



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 131/PUU-XXI/2023**

**Concerning**

**Petitioner's Right of Refusal for Constitutional Justices**

- Petitioner** : **Mochamad Adhi Tiawarman**
- Type of Case** : Judicial Review of Law Number 48 of 2009 concerning Judicial Powers (Law 48/2009) and Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Judicial Review of the Constitutionality of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 and Article 15 paragraph (2) of the Constitutional Court Law against Article 28D paragraph (1) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioner's petition entirely.
- Date of Decision** : Thursday, December 21, 2023
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen who submits a petition for review of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 and Article 15 paragraph (2) of the Constitutional Court Law. In the Petitioner's opinion, the norms of the articles being petitioned for review are contrary to Article 28D paragraph (1) of the 1945 Constitution.

Whereas regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of the norms of law, *in casu* Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 and Article 15 paragraph (2) of the Constitutional Court Law against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Petitioner feels prejudiced by the enactment of Article 15 paragraph (2) of the Constitutional Court Law because the norms of the article have not been able to result in the selection of constitutional justices who do not have blood or marital relations up to the third degree with the President and/or the House of Representatives (*Dewan*

*Perwakilan Rakyat* or DPR) members. Also, the Petitioner feels prejudiced by the enactment of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009, because even though the position of the President and the DPR is not as parties in judicial review cases but as providers of information [*vide* Article 54 of the Constitutional Court Law], within the limits of reasonable reasoning, the President and the DPR have an interest in maintaining the enactment of laws so that it is not canceled by the Constitutional Court through formal review and material review mechanisms. As a result, the constitutional justice in question is not independent in examining, deciding, and adjudicating cases regarding judicial review against the 1945 Constitution because of family or marital relations. The Petitioner wants to be given the right of refusal as referred to in Article 17 paragraph (1) and paragraph (2) of Law 48/2009. This is because the norms of Article 17 of Law 48/2009 do not yet clearly regulate the Petitioner's right of refusal for constitutional justices who have blood or marital relations up to the third degree with the President and/or the DPR members. The Petitioner stated that he has been prejudiced in a specific, factual, or at least potential manner due to the enactment of the norms petitioned for review because the Petitioner does not obtain recognition, guarantees, protection, and fair legal certainty guaranteed by Article 28D paragraph (1) of the 1945 Constitution. If the articles being reviewed are canceled and declared to be contrary to the 1945 Constitution, the Petitioner will obtain legal remedies.

Thus, regardless of whether the Petitioner's argument regarding the unconstitutionality of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition. Meanwhile, regarding the Petitioner's legal standing in the review of the norms of Article 15 paragraph (2) of the Constitutional Court Law, the Petitioner has been able to describe that there is a causal relationship (*causal verband*) between the Petitioner's assumptions regarding the potential injury of constitutional rights suffered by the Petitioner and the enactment of the provisions of the norms of Article 15 paragraph (2) of the Constitutional Court Law. This is because Article 15 paragraph (2) of the Constitutional Court Law provides the requirements for becoming a constitutional justice to which, according to the Petitioner, it is relevant to add norms regarding the requirements for becoming a constitutional justice not being bound by blood or marital relations up to the third degree with the President and/or the DPR members. Therefore, the Petitioner, who works as an advocate and as a seeker of justice at the Constitutional Court, may experience potential constitutional injury if the requirements for becoming a constitutional justice do not contain the conditions as desired by the Petitioner above. Therefore, regardless of whether the Petitioner's argument regarding the unconstitutionality of the norms petitioned for review is proven or not, the Court is of the opinion that the Petitioner may act as Petitioner in the *a quo* petition.

Whereas because the *a quo* petition is evident, the Court is of the opinion that there is no relevance to hearing statements from the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, in arguing for the unconstitutionality of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 as well as Article 15 paragraph (2) of the Constitutional Court Law, which is considered to be contrary to Article 28D paragraph (1) of the 1945 Constitution, the Petitioner, in principle, argues that constitutional justices must be positioned in a free situation when handling a case and must be free from blood or marital relations up to the third degree with parties who have an interest in the object being adjudicated (*objectum litis*). Meanwhile, the President and the DPR are parties having an interest in the case of judicial review against the 1945 Constitution because the object being adjudicated is the case of judicial review of Law against the 1945 Constitution which was formed by the

President and the DPR, so the position of these two institutions is to provide information in the trial of judicial review of law against the 1945 Constitution. However, as providers of information, in reality, the President and the DPR have an interest in maintaining the enactment of laws so that it is not canceled by the Constitutional Court through formal review and material review mechanisms. As a result, a constitutional justice who has blood or marital relations up to the third degree with the President and/or the DPR members is not free nor independent in examining, adjudicating, and deciding cases of judicial review against the 1945 Constitution, and under Article 17 paragraph (1) and paragraph (2) of Law 48/2009 the Petitioner is given the right of refusal for the justice adjudicating his/her case. However, in the Petitioner's opinion, the right of refusal cannot yet be applied to constitutional justices, because the word "justice" with a small "j" does not refer to constitutional justices and this matter has not been described by the legislators. As a result, when the Petitioner wants to submit the right of refusal for a constitutional justice who has blood or marital relations up to the third degree with the President and/or the DPR members, such right cannot be legally granted because Article 17 paragraph (3), paragraph (4), paragraph (5), paragraph (6) and paragraph (7) of Law 48/2009 do not clearly regulate regarding constitutional justices.

Regarding the constitutionality issue of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009, the issue cannot be separated from the Court's stance through Constitutional Court Decision Number 141/PUU-XXI/2023 dated 29 November 2023. By paying close attention to the excerpt from the legal considerations, in fact, the constitutionality issue of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009 which was questioned by the Petitioner had been answered, in particular with the Court's confirmation that the provisions of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009 can be applied in the judicial practice of the Constitutional Court. This is because the Court is of the opinion that the provisions of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009 are provisions relating to the principles of administering judicial power which are general in nature and can be applied in the practice of procedural law at the Constitutional Court.

Regarding the constitutionality issue of the provisions of the norms of Article 17 paragraph (6) and paragraph (7) of Law 48/2009, it has also been considered in Constitutional Court Decision Number 141/PUU-XXI/2023, which basically confirms that, among other things, the provisions of the norms of Article 17 paragraph (6) and paragraph (7) of Law 48/2009 cannot be applied to the procedural law at the Constitutional Court because a Constitutional Court decision is a decision passed down by a judicial body at the first and last level and has permanent legal force since it is pronounced in a plenary session open to the public. Therefore, a Constitutional Court decision does not recognize any invalidity that has the legal consequence that the decision must be re-examined with a different composition of the panel of justices. Because every decision made must be based on the provisions of Article 45 paragraph (4) of the Constitutional Court Law and Article 66 paragraph (3) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws, where cases at the Constitutional Court are decided by 9 (nine) Constitutional Justices or at least 7 (seven) Constitutional Justices. Thus, at the Constitutional Court, there are no other justices/panel that could possibly re-examine or review a decision due to an alleged violation as referred to in the provisions of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009. Furthermore, in the legal consideration of Constitutional Court Decision Number 141/PUU-XXI/2023, the Court has also emphasized that against a Constitutional Court decision allegedly containing the issue of alleged violations as referred to in the provisions of the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009, the object of the

petition can be submitted for re-examination in terms of the constitutionality issue to the extent that it is not prevented by the provisions of the norms of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021 or submitted for legislative review to legislators.

Regarding the Petitioner's argument which questions the provisions of the norms of Article 17 paragraph (1) and paragraph (2) of Law 48/2009 about constitutional justices who have blood or marital relations up to the third degree with the President and/or the DPR members, the right of refusal can be applied to the Petitioner in cases of judicial review against the 1945 Constitution. In the Court's opinion, if carefully examined, the provisions of the norms of Article 17 paragraph (1) and paragraph (2) of Law 48/2009 provide that the party being adjudicated has the right of refusal for the justice who is adjudicating the case, and the right of refusal is the right of an adjudicated person to submit an objection accompanied by reasons for a justice who is adjudicating the case. Therefore, the *addresat* referred to in the right of refusal contained in the provisions of the norms of Article 17 paragraph (1) and paragraph (2) of Law 48/2009 is intended for the justice who is adjudicating the case in question, not for the material or object that is the substance of the petition for judicial review of law against the 1945 Constitution. Because the object of the petition for judicial review of law against the 1945 Constitution is a material review of norms and a formal review of the formation of law, the right of refusal as intended by the Petitioner in the *a quo* case may be excluded from being applied to the extent that there is relevance or interaction between the petition for judicial review of law against the 1945 Constitution and the concrete case which is used as the Petitioner's reason in describing the Petitioner's legal standing which in the petition in question relates to the assumption regarding the injury of constitutional rights and the enactment of the norms being petitioned for review. Thus, the legal considerations as outlined above also answer the Petitioner's argument regarding his desire to exercise his right of refusal if a justice who adjudicates law against the 1945 Constitution at the Constitutional Court has blood or marital relations up to the third degree with the President and/or the DPR members. Moreover, the 9 (nine) constitutional justices consist of 3 (three) justices who were proposed by the President, 3 (three) justices who were proposed by the DPR, and 3 (three) justices who were proposed by the Supreme Court, which is not much different from the concern as petitioned by the Petitioner in relation to potential conflicts of interest. In addition, in the case of judicial review of law against the 1945 Constitution, the Court has repeatedly emphasized its stance, that the Court's authority is to examine the abstract norms of law against the 1945 Constitution with *erga omnes* decisions so that the Court decision does not only apply to the Petitioner, but also applies broadly to the society and state institutions [among others, *vide* Constitutional Court Decision Number 67/PUU-XII/2014, Constitutional Court Decision Number 59/PUU-XVI/2018, and Court Decision Constitution Number 62/PUU-XVIII/2020]. This is different from the decisions of the Supreme Court and the judiciary bodies subordinate to it, which examine concrete and individual cases so that the decisions only apply to certain parties who are closely related to the cases. Thus, the Petitioner's right of refusal of a justice who adjudicates his case is closely related to the justice's interests in his case. In the context of a judicial review case, if the Petitioner submits the right of refusal for a constitutional justice who has blood or marital relations up to the third degree with the President and/or the DPR members, the Petitioner needs to consider that the constitutional justice concerned is examining abstract norms that are not related to concrete events experienced by the Petitioner so that the constitutional justice's interests have no relevance to the enactment of the legal norms petitioned for review.

Apart from the considerations mentioned above, there are differences in the requirements between constitutional justices and other justices, which are provided in the constitution. Under Article 24C paragraph (5) of the 1945 Constitution, it is said that a constitutional court justice shall have integrity and impeccable personality, be just, be a statesman mastering the constitution and constitutionalism, and not concurrently hold a public office. Meanwhile, the

requirements for becoming a supreme justice as provided in Article 24A paragraph (2) of the 1945 Constitution read that a Supreme Court justice shall have integrity and impeccable personality, be just, professional, and be experienced in the field of law. In these two provisions, there is one differentiating requirement, namely a constitutional justice must be a statesman. Literally, according to the Great Dictionary of the Indonesian Language (KBBI), a statesman is an expert in state affairs; an expert in administering the country (government); a political leader who consistently formulates state policies with a vision or manages state problems with wisdom and authority. Another source (Merriam-Webster dictionary) defines statesman as one versed in the principles or art of government especially: one actively engaged in conducting the business of a government or in shaping its policies; or it can also be interpreted as a wise, skillful, and respected political leader. In this regard, Manuel L. Quezon (the President of the Commonwealth of the Philippines, 1935-1944) stated, "My loyalty to my party ends when my loyalty to my country begins." Thus, although there is no standard definition regarding the meaning of statesman, a statesman can be defined as a person who has finished with himself/herself and has devoted his/her entire life to the interests of his/her nation and state.

Regarding the Petitioner's argument that Article 15 paragraph (2) of the Constitutional Court Law is conditionally unconstitutional to the extent that the requirement of "not being bound by blood or marital relations up to the third degree with the President and/or the DPR members", the Court's stance is always that the requirements for becoming a constitutional justice are within the authority of the legislators, and are contrary to the principles of open legal policy. Therefore, regarding the Petitioner's argument desiring that the provisions of the norms of Article 15 paragraph (2) of the Constitutional Court Law which provide the requirements for becoming a constitutional justice be added with the requirement of "not being bound by blood or marital relations up to the third degree with the President and/or the DPR members" is something that cannot be separated and is an integral part of the other requirements that must be fulfilled cumulatively by candidates for constitutional justices as referred to in the norms of Article 15 paragraph (2) letters a to h of the Constitutional Court Law. Thus, the requirement of "not being bound by blood or marital relations up to the third degree with the President and/or the DPR members", if considered important as an additional requirement for candidates for constitutional justices, is completely within the authority of the legislators. Moreover, the Petitioner's petition has actually been accommodated in the provisions of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) of Law 48/2009.

Pursuant to the entire description of legal considerations above, it is evident that the norms of Article 17 paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009 and the norms of Article 15 paragraph (2) of the Constitutional Court Law do not violate recognition, guarantees, protection and fair legal certainty guaranteed by Article 28D paragraph (1) of the 1945 Constitution as argued by the Petitioner. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision in which the verdict was to Dismiss the Petitioner's petition entirely.