and Article 96 paragraph (1) of Law 13/2022. By looking closely, the public consultation activities are not limited because the legislators evidently still provide other space, in addition to what has been determined to the extent that the activities are an embodiment of public consultation. The Court is of the opinion that Article 96 paragraph (6) of Law 13/2022 which by the Petitioner is being petitioned to be interpreted as a mandatory activity will give rise to legal consequences. The word mandatory will have the consequence of sanctions if it is not implemented. This matter has been expressly stipulated in Law 12/2011 that "To express the existence of an obligation that has been determined, use the word mandatory. If these obligations are not fulfilled, the person concerned will be subjected to sanctions" [*vide* Appendix II number 268 of Law 12/2011]. If the Petitioner's *petitum* is granted, it is clear that this is not in accordance with the technicalities of establishing the statutory regulations because the norm which is formulated with the word "mandatory" must be followed by sanctions. However, as has been considered above, the word "be able" questioned by the Petitioner in relation to Article 96 paragraph (6) of Law 13/2022 regulates various types of activities for conducting public consultations which are not limited. Therefore, such an arrangement is appropriate because there is still the possibility of carrying out other activities in the implementation of public consultations as part of the obligation for community participation. Accordingly, the Court is of the opinion that there is no question of the constitutionality of the norms of Article 96 paragraph (6) of Law 13/2022, therefore the arguments of the *a quo* petition of the Petitioner is legally unjustifiable.

Regarding the Petitioner's argument that Article 96 paragraph (8) of Law 13/2022 in relation to the explanation of the establishment of statutory regulations to the public regarding the results of discussion of public input must be mandatory instead of optional and needs to be given a deadline of no later than one week from such input is received by the legislators, the Court is of the opinion that this norm actually regulates the public participation in more details compared to the previous regulation in Law 12/2011. Expanding the interpretation as petitioned by the Petitioner in his *petitum* by limiting

the time for providing explanation to the public, namely one week from the time such input is received by the legislators, the Court is of the opinion that it will not provide legal certainty, on the contrary it is counterproductive to the efforts to widen public participation in the establishment of statutory regulations. The Court is of the opinion that more technical regulations regarding public participation in establishing the statutory regulations are inappropriate to be regulated in the law as considered above. Meanwhile, regarding the word "be able" in Article 96 paragraph (8) of *a quo* Law 13/2022, the word "be able" in the *a quo* context should not be interpreted as the *a quo* norm has removed the public's right to participate in the establishment of statutory regulations as guaranteed in Article 96 paragraph (1) of Law 13/2022. Accordingly, the Court is of the opinion that there is no question of the constitutionality of the norms of Article 96 paragraph (8) of Law 13/2022, therefore the Petitioner's *a quo* argument is legally unjustifiable.

Regarding the Petitioner's argument which pleads for further regulation regarding public participation mandated by Article 96 paragraph (9) of Law 13/2022 to be regulated in DPR (House of Representatives) regulations, DPD (Regional Representatives Council) Regulations and Presidential Regulations and a time period must be set for its publication, the Court is of the opinion that such argument is stated in an unusual argument and *petitum*. Moreover, it is not within the Court's authority to determine provisions of an executorial nature regarding the enactment of implementing provisions of a law. Since the Petitioner's reasons are obscure (*obscur*) then the Court is of the opinion that the *a quo* arguments of the petition is irrelevant to consider.

Pursuant to the legal considerations above, the Court is of the opinion that Article 96 paragraph (6) and paragraph (8) of Law 13/2022 has been found not to violate the principle of popular sovereignty, does not give rise to issues of constitutionality of norms, injustice, legal uncertainty, unequal treatment before the law and in the government, treatment that is discriminatory and it does not violate the right to self-advancement as argued by the Petitioner. Therefore, the *a quo* argument of the Petitioner is legally unjustifiable. The Court is of the opinion that the arguments and *petitum* related to Article 96 paragraph (9) of Law 13/2022 are unclear or obscure, therefore they shall not be considered further.

Accordingly, the Court handed down a decision whose verdict states, as follows:

1. The Petitioner's petition in relation to Article 96 paragraph (9) of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Statutory Regulations (State Gazette of 2022 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 6801) is inadmissible;
2. To dismiss the remainder of the Petitioner's petition.