CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 114/PUU-XXI/2023

Concerning

Obligation to Help People in Dangerous Traffic Accidents

Petitioner	:	**Leonardo Olefins Hamonangan**
Type of Case	:	Judicial Review of the Criminal Code (*Kitab Undang-Undang Hukum Pidana* or KUHP) and Law Number 22 of 2009 concerning Road Traffic and Transportation (Law 22/2009) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 531 of Criminal Code and Article 312 of Law 22/2009 are contrary to Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	To dismiss the petition in its entirety
Date of Decision	:	Wednesday, November 29, 2023
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen who submitted petition for judicial review of Article 531 of the Criminal Code and Article 312 of Law 22/2009. According to the Petitioner, Article 531 of the Criminal Code which regulates the giving of help to people who are in dangerous incidents without causing danger to themselves or others, and the provisions of a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiah; and Article 312 of Law 22/2009 which regulates people who drive motorized vehicles that are involved in traffic accidents and deliberately do not stop their vehicles, do not provide help or do not report the traffic accidents to the police, and criminal penalties of fines and imprisonment, both articles are contrary to Article 28D paragraph (1) of the 1945 Constitution which guarantees the right to legal recognition, protection and fair legal certainty as well as equal treatment before the law.

Regarding the authority of the Court, since the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* Article 531 of the Criminal Code and Article 312 of Law 22/2009 against the 945 Constitution, therefore the Court has the authority to hear the petition of the Petitioner.

Regarding to the Petitioner's legal standing, the Petitioner is an individual Indonesian citizen as proven by an Indonesian identity card (*kartu tanda penduduk)* who argues that his constitutional rights are potentially injured by the enactment of Article 531 of the Criminal Code and Article 312 of Law 22/2009. In this regard, the Petitioner works as a legal research assistant at the HeyLaw.id office to search for and dissect foreign laws, translate them, and

teach law to participants. The Petitioner has concerns since in carrying out his activities, the Petitioner travels through the traffic to carry out research and he often sees the phenomenon of accidents on his trip. The Court is of the opinion that the Petitioner is able to describe the existence of a causal relationship *(causal verband)* which is specific in nature between the potential presumed injury of the Petitioner's constitutional rights as an individual Indonesian citizen and the enactment of the norms of Article 531 of the Criminal Code and Article 312 of Law 22/2009 being petitioned for review. Within the limits of reasonable reasoning, at least the Petitioner has described the potential presumed constitutional injury due to the enactment of Article 531 of the Criminal Code, namely regarding the phrase "while the help can be given or provided by him/her without concerns that he/she may endanger himself/herself or others", and Article 312 of Law 22/2009, namely regarding the phrase "without reason" which are being petitioned for review. Therefore, such potential injury will not occur if the Petitioner's petition is granted. Therefore, regardless of whether the unconstitutionality of the norms of Article 531 of the Criminal Code and Article 312 of the Criminal Code are proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition;

Whereas, because the Court is of the opinion that the constitutionality issue being disputed by the Petitioner is clear, it is irrelevant to ask for statements from the parties as intended in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, according to the Petitioner, the phrase "while the help can be given or provided by him/her without concerns that he/she may endanger himself/herself or others" in Article 531 of the Criminal Code, is inhumane and is not in accordance with the theory of criminal responsibility which imposes punishment on the perpetrator of criminal offence. In addition, the phrase "without reason" in the norms of Article 312 of Law 22/2009 is coercive and prone to arbitrary action from the police without considering a person's obstacles in reporting an accident. Moreover, the condition of the long distance between the police station and the location of the accident can be ruled out because someone who was at the scene of the accident is deemed to have failed to carry out their obligation to report the accident to the local police station. Upon comparing the law applicable in several countries, namely China and Belgium as civil law countries, South Korea as an inquisitorial law country, Australia and India as common law countries, according to the Petitioner, all these countries do not apply criminal penalties to someone who helps the accident victims, because these countries apply a good Samaritan law, which means a person's willingness to help another person in a situation of danger. The Petitioner also added that in India, someone who helps a victim voluntarily may not be prosecuted in a civil manner. Therefore, the Petitioner petitions for the Court to declare the phrase "while the help can be given or provided by him/her without concerns that he/she may endanger himself/herself or others" in the norm of Article 531 of the Criminal Code and the phrase "without reason" in the norm of Article 312 of Law 22 /2009, are contrary to the 1945 Constitution and have no binding legal force.

Regarding the subject matter of the petition, the Court is of the opinion that the norm of Article 531 of the Criminal Code actually provides the meaning that anyone who sees someone facing the a dangerous incident, then the person who sees a dangerous incident will move towards the person who is in danger to provide help to the said person, however he/she must ensure that the giving of help will not endanger himself/herself or others. This means that the obligation to provide "help" in the norms of Article 531 of the Criminal Code is an essential and basic meaning according to civilized humanity, so that the urgency of providing help in the norms of Article 531 of the Criminal Code is a *condition sine qua non.*

Although Indonesia does not adhere to the “Good Samaritan Law” as applicable in the countries examined by the Petitioner in his petition, the Court is of the opinion that the essence of "help" in the norms of Article 531 of the Criminal Code has the same intention and motive as the "Good Samaritan Law", namely placing someone who is in/is facing mortal danger, who according to reasonable reasoning, needs help. This means that the norms of

Article 531 of the Criminal Code and the "Good Samaritan Law" are actually based on the same principle, namely the concern for the safety of human life *(le soin à la sécurité de la vie humaine)*, although understandably there are conceptual differences between the "Good Samaritan Law" and the formulation of norms in Article 531 of the Criminal Code, both from the aspect of encouragement/desire to help and the implications for the givers of help. In the concept of the "Good Samaritan Law", the factor of motivation/desire to help lies in the person who witnesses the incident or it can be said to be voluntary in nature and there is no threat of sanctions if they do not provide help because it is solely voluntary. Meanwhile, in the norms of Article 531 of the Criminal Code, it is not solely voluntary, instead it is more because of encouragement under legal obligations and it appears to be more imperative. Therefore, an attitude of "ignorance" towards the need to provide help, such as when a person witnesses other people are in need of help because they are in mortal danger, but the person who witnesses the incident does not provide help, the said person may be subject to the threat of criminal sanctions. Such legal construction shows that the provisions in the norms of Article 531 of the Criminal Code appear to more imperative than the "Good Samaritan Law" in interpreting the meaning of help for people who are in need of it because they are facing mortal danger or deadly physical threat. Thus, the threat of criminal sanctions and the imperative nature of the help provided as intended in the norms of Article 531 of the Criminal Code are a manifestation of the principle “beneficence and non-maleficence” namely prioritizing overcoming danger on the one hand and on the other hand not carrying out actions that could harm a person or others. This matter is also in line with the principle "*primum non-nocere*" (first, do no harm), which in this meaning the giving of help must be prioritized and it must not hurt/harm other people. Therefore, the provision of providing help as referred to in the norm of Article 531 of the Criminal Code being petitioned for review needs to be maintained so that the society has human and social responsibility to help people who are in mortal danger, physically threatened and/or people who have had traffic accidents. Such prioritization is in line with the second principle of Pancasila, namely a just and civilized humanity.

Regarding the arguments of the petition, the Court is of the opinion that the phrase "without reason" in the context of *a quo* norms has serious juridical implications, because a person's motives for not providing help or not reporting a traffic accident he/she witnesses, or not stopping his/her vehicle even though the said person is involved in a traffic accident will be known. It is an important element for the police officers to know in the context of enforcing traffic law in particular and criminal law in general. Therefore, the phrase "without reason" clearly appears to be part of the substance of the norms of Article 312 of Law 22/2009, because every person who drives a motorized vehicle and/or every person who witnesses an accident should help the accident victim and should not ignore the accident victim without a proper/legal reason in accordance with the law. Therefore, the Court is of the opinion that there is no constitutionality issue regarding the phrase "without reason" in the context of the existence of the *a quo* norms. In fact, ignoring or eliminating the phrase "without reason" will break the connection between the criminal act and the criminal threat. Therefore, the existence of the phrase "without reason" is an important element in understanding the integrity of the *a quo* norms and there is no unconstitutionality issue in the norms of Article 312 of Law 22/2009.

Pursuant to the entire description of the legal considerations above, the phrase "not providing help without concerns that he/she may endanger himself/herself or others" in the norm of Article 531 of the Criminal Code and the phrase "without reason" in the norm of Article 312 of Law 22/2009 are not violating the guarantees, protection, fair legal certainty and equal treatment before the law as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.