



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 122/PUU-XXI/2023**

**Concerning**

**Constitutionality of Case Examinations at the Supreme Court  
Without Hearing Statements from the Parties**

<b>Petitioners</b>	: Asep Muhidin, et al.
<b>Type of Case</b>	: Judicial Review of Law Number 14 of 1985 concerning the Supreme Court as most recently amended by Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (Supreme Court Law) and Law Number 8 of 1981 concerning Criminal Procedure Law (Indonesian Criminal Procedure Code) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Article 50 paragraph (1) of the Supreme Court Law and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code are contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety
<b>Date of Decision</b>	: Wednesday, November 29, 2023
<b>Overview of Decision</b>	:

The Petitioners are individual Indonesian citizens who have the same interests. The Petitioners submitted a petition for judicial review of Article 50 paragraph (1) of the Supreme Court Law and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code.

Regarding the Court's authority, since the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 50 paragraph (1) of the Supreme Court Law and Article 253 of the Indonesian Criminal Procedure Code against 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition of the Petitioners.

Regarding the aforementioned legal standing, Petitioner I, named Asep Muhidin, is an individual Indonesian citizen who works as an advocate who provides legal services both inside and outside of the court, who submitted a request for cassation, judicial review or material review to the Supreme Court to fight for justice. However, Petitioner I never received a request for statement from the Supreme Court in examining, adjudicating and deciding the case submitted by Petitioner I. In fact, the Supreme Court's decision was not declared in a session open to the public as stipulated in Article 40 paragraph (2) of the Supreme Court Law, so there is the potential for giving a decision with incoherent considerations. In addition, the request for cassation in criminal, civil and state administrative cases have the potential not to be declared in hearings open to the public, because it is not known and there is no notification to the parties when the hearing will be held, so that all decisions of the Supreme Court in

cassation cases which are not declared in a hearing open to the public should have been void [*vide* Article 40 paragraph (2) of the Supreme Court Law]. Therefore, according to Petitioner I, to avoid suspicion, the Supreme Court can at least hold a hearing open to the public by providing prior notification to the parties with limited interests, not to present and re-examine the *judex facti*, but rather to examine the *judex juris*.

Petitioner II, named Rahadian Pratama Mahpudin, is an individual Indonesian citizen who works as an assistant lecturer at one of the Law Faculties of Universitas Garut. According to Petitioner II, the application of Article 50 paragraph (1) of the Supreme Court Law and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code does not reflect the principle of *audi et alteram partem*. The inconsistency between *das sein* and *das sollen* in these two articles, as well as the principle of *audi et alteram partem*, has given rise to logical fallacy for the students, because students only accept the lessons given by the lecturer without questioning the truth, the causes and effects, or similar questions. Without applying the legal principles, the students will only study a legal rule without studying a concrete event, so that a legal rule regarding a very important concrete event will be ignored.

Petitioner III, named Asep Ahmad, is an individual Indonesian citizen who works as a journalist. The enactment of Article 50 paragraph (1) of the Supreme Court Law and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code have caused potential injury to Petitioner III, namely the right to receive news and to spread information that is potentially incorrect or hoax. As a result, Petitioner III could not convey correct information and he was suspected of spreading misleading information, which could damage the reputation of journalists and the press company where the journalists work.

The Court is of the opinion that Petitioner I is able to prove his potential constitutional injury, because as an individual Indonesian citizen who works as an advocate, Petitioner I has a direct interest in the handling of cases at the Supreme Court, so that Petitioner I is an interested party in the progress of case handling that are examined, adjudicated, and decided by the Supreme Court, whether in the form of cassation cases, judicial review, or material review of statutory regulations under the Law. If the petition is granted, then the constitutional injury experienced by Petitioner I will not occur in the future.

Regarding Petitioner II, even though Petitioner II has been able to prove himself to be an individual Indonesian citizen who works as an assistant lecturer who teaches law, the Court is of the opinion that Petitioner II has no direct interest in the progress of case handling at the Supreme Court, whether in the form of cassation cases, judicial review, or material review of statutory regulations under the Law. In fact, teaching about case examination at the Supreme Court is a legal knowledge that enriches the body of Indonesian law which reflects the character of the Supreme Court. This has no relevance to legal principles, namely *audi et alteram partem*, and *das sein* and *das sollen*. The logical fallacy of the law students arising from receiving the lessons from Petitioner II regarding the application of the said legal principles are not related to the causal relationship between the presumed injury of the Petitioner's constitutional rights and the enactment of the phrases in the norms of the articles being petitioned for review. Therefore, the Court is of the opinion that Petitioner II does not have the legal standing to submit the *a quo* petition.

Regarding Petitioner III, even though Petitioner III has been able to prove himself to be an individual Indonesian citizen who works as a journalist, the Court is of the opinion that Petitioner III has no direct interest in the progress of case handling at the Supreme Court, whether in the form of cassation cases, judicial review, or material review of statutory regulations under the Law. Even though he works as a journalist, Petitioner III needs information regarding the handling of cases at the Supreme Court, but Petitioner III is not a party to the case at the Supreme Court. If Petitioner III needs information regarding the cases and decisions at the Supreme Court, the Petitioner can request this information from the information section at the Supreme Court. Likewise with the decision of the Supreme Court,

the Petitioner can download it at the Supreme Court page <https://putusan3.mahkamahagung.go.id/>. Therefore, the Court is of the opinion that Petitioner III is unable to prove a causal relationship between the presumed injury of his constitutional rights and the enactment of phrases and words in the norms of the articles being petitioned for review. Therefore, Petitioner III does not have the legal standing to submit the *a quo* petition.

Even though Petitioner II and Petitioner III do not have the legal standing to submit the *a quo* petition, Petitioner I has the legal standing to submit the *a quo* petition, therefore the Court will then consider the subject matter of the petition of Petitioner I.

Whereas, because the Court is of the opinion that the constitutionality issue disputed by the Petitioner is clear, it is no longer relevant to ask for statements from the parties as intended in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, the argument for the unconstitutionality of Article 50 paragraph (1) of the Supreme Court Law, namely the phrase "only if deemed necessary" and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code, namely the phrase "if deemed necessary" and the word "may" are considered to be contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. The Petitioner argues that substantially the decision of the Supreme Court potentially violates the law because the decision of the Supreme Court is never declared in a hearing open to the public without prior notification to the parties regarding the trial, so it is contrary to Article 40 paragraph (2) of the Supreme Court Law and the Elucidation thereof which require the decision of the Supreme Court to be declared in a hearing open to the public, otherwise the decision should be null and void. Regarding the constitutional meaning of Article 50 paragraph (1) of the Supreme Court Law and Article 253 paragraph (3) of the Indonesian Criminal Procedure Code, this means that the Supreme Court has autonomous authority to hear the parties or witnesses directly. The authority of the Supreme Court to rule the District Court or High Court as the *judex facti* is a mandate, not a delegation. However, the legal responsibility for cassation review remains with the Supreme Court, especially in the event that the Supreme Court exercises its authority as the *judex juris*, which is very different from the authority of the District Court or High Court as the *judex facti*.

Regarding the subject matter of the petition, the Court is of the opinion that the review of Article 50 paragraph (1) of the Supreme Court Law has been decided by the Court in its decision number 71/PUU-XVIII/2020 dated 26 October 2020. Therefore, the Court Decision Number 71/PUU-XVIII/2020 *mutatis mutandis* applies in the review of the unconstitutionality of the *a quo* petition. In this case, there is no unconstitutionality issue of Article 50 paragraph (1) of the Supreme Court Law. However, it is important for the Court to emphasize that in the case examination and proceeding at the Supreme Court, the Court is of the opinion that as a court of *judex juris*, the Supreme Court does not require the parties, public prosecutors, defendants and witnesses to attend the examination of cassation and review cases. If the Supreme Court orders the High Court or District Court to conduct an examination by hearing the statements of the parties and witnesses in a civil case or the public prosecutor, the defendant and the witnesses in a criminal case to examine a delegated case which is actually within the authority of the Supreme Court, this actually reflects the principle of speedy and low cost trial, this does not mean that the Supreme Court carries out its function as *judex facti*.

Regarding the argument of the petition, namely the phrase "only if deemed necessary" is contrary to the 1945 Constitution to the extent that it is not interpreted as "mandatory" in Article 50 paragraph (1) of the Supreme Court Law, the Court is of the opinion that the Petitioner's wish is not in line and gives rise to inconsistency because on the one hand it requires the Supreme Court to hear the statements of the parties, witnesses, public prosecutors or defendants directly. However, on the other hand, the Supreme Court ordered the Court of First Level or the High Court of Appeal which decided on the case to hear the parties or witnesses, as written in the *petitum* of the petition [*vide* revised petition for Case

Number 122/PUU-XXI/2023, p. 28]. The existence of the phrase "mandatory" and "or ordered" in the *petitum* of the petition actually obscures the petition itself. Therefore, the Petitioner's argument regarding the norms of Article 50 paragraph (1) of the Supreme Court Law is legally unjustifiable. Regarding the constitutionality issue of the norms of Article 253 paragraph (3) of the Indonesian Criminal Procedure Code, especially the phrase "if deemed necessary" and the word "may", the Court is of the opinion that the constitutionality issue of the norms of this article is the same as Article 50 paragraph (1) of the Supreme Court Law, therefore the Court does not need to consider it further. Regarding the hearing to declare the decision of the Supreme Court, the Court is of the opinion that to make it easier for the public to reach and obtain justice (access to court and access to justice), the Supreme Court needs to open the access to parties, especially those litigating at the Supreme Court. Moreover, Article 40 paragraph (2) of the Supreme Court Law stipulates that "the decisions of the Supreme Court are declared in hearings open to the public". If not, then the decision of the Supreme Court is null and void as confirmed in the Elucidation to Article 40 paragraph (2) of the Supreme Court Law. Therefore, with the development of information technology, the Supreme Court is able to provide opportunities for the parties, especially those litigating at the Supreme Court, to attend the decision hearings online without having to go to the building of the Supreme Court.

Pursuant to the entire description of the legal considerations above, the phrase "only if deemed necessary" in Article 50 paragraph (1) of the Supreme Court Law, and the phrase "if deemed necessary" and the word "may" in Article 253 paragraph (3) of the Indonesian Criminal Procedure Code do not violate equal position at the law and do not violate the guarantees, protection, fair legal certainty and equal treatment before the law as guaranteed in the 1945 Constitution. Therefore, the Petitioner's argument is entirely legally unjustifiable.

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

1. To declare that the petition of Petitioner II and Petitioner III is inadmissible;
2. To dismiss the remainder of the petition of the Petitioner I.