



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 54/PUU-XXI/2023**

Concerning

Formal Review of the Job Creation Law

- Petitioners** : **The Federation of National Trade Unions (FKSPN) represented by Baso Rukman Abdul Jihad as the General Chair and Lilis Mahmudah as the General Secretary, Siti Istikharoh as the General Treasurer, et al.**
- Type of Case** : Formal Review of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : The formation process of Law 6/2023 is contrary to the 1945 Constitution
- Verdict** : To dismiss the Petitioners' petition entirely
- Date of Decision** : Monday, 2 October 2023
- Overview of Decision** :

The Petitioners are a group of individuals who have the same interests and are members of organizations and federations of labour unions or trade unions, each of which has been officially registered with the relevant ministry, agency, or service, in this case, represented by the Chairman, Secretary, and Treasurer (or by other position names) in accordance with the provisions of the Memorandum/Articles of Association of each organization. The Petitioners believe that the formation of Law 6/2023 has changed some of the contents of Law Number 13 of 2003 concerning Manpower (hereinafter referred to as Law 13/2003) so that it directly causes an adverse impact on the Petitioners' attempts and efforts to fight for workers' rights to the improvement of a decent standard of living as the vision, mission, function, and goal as determined in the Memorandum/Articles of Association of each organization. The Petitioners also believe that the formation of Law 6/2023 has caused the impairment of the Petitioners' constitutional rights, both factually and potentially, in particular the rights to receive the guarantee of legal certainty, a decent living, receive rewards and treatments in a manner that is fair, decent and being away from slavery systems in terms of employment relationship as guaranteed in Article 28D paragraph (1) and paragraph (2), Article 28C paragraph (1), Article 27 paragraph (2), and Article 28I paragraph (1) of the 1945 Constitution. Therefore, the Petitioners have an inseparable relationship with Law 13/2003 which was amended, repealed, or stipulated with the new provisions in Law 6/2023.

Regarding the authority of the Constitutional Court, the Court is of the opinion that because the Petitioners' petition is a formal review of the law, *in casu* Law 6/2023 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the period for submitting a petition for formal review, according to the Petitioners, the petition was submitted within the time limit for submitting a petition for formal review of the law, namely 45 days from its promulgation in the State Gazette and Supplement to the State Gazette of the Republic of Indonesia.

Regarding the time limit for submitting a petition for formal review, the Court is of the opinion that given that Law 6/2023 was promulgated on 31 March 2023 as contained in State Gazette of 2023 Number 41, Supplement to the State Gazette Number 6856, the deadline for submitting a petition for formal review of the *a quo* law is 14 May 2023. The Petitioners' petition was received by the Court on 5 May 2023 based on Deed of Submission of Petitioners' Petition Number 49/PUU/PAN.MK/AP3/05/2023. Therefore, the Petitioners' petition was submitted within the time limit for submitting a petition for formal review of a law.

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have met the category of a group of individual Indonesian citizens who have the same interests and are members of organizations and federations of labor unions or trade unions. Moreover, the Court is of the opinion that the Petitioners also have a direct relationship with Law 6/2023 because the norm content in Law 6/2023 is closely related to the field of employment which is the main concern of the Petitioners in fighting for workers' rights as an effort in the improvement of a decent standard of living. Therefore, the Court is of the opinion that regardless of whether the argument regarding the unconstitutionality of the formation of Law 6/2023 is proven or not, the Petitioners have the legal standing to submit the *a quo* petition.

However, before considering the arguments of the Petitioners' petition, with respect to the formal review of Law 6/2023 as petitioned by the Petitioners in the *a quo* case, the Court is examining several other cases of the same object of constitutionality review, namely in Cases Number 40/PUU-XXI/2023, Number 41/PUU-XXI/2023, Number 46/PUU-XXI/2023, and Number 50 /PUU-XXI/2023. After carefully examining the argument of the petitioner's petition in each of these other cases, the Court assessed that the *a quo* case presents more arguments as explained above. Meanwhile, the other cases present arguments which substantially have the same formal review as the *a quo* case. Therefore, the Court is of the opinion that with respect to the same and related petition argument, the Court's legal considerations in the *a quo* case will be used as a reference in other cases. In addition, with respect to the different arguments in the other cases, consideration will be made to the argument in each case. Therefore, the Court considers passing down a decision first on the *a quo* case.

Regarding the Petitioners' argument concerning the approval of Government Regulation in Lieu of Law 2/2022 to become law at the 19th Plenary Session of the House of Representatives of RI on 21 March 2023 being conducted outside the 2022/2023 Session Period III of the House of Representatives RI, namely from 10 January 2023 to 16 February 2023, which was the next session period to pass Government Regulation in Lieu of Law 2/2022 under statutory regulations, the Court is of the opinion that the President, as the main state actor, has a role as well as responsibility in the country's success in overcoming every national and constitutional problem. This means that whether a government is good or bad, successful or not, is very much in the President's hands. Therefore, within reasonable reasoning, the President has an exclusive right to make decisions based on subjective judgment in the event of an emergency that forces him to act in a quick and precise manner to anticipate conditions that tend to worsen and overcome the crisis currently hitting his country with extraordinary measures. It is said to be extraordinary because these measures are actually unusual and even considered abnormal or beyond the usual nature. Even at the extreme, these measures may be considered under normal circumstances as an anomaly or even abnormal, so the approach in understanding and assessing such extraordinary measures is to use an innovative perspective such as out of the box perspective, *in casu*, appropriate urgency and expediency (*doelmatigheid*) which focuses on fulfilling the goals or

benefits expected by the government and are carried out quickly, effectively and efficiently in order to provide public benefits and welfare.

Furthermore, before considering the constitutionality of the approval process for the Bill concerning the Stipulation of Government Regulation in Lieu of Law 2/2022 to become Law 6/2023, it is imperative that the Court first considers the relationship between the form, character, and legal framework of a law and a law originating from the Government Regulation in Lieu of Law, because in the Court's opinion, the dichotomy between them will determine the degree of the formal or procedural constitutionality of formation of them. Conceptually, the law as understood as "*wet in formele zin*" is a legal product formed by parliament and the government. Based on this understanding, the Constitution gives the authority for its formation to the House of Representatives [vide Article 20 paragraph (1) of the 1945 Constitution], where every material content is discussed by the House of Representatives and the President to obtain mutual approval [vide Article 20 paragraph (2) of the 1945 Constitution]. This constitutional legal framework is then further explained in Law Number 12 of 2011 concerning the Formation of Laws and Regulations (hereinafter referred to as Law 12/2011) as lastly amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (hereinafter referred to as Law 13/2022). The norms of Article 1 point 3 of Law 12/2011 provide that Laws are statutory regulations formed by the House of Representatives with the joint approval of the President. As part of statutory regulations, the formation of (formal) laws is bound by the principles of statutory regulation formation which include the principles of purpose clarity, appropriate institutions or forming officials, suitability between type, hierarchy and material content, executable, efficiency and effectiveness, formulation clarity and openness [vide Article 5 Law 12/2011]. Furthermore, the material content of norms that must be regulated in law includes further regulation of the provisions of the 1945 Constitution, order of a certain Law to be regulated by Law, ratification of certain international agreements, follow-up on the Constitutional Court's judgment; and/or fulfilment of public legal needs [vide Article 10 paragraph (1) of Law 12/2011]. In addition, the process of forming a law must fulfil a series of stages consisting of planning, drafting, discussion, ratification, and promulgation. Even though the content of a Government Regulation in Lieu of Law is the same as the content of a law [vide Article 11 of Law 12/2011], in essence, the two have fundamental differences. Laws must receive joint approval of the House of Representatives and the President before being ratified and promulgated, whereas in the case of a Government Regulation in Lieu of Law, due to a compelling urgency situation, the President can enact and promulgate it immediately, and the House of Representatives approval is obtained after the Government Regulation in Lieu of Law comes into force. As a consequence of the compelling urgency requirement, the stages in the formation of a bill (consisting of planning, drafting, discussion, ratification, and promulgation stages) cannot be applied to the Government Regulation in Lieu of Law. Likewise, both in the enactment of the Government Regulation in Lieu of Law and in the process of the House of Representatives approval, it is not relevant to broadly involve meaningful public participation because of a compelling urgency situation, so the House of Representatives approval is within the framework of carrying out its supervisory function which is actually a representation of the people's will.

Then it is important for the Court to consider relevant real events, situations, and conditions that may influence the process of forming a law originating from a Government Regulation in Lieu of Law. However, before considering these matters, the Court first outlines the legal facts in the process of forming Law 6/2023, chronologically based on time as follows:

1. Government Regulation in Lieu of Law 2/2022 was promulgated on 30 December 2022 in State Gazette of the Republic of Indonesia of 2022 Number 238, Supplement to the State Gazette of the Republic of Indonesia Number 6841. The promulgation coincided with the time limit for Session Period II of the House of Representatives, which started on 1 November 2022 to 9 January 2023.

2. On 9 January 2023, the President submitted Letter Number: R-01/Pres/01/2023 regarding the Bill concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to the House of Representatives, coinciding with the end of Session Period II of the House of Representatives, which was received by the House of Representatives on 9 January 2023.
3. On 14 February 2023, coinciding with Session Period III of the House of Representatives of RI which started from 10 January 2023 to 13 March 2023, the Meeting of the Steering Committee of the House of Representatives of RI assigned the Legislation Committee of the House of Representatives of RI to be the Complementary Organ to discuss the Bill based on Letter of the House of Representatives of the Republic of Indonesia Number T/157/PW.01/02/2023 regarding the Assignment to discuss the Bill concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law.
4. To follow up on the letter, the Legislation Committee of the House of Representatives of RI began a discussion in a Working Meeting with the Government and the Regional Representatives Council of RI for the Discussion of the *a quo* Bill with the agenda of the Government's Explanation of Government Regulation in Lieu of Law 2/2022 and began the holding of a Plenary Meeting with the agenda of a public hearing with resource persons/experts from academic elements on February 14 2023.
5. On 15 February 2023, the Legislation Committee of the House of Representatives of RI held a discussion at the Working Committee Meeting of the *a quo* Bill, for approval by the Working Committee Members.
6. On 15 February 2023, the Legislation Committee of the House of Representatives of RI held a Working Meeting with the Government with the agenda of discussion level I and decided that a *quo* Bill was approved to proceed to discussion level II, namely at Plenary Session of the House of Representatives of RI. The decision in discussion level I was made after hearing the opinions of 9 (nine) factions in the House of Representatives RI, of which 7 (seven) factions agreed and 2 (two) factions rejected.
7. On 21 March 2023, coinciding with Session Period IV of the House of Representatives which started from 14 March 2023 to 15 May 2023, a Plenary Meeting was held with an agenda of Discussion Level II of the *a quo* Bill. During the meeting, the bill concerning the stipulation of Government Regulation in Lieu of Law 2/2022 was officially approved as law. It was recorded that 7 (seven) factions agreed and 2 (two) factions refused to approve Government Regulation in Lieu of Law 2/2022 to become law.
8. On 31 March 2023, the Government followed up by promulgating Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law as contained in State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856.

Based on the legal facts mentioned above, the Court can understand the time needed by the House of Representatives to conduct more in-depth discussions and studies which resulted in the assessment of Bill 6/2023 which was proposed by the President being finalized at the end of the 2022-2023 Session Period II of the House of Representatives. Moreover, based on Article 52 of Law 12/2011, actually the President may submit a Bill concerning the stipulation of a Government Regulation in Lieu of Law to become law at the same time as the stipulation of the Government Regulation in Lieu of Law or until the end of the next session period of the House of Representatives after the Government Regulation in Lieu of Law is enacted. In fact, the President proposed Bill 6/2023 at the end of the session period II of the House of Representatives (9 January 2023). the Court is of the opinion that this showed the President's good faith to immediately obtain legal certainty regarding the Government

Regulation in Lieu of Law that had been stipulated. Meanwhile, the time limit provided by Law 12/2011 for submitting the *a quo* bill was at the end of the session period III of the House of Representatives, because the Government Regulation in Lieu of Law in question must first be submitted by the President to the House of Representatives in the following session [vide Article 52 paragraph (1) of Law 12/2011]. Therefore, within reasonable reasoning, the Court can accept the series of stages of the discussion process up to the approval that has been carried out by the House of Representatives as per the chronological legal facts in the process of forming Law 6/2023 which has been described in sub-paragraph [3.14.5] above. The additional period of discussion until the decision to approve or reject Bill 6/2023 which requires 2 (two) Session Periods after the stipulation of Government Regulation in Lieu of Law 2/2022, namely during the 2022-2023 Session Period IV of the House of Representatives and the absence of attempts to waste time in discussing and approving Government Regulation in Lieu of Law 2/2022 to become Law 6/2023 in a manner that does not exceed or are within the session IV time limit of the *a quo* law, provide strong, rational and fair reasons and are still within the meaning of "the following session" as intended in Article 22 paragraph (2) of the 1945 Constitution. Based on these legal considerations, the Petitioners' argument that the approval process for Government Regulation in Lieu of Law 2/2022 to become law on 21 March 2023 with respect to "the following session" is not in accordance with the provisions of statutory regulations is legally unjustifiable.

Regarding the Petitioners' argument that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 has been stipulated by the President in violation of the principle of compelling urgency and of Constitutional Court Decision Number 91/PUU-XVIII/2020 regarding meaningful participation, the Court is of the opinion that after the amendment to the 1945 Constitution, the principle of people's sovereignty is no longer carried out only by the People's Consultative Assembly but is implemented according to the constitution [vide Article 1 paragraph (2) of the 1945 Constitution], so that the state power in the context of implementing people's sovereignty is distributed to each power branch of state institutions that supervises and balances each other under the principle of checks and balances in accordance with their respective functions which refer to the state objectives contained in the constitution. A Government Regulation in Lieu of Law is the President's prerogative as a form extraordinary rules in overcoming compelling urgency situations and is temporary, so a review process is then needed which results in the approval by the House of Representatives for it to be definitively enacted to become law or the rejection of the same. Constitutional Court Decision Number 138/PUU-VII/2009 provides parameters for compelling urgency in the context of providing a constitutional interpretation as a guide for the President in enacting a Government Regulation in Lieu of Law and at the same time as a guide for the House of Representatives in supervising, assessing and giving approval to the Government Regulation in Lieu of Law before it is enacted as law. This means that a Government Regulation in Lieu of Law that has been approved by the House of Representatives to become law has substantively and definitively become law. Therefore, the room for assessing the parameters for compelling urgency exists in the House of Representatives only and is completed when the House of Representatives gives its approval. Even if the Court wishes to judge, *quod non*, the issuance process of the *a quo* Government Regulation in Lieu of Law has satisfied the requirements of compelling urgency because Law 11/2020 has been revised and replaced with Government Regulation in Lieu of Law 2/2022 [vide Preamble Considering letter f of Government Regulation in Lieu of Law 2/2022], and this is in line with the principle of *lex posterior derogat legi priori*. Moreover, forming/revising Law 11/2020 using normal procedures requires quite a long time, while the urgent situation requires certainty to be resolved. Therefore, based on these legal considerations, the arguments of the Petitioners' petition that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 has been stipulated by the President in violation of the nature of compelling urgency in accordance with the parameters described in the consideration of Constitutional Court Decision Number 138/PUU-XVII/2009 is legally unjustifiable.

Furthermore, the Petitioners also argue that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 has been stipulated by the President in violation of Constitutional Court Decision Number 91/PUU-XVIII/2020 which orders legislators to revise the formal procedures for the formation of Law 11/2020, instead of issuing a Government Regulation in Lieu of Law. Regarding the Petitioners' *a quo* argument, the Court is of the opinion that the stipulation of a *quo* Government Regulation in Lieu of Law 2/2022 is the chosen presidential leadership legal policy which is in accordance with the constitution and is part of a series of efforts by legislators to revise Law 11/2020 which ultimately results in the promulgation of Law 6/2023 as the final changes to Law 11/2020 as mandated in Constitutional Court Decision Number 91/PUU-XVIII/2020. Moreover, under Article 7 paragraph (1) *juncto* Article 11 of Law 12/2011, the position of a Government Regulation in Lieu of Law is equal to law and the content of a Government Regulation in Lieu of Law is the same as the content of law. This means that the revision to Law 11/2020 which was outlined in the legal form of Government Regulation in Lieu of Law 2/2022 and was later approved by the House of Representatives as Law 6/2023 has the same position and content as the revision in the form of law, because the choice of legal form, whether in the form of law or Government Regulation in Lieu of Law, is the domain of legislators and it is basically in accordance or at least does not violate Constitutional Court Decision Number 91/PUU-XVIII/2020. Furthermore, the Court is of the opinion that there is no violation of the principles of people's sovereignty, country of law, and guarantees of legal certainty because the process of discussing the Government Regulation in Lieu of Law to become law was actually an implementation of people's sovereignty as well as providing legal certainty in the democratic country of law. Therefore, the Court is of the opinion that the argument of the Petitioners' petition stating that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 has been stipulated by the President in violation of Constitutional Court Decision Number 91/PUU-XVIII/2020 which orders legislators to revise the formal procedures for the formation of Law 11/2020, instead of issuing a Government Regulation in Lieu of Law, is legally unjustifiable.

Furthermore, the Petitioners argue that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 had been stipulated by the President in violation of Constitutional Court Decision Number 91/PUU-XVIII/2020 in terms of meaningful participation. Regarding the Petitioners' *a quo* argument, the Court is of the opinion that meaningful participation as considered by the Court in Constitutional Court Decision Number 91/PUU-XVIII/2020 and then accommodated in the norms of Article 96 of Law 13/2022, is intended to create strong public participation and involvement in every stage of the formation of statutory regulations. In such a context, legislators must listen, consider, and provide explanations to all parties, especially parties affected and interested in the policy choices taken or determined not to be implemented in the case of policy choices in the form of Government Regulation in Lieu of Law. Therefore, in the process of forming a law (ordinary), meaningful participation must be carried out at all stages, especially at the submission, discussion, and approval stages. However, the case is different in the process of approving a bill originating from a Government Regulation in Lieu of Law, where the implementation of meaningful participation is not relevant anymore. Therefore, the Court is of the opinion that the Petitioners' argument stating that Government Regulation in Lieu of Law 2/2022 as the precursor to the birth of Law 6/2023 has been stipulated by the President in violation of Decision Number 91/PUU-XVIII/2020 in terms of meaningful participation is legally unjustifiable.

Furthermore, the Petitioners also argue that the legislation model of Law 6/2023 has restored the law formation process to that of an executive-heavy and authoritarian nature as happened in the New Order era. Regarding the Petitioners' *a quo* arguments, the Court is of the opinion that executive heavy is a term used to describe a government system in which the tendency to use executive power or authority, especially the president or the head of government, has strong influence and control in decision making and implementation of

government policies. Under these conditions, the executive usually has greater authority than other branches of government, such as the legislature and the judiciary. Historically, the term executive heavy is often used by Indonesian legal scholars to describe the implementation of the government system before the 1998 reform era where government power rested with the executive (the President). This view is based on the argument that the constitution in that era actually gave a greater portion of authority to the executive branch compared to other branches of government power. In addition, political realities with a single, strong leadership place the President in a central position with dominant authority to direct the government and make decisions, including having control over the legislative agenda and having the ability to mobilize a majority in parliament. However, after the amendment to the 1945 Constitution, the design of the political superstructure in Indonesia experienced significant changes, especially related to the redistribution of authority possessed by each branch of government power by strengthening the principle of checks and balances to get rid of the executive heavy stigma.

Therefore, with regard to the issue of constitutionality in terms of the formation process of laws originating from Government Regulations in Lieu of Law and to provide fair legal certainty, to understand the dynamics and context of the House of Representatives sessions, the type and character of law attached to the submission of Government Regulation in Lieu of Law document and according to reasonable reasoning, it is important for the Court to determine the time limit for approval by the House of Representatives in the following session as stipulated in Article 22 paragraph (2) of the 1945 Constitution. There are a number of time options for interpreting the phrase "the following session" which is considered constitutional under the 1945 Constitution, namely: (1) the session period of the House of Representatives when a Government Regulation in Lieu of Law is proposed by the President to the House of Representatives; (2) the first session of the House of Representatives after a Government Regulation in Lieu of Law is submitted by the President to the House of Representatives; (3) the first session period after the end of the maximum time limit for submitting a Government Regulation in Lieu of Law by the President to the House of Representatives. The determination of this time limit is solely to create legal order in terms of approval of bills originating from a Government Regulation in Lieu of Law within the framework of a democratic country of law based on the constitution and does not reduce the urgent, compelling, and temporary aspects of the enactment of a Government Regulation in Lieu of Law which are the special characteristics of the Government Regulation in Lieu of Law itself. When approving a Government Regulation in Lieu of Law, the House of Representatives should also prioritize the principle of good faith in the process and not waste time. Therefore, the Court is of the opinion that the 3 (three) time options for the meaning of the phrase "the following session" should be accommodated in the law relating to the special chapter regarding procedures for approving bills originating from the Government Regulation in Lieu of Law and/or by the House of Representatives in the House of Representatives procedural regulation (*tatib*) specifically providing the procedures for approval by the House of Representatives to a bill concerning stipulation of a Government Regulation in Lieu of Law to become law with the guidance of the legal considerations in this decision. If the choice of time for the phrase "the following session" as described above has been provided in the law and/or the House of Representatives procedural regulation, then the Court can use such provisions as part of the constitutionality parameters in assessing the approval process for bills originating from Government Regulations in Lieu of Law. Moreover, in an effort to fulfil the principle of openness in terms of meaningful participation in the process of the formation of legislation in general, not including laws originating from Government Regulations in Lieu of Law, the House of Representatives needs to develop an information system for the formation of laws and regulations, such as SIMAS PUU, *in casu* information applications contained in the House of Representatives official website should be managed more comprehensively and integrated with relevant ministry/institution websites to ensure the quality of management and quality of material available in the applications or information systems in question, and are accessible to the public as a forum for carrying out dissemination activities. and open a room

of meaningful participation for law-forming institutions as stakeholders (the House of Representatives and President) and the public in general.

Therefore, based on all the legal considerations above, the Court is of the opinion that it has been proven that the formal formation process of Law 6/2023 is not contrary to the 1945 Constitution. Therefore, Law 6/2023 remains in force and binding. Accordingly, the arguments of the Petitioners' petition are entirely legally unjustifiable.

Subsequently, the Court handed down a decision in which the verdict was to Dismiss the Petitioners' petition entirely.

Dissenting Opinion

Against the *a quo* Court's decision, 4 (four) Constitutional Justices have dissenting opinions, namely Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, and Constitutional Justice Enny Nurbaningsih, who basically stated that the Petitioners' petition was legally reasonable and the Court should have granted the Petitioners' petition entirely. Moreover, Constitutional Justice Suhartoyo has a dissenting opinion which basically states that the Court should have declared the Petitioners' petition premature and the Court, before passing down its final decision, in a provisional decision ordered the legislators to satisfy the verdict of Constitutional Court Number 91/PUU-XVIII/2020.