



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF CASE
FOR DECISION NUMBER 41/PUU-XXI/2023**

Concerning

Formal Review of Job Creation Law

- Petitioner** : **Konfederasi Serikat Buruh Seluruh Indonesia (KSBSI or Confederation of All Indonesian Trade Unions), in this case represented by Elly Rosita Silaban as President of the KSBSI National Executive Council (Dewan Eksekutif Nasional or DEN) and Dedi Hardianto as Secretary General of KSBSI National Executive Council**
- Type of Case** : **Judicial Review of Law Number 6 of 2023 concerning Job Creation regarding the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law concerning Job Creation (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)**
- Subject Matter** : **Formal Review of Law 6/2023 against the 1945 Constitution**
- Verdict** : **To dismiss the Petitioner's petition in its entirety**
- Date of Decision** : **Monday, 2 October 2023**
- Overview of Decision** :

Whereas the Petitioner is a Legal Entity in the form of Association which is named Konfederasi Serikat Buruh Seluruh Indonesia (KSBSI or Confederation of All Indonesian Trade Unions), in this case represented by the President and Secretary General of the National Executive Council (Dewan Eksekutif Nasional or DEN) of Konfederasi Serikat Buruh Seluruh Indonesia (DEN KSBSI). In its qualification as a labour organization in the form of a confederation, the Petitioner has aims and functions, namely a.) channelling and fighting for workers' aspirations to obtain legal protection, decent working conditions, living conditions and wages; b.) upholding the law, justice, democracy and human rights; c.) play an active role in the political decision-making process and being a social control instrument over government policies related to employment, social issues and economy; d.) playing a role in influencing general policies related to and/or impacting employment; and e.) fighting for the creation of labour regulations that reflect democracy with social justice. The Petitioner explained that its constitutional loss occurred in the planning, drafting and discussion process of Law 6/2023, namely there is a neglect of the Petitioner's constitutional rights in fighting for collective rights and the right to express opinions in the planning, drafting and discussion process of Law 6/2023 in order to play an active role in the political decision-making process in government policies related to employment.

Regarding the Court's authority, since the Petitioner submitted a formal review of the law *in casu* Law 6/2023 against the 1945 Constitution, such matter is under the Court's authority in accordance with Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) letter a of Law Number 24 of 2003 concerning the Constitutional Court as most recently amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2020 Number 216, Supplement to Gazette Republic of

Indonesia Number 6554, hereinafter referred to as the Constitutional Court Law), and Article 29 paragraph (1) letter a Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia of 2009 Number 157, Supplement to State Gazette of the Republic of Indonesia Number 5076), the Court has the authority, among other things, to adjudicate at the first and final level whose decisions shall be final to conduct judicial review against the 1945 Constitution. This article does not describe whether the Court's authority to adjudicate at the first and final level, whose decision shall be final, to conduct judicial review against the 1945 Constitution is only on one type of review, either the material or formal review, or whether both formal and material review is allowed. The Constitutional Court Law in Article 10 paragraph (1) letter a states that the Constitutional Court has the authority to adjudicate at the first and final level whose decision shall be final to conduct judicial review against the 1945 Constitution. Meanwhile, Article 51 paragraph (3) states that in the petition, the Petitioner must clearly explain that: (a) the formation of the Law does not fulfil the requirements as set out in the 1945 Constitution; and/or (b) the content contained in paragraphs, articles and/or sections of the Law is deemed to be contrary to the 1945 Constitution. Therefore, in accordance with the provisions of such article in general, the Court has the authority to examine, adjudicate and decide on any judicial review cases against the 1945 Constitution, both in formal and material review, therefore the Court has the authority to adjudicate the *a quo* petition.

Regarding the legal standing, the Petitioner also has a direct relationship with Law 6/2023 because the norm in Law 6/2023 is closely related to the field of employment which is the Petitioner's main concern in fighting for the rights of labourers/workers as an effort to improve a better standard of living. Therefore, the Court is of the opinion that regardless of whether the argument which states that the establishment/approval of Law 6/2023 is unconstitutional is proven or not, the Petitioner has the legal standing to submit the *a quo* petition.

Subject Matter

Whereas after the Court has carefully read the Petitioner's petition, examined the evidence submitted, and considered the Petitioner's arguments, the Court will then consider the subject matter of the Petitioner's petition as follows:

1. Whereas is related to the arguments of the *a quo* petition, the Court has given its considerations regarding the "following session" as regulated in the provisions of Article 22 paragraph (2) of the 1945 Constitution and Article 52 paragraph (1) of Law 12/2011, such matter has been decided by the Court in Constitutional Court Decision Number 54/PUU-XXI/ 2023, dated 2 October 2023, which has been declared previously, specifically in the legal considerations in Sub-Paragraph [3.14.6] and Sub-Paragraphs [3.14.7]. After carefully reading such legal considerations, because the substance questioned by the Petitioner is essentially the same as the one previously decided by the Court in Constitutional Court Decision Number 54/PUU-XXI/2023, moreover, the essence of what is being petitioned for in the *a quo* case is the same as the one in case 54/PUU-XXI/2023, namely questioning the words "the following session". Therefore, the legal considerations in the Constitutional Court Decision Number 54/PUU-XXI/2023 *mutatis mutandis* shall apply in the legal consideration of the *a quo* petition. Therefore, based on the description of the legal considerations above, the Court is of the opinion that the Petitioner's argument which states that Law 6/2023 only received the approval from the DPR (House of Representatives) during the second (2) session after Perppu (government regulation in lieu of law) 2/2022 was enacted, therefore the ratification of Perppu 2/2022 to become Law 6/2023 was contrary to Article 22 paragraph (2) of the 1945 Constitution and Article 52 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Statutory Regulations is legally unjustifiable;
2. Whereas the Petitioner argued that the DPR's decision to approve the Bill concerning the Determination of Perppu 2/2022 to become Law at the 19th Plenary Session of the DPR RI for the IV Session Period of the 2022-2023 Session Year, which was held on 21 March 2023, did not fulfil the minimum number of members required to attend the session (quorum), the Court is of the opinion that the final number of attendance of the members of DPR RI (House of Representatives of the Republic of Indonesia) must fulfil the minimum attendance of the session (quorum). Therefore, carrying out periodic confirmation and verification of the legitimacy of DPR RI members through the Secretariat General of the DPR RI is a form of caution that needs to be taken to prevent potential violations of DPR RI Code of Conduct 1/2020, especially with regard to the quorum. In addition, there was no other evidence submitted by the Petitioner regarding any objections or interruptions from the participants of the session who were present both physically and virtually regarding the number of DPR RI members who did not meet the quorum at the DPR RI plenary session on 21 March 2023. Meanwhile, in Level II Discussions/Decision Making on the

Bill concerning the Determination of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation to Become Law, 7 (seven) factions agreed and there were 2 (two) factions that expressed disagreement, those were the Demokrat Faction and Partai Keadilan Sejahtera (PKS) faction. In this case, the objection only concerns the approval regarding the Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation to Become Law, so it cannot be said that the plenary session with the agenda for Level II Discussions/Decision Making on the Bill concerning the Stipulation of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation to Become Law did not meet the quorum requirements for ratifying the *a quo* Bill. Moreover, pursuant to the provisions of the DPR RI Code of Conduct 1/2020 Article 313 paragraph (1), which in essence states that majority vote decision making shall be valid if attended by members and faction elements as intended in Article 281 paragraph (1) and approved by more than ½ (half) of the number of Members present. Therefore, the Petitioner's argument which states that the DPR's decision to approve the Bill concerning the Determination of Perppu 2/2022 to Become Law at the 19th Plenary Session of the DPR RI for the IV Session Period of the 2022–2023 Session Year held on 21 March 2023 did not meet the requirement of minimum numbers of members attending the session (quorum), such argument is legally unjustifiable;

3. Whereas the Petitioner further argued that the formation of Law 6/2023 did not fulfil the principle of compatibility between type, hierarchy and material content, because it deleted a lot of material in articles relating to employment, especially 9 articles, namely, Articles 161 to Article 169, and Article 172 in Chapter IV Employment, Part One General as well as the principle of clarity of formulation, because there are words or terms that have the potential to give rise to multiple interpretations in their implementation as referred to in Article 5 letter c, and letter f of Law 12/2011, regarding the *a quo* argument of the Petitioner, the Court considered that in terms of formal review, the formation of laws in general is different from the formation of laws originating from a Perppu (government regulation in lieu of law). Meanwhile, the Petitioner argued that the formation of Law 6/2023 did not fulfil the principles of compatibility between type, hierarchy and content material as well as the principle of clarity of formulation. Since Law 6/2023 is a law originating from the Perppu and the *a quo* petition for judicial review is a formal review, meanwhile the Petitioner's argument is related to material review, the Court is of the opinion that the *a quo* argument is irrelevant for further consideration;
4. Whereas the Petitioner's argument which stated that the establishment of Law 6/2023 does not fulfil the principle of openness due to the minimal involvement of the community, including the Petitioner. Whereas regarding the *a quo* argument of the petitioner, the Court has given its considerations regarding the "fulfilment of the principle of openness in Law 6/2023" as regulated in the provisions of Article 5 letter g of Law 12/2011, which has been decided by the Court in the Constitutional Court decision Number 54/PUU-XXI/2023, which has been declared previously, specifically in the legal considerations of Sub-Paragraph [3.15.5] and Sub-Paragraph [3.15.6]. After carefully reading the legal considerations in the Constitutional Court Decision Number 54/PUU-XXI/2023, because of the constitutional issues argued by the Petitioner in the *a quo* petition, in essence, is the same from the one in the Constitutional Court Decision Number 54/PUU-XXI/2023 which has been declared previously. Therefore, the legal considerations in the Constitutional Court Decision Number 54/PUU-XXI/2023 *mutatis mutandis* shall apply as the legal consideration to the Petitioner's arguments in the *a quo* petition. Thus, the Petitioner's argument regarding the establishment of Law 6/2023 does not fulfil the principle of openness due to the minimal involvement of the community, including the Petitioner, is legally unjustifiable;
5. Whereas regarding the legal considerations which are used as the basis for the Constitutional Court Decision Number 54/PUU-XXI/2023 as described in Paragraph [3.14] and Paragraph [3.17] above, Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Enny Nurbaningsih, and Constitutional Justice Suhartoyo have dissenting opinions. Regarding the *a quo* case, the four Constitutional Justices still have the same dissenting opinions as stated in the Constitutional Court Decision Number 54/PUU-XXI/2023 which has been declared previously.

Whereas pursuant to all the legal considerations above, the Court is of the opinion that it has been evident that the formal formation process of Law 6/2023 was not contrary to the 1945 Constitution. Therefore, Law 6/2023 remains to have binding legal force. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Subsequently, the Court handed down a decision whose verdict is to dismiss the Petitioner's petition in its entirety.