



**CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**  
**SUMMARY OF DECISION FOR CASE NUMBER 79/PUU-XXI/2023**

**Concerning**

**Efforts to Avoid Words or Arrangements of Words  
That Are Hostile or Insulting**

<b>Petitioner</b>	: Rega Felix
<b>Type of Case</b>	: Review of Law Number 1/PNPS of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion (Law 1/PNPS/1965) and Law Number 12 of 2012 concerning Higher Education (Law 12/2012) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Judicial review of the Elucidation of Article 4 of Law 1/PNPS/1965 and Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2002 against the 1945 Constitution
<b>Verdict</b>	: <ol style="list-style-type: none"><li>1. To declare that the Petitioner's petition to the extent of the Elucidation of Article 4 of Law Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion is inadmissible;</li><li>2. To dismiss the Petitioner's petition in terms of other and the rest.</li></ol>
<b>Date of Decision</b>	: Wednesday, 27 September 2023
<b>Overview of Decision</b>	:

The Petitioner is an individual Indonesian citizen who has been designated as a non-Civil Servant lecturer since 7 July 2023. The Petitioner explains that he has constitutional rights guaranteed by Article 28C paragraph (1) and paragraph (2), Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), and Article 28I paragraph (1) of the 1945 Constitution.

Regarding the authority of the Court, because the Petitioner is reviewing the law, *in casu* the Elucidation of Article 4 of Law 1/PNPS/1965 as well as the norms of Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012, against the 1945 Constitution, the Court has the authority to hear and decide the *a quo* petition.

Regarding the Petitioner's legal standing, because the Petitioner has been able to explain the deemed impairment of the Petitioner's constitutional rights which are guaranteed in the 1945 Constitution due to the Elucidation of Article 4 of Law 1/PNPS/1965 as well as the norms of Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 submitted in the *a quo* petition for review. Therefore, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

The Petitioner argues that the phrase "which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting" in the Elucidation of Article 4 of Law 1/PNPS/1965 is contrary to the 1945 Constitution, especially Article 28C paragraph (1) and paragraph (2), Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), and Article 28I paragraph (1);

Whereas regarding the Petitioner's argument, before considering further whether the phrase "which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting" in the Elucidation of Article 4 of Law 1/PNPS/1965 is contrary to the 1945 Constitution, it is important for the Court to first quote the norm of Article 4 of Law 1/PNPS/1965 which states in full:

"In the Criminal Code there is a new article that reads as follows:

"Article 156a: By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act:

- a. which principally have the character of being at enmity with, abusing, or staining a religion, adhered to in Indonesia;
- b. with the intention to prevent a person from adhering to any religion based on the belief of the Almighty God."

Under the *a quo* provisions of Article 4 an elucidation was formulated that states in full:

"The meaning of this provision has been sufficiently explained in the general explanation above. The expression of feelings or committing of an act can be done verbally, in writing, or by other actions.

Letter a, the criminal act referred to here is that is solely (principally) aimed at an intention to antagonize or insult.

Therefore, written and oral descriptions carried out objectively, *zakelijk*, and scientifically regarding a religion which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting, is not a criminal act under this article.

Letter b, The person who commits the criminal act mentioned here, apart from disturbing the religious people's peace, principally betrays the first principle of the State totally, and therefore it is appropriate that his act be punished appropriately."

Whereas even though Law 1/PNPS/1965 was enacted long before Law Number 12 of 2011 concerning the Formation of Laws and Regulations as last amended by Law Number 13 of 2022 (Law 12/2011), the use of Law 12/2011 it is still relevant to understand the elucidation function of law. Law 12/2011 provides that the elucidation of an article or paragraph of a law is a means of clarifying the norms in the body and must not result in the ambiguity of the intended norm [vide Appendix II number 176 of Law 12/2011]. The understanding of the Elucidation of Article 4 of Law 1/PNPS/1965 cannot be separated from the essence of the main norms, *in casu* Article 156a, which is an amendment to the Criminal Code, providing, "By a maximum imprisonment of five years shall be punished any person who deliberately in public gives expression to feelings or commits an act: (a) which principally have the character of being at enmity with, abusing or staining a religion, adhered to in Indonesia; (b) with the intention to prevent a person to adhere to any religion based on the belief of the Almighty God." In the Petition Argument, it is evident that the Petitioner does not relate such basic norms which are criminal provisions and explanations. The Petitioner is more concerned with arguing as an academic who may express opinions or statements that are different from the interpretation of generally recognized religious authorities. Therefore, according to the Petitioner, the phrase "which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting," in the Elucidation of Article 4 of Law 1/PNPS/1965 will easily ensnare someone in the criminal realm. This is because law enforcement officials will be concerned first with the context

of "words", not with the context of *tempus* and *locus* when these "words" are conveyed, for example in educational or scientific institutions where such criminal charges may be dismissed. Instead, law enforcement officials may use the parameters of "words" only as a reason for criminal charges. Regarding the Petitioner's *a quo* argument, the Court is of the opinion that the interpretation of the Elucidation of Article 4 of Law 1/PNPS/1965 cannot be separated from the main provisions which constitute criminal punishment as stipulated in the provisions of Article 4 of Law 1/PNPS/1965 in question, which has confirmed the connection with the provisions of the norms of Article 156a of the Criminal Code. Therefore, the phrase "regarding a religion which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting" is intended as a form of exception if the act/action is carried out, for example, in an educational or scientific institution which is a forum for examining a hypothesis whose truth still needs to be tested scientifically, not from the perspective of legal science in general, *in casu* criminal law. Therefore, the Petitioner's presumptions or assumptions as an expression of concern that the phrase "words" could become *modus operandi* for law enforcement officials because the norms are elastic and have the potential to result in criminal penalties for people who use that forum, are irrelevant. In addition to such legal consideration, the Court is also of the opinion that raising a constitutionality issue of the Elucidation of Article 4 of Law 1/PNPS/1965 without including a review of the constitutionality of the Body of Article 4 of Law 1/PNPS/1965 is an incomplete and incomprehensive constitutionality review because the provisions of the norms Article 4 of Law 1/PNPS/1965 which is an integral part of the norms of the provisions of Article 156a of the Criminal Code is a criminal provision which consists of the elements of a criminal offense. Meanwhile, the phrase "regarding a religion which is accompanied by efforts to avoid words arrangements of word that are hostile or insulting" in the Elucidation of Article 4 of Law 1/PNPS/1965 is part of the description of the criminal offense elements in question. Therefore, regardless of whether or not there is a constitutionality issue with the norms of Article 4 of Law 1/PNPS/1965 and the phrase "which is accompanied by efforts to avoid words or arrangements of words that are hostile or insulting" in the Elucidation of Article 4 of Law 1/PNPS /1965, the petition submitted by the Petitioner to review the Elucidation of Article 4 of Law 1/PNPS/1965 is not complete or comprehensive. In other words, by not including the review of the Body of *a quo* Article, the Petitioner's petition to the extent that is related to the review of the Elucidation of Article 4 of Law 1/PNPS/1965 is unclear or vague.

Whereas the Petitioner further argues that the interpretation of norms in Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 are, according to the Petitioner, contrary to the 1945 Constitution to the extent that it is not interpreted conditionally as stated in the *a quo petitem*;

Regarding the Petitioner's *a quo* argument, before the Court further considers the subject matter of the petition, the Court needs to emphasize that the Unitary State of the Republic of Indonesia has a goal as mandated in the Preamble to the 1945 Constitution, namely "... protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice...". To realize this goal, Article 31 paragraph (3) of the 1945 Constitution mandates that the Government strive for and implement a national education system that increases faith and devotion to God Almighty as well as noble morals in order to educate the life of the nation as regulated by law. Moreover, the provisions in Article 31 paragraph (5) of the 1945 Constitution mandate that the Government advance science and technology by upholding religious values and national unity for the advancement of civilization and the welfare of mankind.

Whereas with regard to the above matter, the Petitioner in his petition has clearly stated, "it is explicitly difficult to see the constitutional contradiction of the phrase "religious values" in Article 6 letter b of Law 12/2012 as well as the phrase "upholding religious values" in Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 because, textually and explicitly, they are not contrary to the

Preamble to the 1945 Constitution and Article 31 paragraph (3) and paragraph (5) of the 1945 Constitution which are manifested in the Preamble Considering and General Explanation of Law 12/2012." However, the Petitioner argues that "it is natural that there is a constitutional interpretation because of the meaning of the phrase "religious values" in Article 6 letter b of Law 12/2012 as well as the phrase "upholding religious values" in Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 can be interpreted as criminal punishment and responsibility as intended in Article 4 of Law 1/PNPS/1965" due to the vagueness of the Elucidation of Article 4 of Law 1/PNPS/1965 and the meaning of the phrase "religious values" and the phrase "upholding religious values" in the explanation and norms petitioned for review.

Regarding the Petitioner's *a quo* argument, the Court needs to emphasize that Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) Law 12/2012 are inseparable parts of the Preamble Considering, bearing in mind, general provisions, paragraphs, articles and elucidations. In this regard, the Preamble Considering letter a of Law 12/2012 as the basis for regulating all norms in the *a quo* Law has stated that "The 1945 Constitution of the Republic of Indonesia mandates the Government to strive for and implement a national education system that increases faith, devotion to God Almighty, and noble morals in order to educate the life of the nation and advance science and technology by upholding religious values and national unity for the advancement of civilization and the welfare of mankind." The phrase "upholding religious values" in the preamble considering or the phrase "religious values" in the norms argued by the Petitioner, are phrases that actually lead to the Pancasila as the ideological value of the Indonesian nation. These values conceptualize divine values (religiosity) which are the source of ethics and spirituality that underlie the ethics of the Indonesian nation's state life. Because, Indonesia is not a secular country that separates "religion" and "state" and also does not use one particular religion as the basis of the state but synergizes various religions and beliefs that exist in social, national, and state life. As a country that has a diversity of religions and beliefs, the state must be able to protect and develop religious life. Therefore, the phrase "upholding religious values" is not intended to limit individual rights so that they are easily criminalized due to the Elucidation of Article 4 of Law 1/PNPS/1965, as the Petitioner is concerned. In this regard, there is no correlation between the phrase "upholding religious values" and the Elucidation of Article 4 of Law 1/PNPS/1965. Therefore, if the Petitioner's *petitum* petitioning the Court to interpret Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 is granted to become "without any punishment and criminal liability for academics for differing in opinion with the general view of religious beliefs held by society in the context of the learning process and/or scientific research" this can create legal uncertainty and prevent individuals from expressing themselves responsibly. Moreover, the Elucidation of Article 3 letter g of Law 12/2012 about which the Petitioner is concerned cannot be separated from the overall regulation of the principles of higher education which are cumulative namely; scientific truth, measurement, honesty, justice, benefits, virtue, responsibility, diversity and affordability [vide Article 3 of Law 12/2012]. In connection with the explanation of the "principle of responsibility" it is stated that "the Academic Community implements the *Tridharma* and realizes academic freedom, academic platform freedom, and/or scientific autonomy, by upholding religious values and national unity as well as statutory regulations." The phrase "upholding religious values" is an inseparable part of the Preamble Considering letter a of Law 12/2012 as considered above. Therefore, there is no constitutionality issue of the norms against the phrase "upholding religious values". This phrase provides general restrictions for the academic community in order to uphold not only religious values but also national unity and statutory regulations. Such restrictions do not conflict with human rights, because they are necessary in the country with the Pancasila ideology. In this case, by looking closely at various laws, it is not only Law 12/2012 that uses the phrase in question. Because, other laws, including Law Number 14 of 2005 concerning Teachers and Lecturers (Law 14/2005) state, "In carrying out professional duties, teachers are obliged to: d.

Upholding statutory regulations, laws and teachers' codes of ethics, as well as religious and ethical values" [vide Article 20 letter d of Law 14/2005] and Law Number 33 of 2009 concerning Film (Law 33/2009) stating, "Film activities and film businesses are carried out based on the freedom to create, innovate and work by upholding religious, ethical, moral, decency and national cultural values" [vide Article 5 of Law 33/2009], where these provisions also apply phrases similar to the one questioned by the Petitioner, namely the phrase "upholding religious values".

The Court is of the opinion that the Petitioner as an academic has enjoyed the right to legal certainty to obtain the freedom of thought and conscience as well as to express thoughts, attitudes, and opinions to advance himself and to fight for his rights collectively in order to build society, nation and state for the advancement of civilization and the welfare of humanity through educational and scientific institutions without the threat of fear as a constitutional right for academics. The State has provided a clear framework to the Government in the implementation of national education by the mandate of Article 31 paragraph (3) of the 1945 Constitution. The implementation of higher education is an inseparable part of the implementation of national education which cannot be separated from the mandate of Article 31 paragraph (3) of the 1945 Constitution. Therefore, the Court is of the opinion that the arguments of the Petitioner's petition concerning the interpretation of norms in Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012 which, as the Petitioner argues, are contrary to the 1945 Constitution to the extent that it is not interpreted conditionally as stated in the *a quo* Petition, are legally unjustifiable;

Whereas based on all the legal considerations above, the Court is of the opinion that the arguments stating that the Elucidation of Article 4 of Law 1/PNPS/1965 is contrary to Article 28C paragraph (1) and paragraph (2), Article 28D paragraph (1), Article 28E paragraph (2) and paragraph (3), Article 28G paragraph (1), and Article 28I paragraph (1) of the 1945 Constitution, are unclear or obscure (*obscur*). Meanwhile, concerning the norms of Article 6 letter b, Article 8 paragraph (2), the Elucidation of Article 3 letter g, and the Elucidation of Article 18 paragraph (2) of Law 12/2012, it has been proven that they do not violate the principle of legal certainty to gain freedom of thought and conscience as well as to express thoughts, attitudes and express opinions through educational and scientific institutions without the threat of fear as a constitutional right for academics as argued by the Petitioner. Therefore, the Petitioner's *a quo* argument is legally unjustifiable.

Accordingly, the Court then handed down a decision in which the verdict was as follows:

1. To declare that the Petitioner's petition to the extent of the Elucidation of Article 4 of Law Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion is inadmissible;
2. To dismiss the Petitioner's petition in terms of other and the rest.

### **Dissenting Opinion**

Against the Constitutional Court's *a quo* decision, Constitutional Justice Manahan MP Sitompul has a dissenting opinion specifically regarding Law Number 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy of Religion.

1. Whereas principally the Elucidation of Article 4 of Law Number 1/PNPS of 1965 concerning Prevention of Abuse and/or Blasphemy of Religion (PNPS Law) contains issues from the aspect of good and correct legislative rules.
2. Whereas the position and function of the elucidation of a statutory regulation are regulated in Attachment I to Law Number 12 of 2011 concerning Formation of Laws and Regulations as amended by Law Number 15 of 2019 and Law Number 13 of 2022, that

the Elucidation functions as an official interpretation of legislators regarding certain norms within the body. Therefore, the elucidation only contains a description of the words, phrases, sentences, or equivalents of foreign words/terms provided in the main norms which can be accompanied by examples.

3. **Whereas the elucidation of law as a means of clarifying norms within the body must not result in ambiguity of the norms in question.** Likewise, Elucidation cannot be used as a legal basis for making further regulations and **may not include formulations containing norms.**
4. Whereas Elucidation **does not use formulas whose contents contain hidden changes** against the provisions of the statutory regulations
5. **Whereas the Formulation of article by article elucidation also does not expand, narrow, or add the meaning of the norms in the body.**
6. The Elucidation of Article 4 of the PNPS Law has led to the formation of new norms or new meanings that should have been provided in the articles but are then stated in the elucidation.
7. Whereas the Elucidation of Article 4 attempts **to expand the meaning of the provisions of the article so that it has the potential to give rise to different interpretations of the substance of the article.**
8. Whereas the formulation of the elucidation of letter a is "**the criminal act referred to here**, is that is solely (principally) aimed at an intention to antagonize or insult. Therefore, written and oral descriptions carried out objectively, *zakelijk* and scientific regarding a religion which is accompanied by efforts to avoid words arrangements of word that are hostile or insulting, **is not a criminal act under this article.**"
9. Whereas the *a quo* elucidation, especially the phrase "**the criminal act referred to here**, and the phrase **is not a criminal act under this article**, has created ambiguity about the categories of criminal acts and/or not criminal acts.
10. Likewise, in the elucidation of letter b, "The person who commits the criminal act mentioned here, apart from disturbing the religious people's peace, principally betrays the first principle of the State totally, and therefore it is appropriate that **his act be punished appropriately.**" The formulation of this phrase is very likely to give rise to new understandings and interpretations in its implementation, thereby giving rise to legal uncertainty.
11. Therefore, the elucidation of Article 4 of the PNPS Law is basically not in accordance with the rules for forming laws as regulated in the P3 Law which provides that Elucidation does not contain new norms or explain anything which exceeds the substance of the statutory articles.
12. Whereas the elucidation of the Articles of the PNPS Law should only contain a short and clear description and should not explain provisions that could give rise to new meanings that seem to be a separate article so that it has the potential to be interpreted differently in its implementation.
13. Whereas although Law Number 1 of 2023 concerning the Criminal Code (Law No. 1/2023) has stated that it revokes and does not apply to Article 4 of the PNPS Law as regulated in Article 622 paragraph (1) letter h, and the regulations regarding religious blasphemy have been replaced with the term Criminal Acts Against Religion, Belief, and Religious Life or Believe (Article 300), however, under Article 624 of Law No. 1/2023 this provision will still be enforced after 3 (three) years from the date of promulgation. Law No. 1/2023 was promulgated on 2 January 2023.
14. Therefore, the Elucidation of Article 4 of the *a quo* Law will still be in effect until Law No. 1/2023 comes into force three years later, namely in 2026.

15. Whereas in order to provide legal certainty and prevent wider constitutional impairment, the Court may grant a constitutionality suspension in terms of the applicability of the *a quo* provisions, with the aim of ensuring the *a quo* provisions are in line with applicable laws.
16. Whereas in order to protect citizens' constitutional rights, as well as guarantee fair legal certainty and prevent interpretations that are not in line with the 1945 Constitution, the Elucidation of Article 4 of the *a quo* Law must be interpreted as "the applicability of the elucidation of Article 4 *a quo* has been postponed until Law No. 1/2023 is officially enacted under Article 624 of Law No. 1/2023."