



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 66/PUU-XXI/2023**

Concerning

**Authority of the People's Consultative Assembly
in Forming the People's Consultative Assembly Decree**

Petitioner	: Partai Bulan Bintang (PBB) represented by Yusril Ihza Mahendra as General Chairperson and Afriansyah Noor as Secretary General
Type of Case	: Judicial Review of Law Number 12 of 2011 concerning Formation of Laws and Regulations (Law 12/2011) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	: Elucidation to Article 7 paragraph (1) letter (b) of Law 12/2011 is contrary to the 1945 Constitution.
Verdict	: To dismiss the Petitioner's petition in its entirety.
Date of Decision	: Tuesday, January 16, 2024
Overview of Decision	:

The Petitioner is a legal entity in a form of political party that has passed verification and has been declared valid as a participant in the 2024 elections of members of House of Representatives and Regional Legislative Council (legislative elections), as determined by the General Election Commission of the Republic of Indonesia (*Komisi Pemilihan Umum Republik Indonesia* or KPU RI). According to the Petitioner, the Petitioner's constitutional rights as a political party participating in the elections are hampered by legal uncertainty due to the enactment of the Elucidation to Article 7 paragraph (1) letter b of the *a quo* Law being petitioned for review. The Petitioner believes that Article 7 paragraph (1) letter b actually has affirmed that the People's Consultative Assembly Decree is a form of clear and unequivocal legal regulation, therefore according to the Petitioner no further explanation is needed.

Regarding the Court's Authority, because the Petitioner petitions for a review of the constitutionality of norms of law, *in casu* Article 7 paragraph (1) letter b of Law 12/2011 against 1945 Constitution, since it is one of the authority of the Court, therefore the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, regardless of whether or not the Petitioner's argument regarding the legal uncertainty caused by the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 which is being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has been able to prove its legal standing through written evidence, namely evidence P- 3 to evidence P-12 as a political party participating in the 2024 General Election, therefore the petitioner is able to describe the causal relationship (*causal verband*) between the constitutional rights that are potentially impaired and the enactment of the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 being petitioned for review. Therefore, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition.

Regarding the Petitioner's argument, the existence of the *a quo* Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 cannot be separated from the aims and objectives of establishing the People's Consultative Assembly Decree No. I/MPR/2003 carried out after the amendments to the 1945 Constitution were completed. The formation of the People's Consultative Assembly Decree is important because the People's Consultative Assembly wishes for the 1945 Constitution to become the main foundation for organizing the state life for the nation and the Unitary State of the Republic of Indonesia, in line with the principle of realizing constitutional supremacy. The amendment to the 1945 Constitution has resulted in changes to the state institutional structures of the Unitary State of the Republic of Indonesia [*vide* Considerations letters a, b and c of People's Consultative Assembly Decree No. I/MPR/2003]. In this regard, the authority of the People's Consultative Assembly has been clearly stated in the 1945 Constitution, that the People's Consultative Assembly has the authority to amend and enact the Constitution [Article 3 paragraph (1)] and appoint the President and/or Vice President [Article 3 paragraph (2)] and it may dismiss the president and/or vice president during their term of office in accordance with the 1945 Constitution [Article 3 paragraph (3)]. The amendment to the 1945 Constitution have implications, one of which is that the People's Consultative Assembly no longer has the authority to issue People's Consultative Assembly Decrees which are legally binding externally, such as People's Consultative Assembly Decrees which determine the broad outlines of state policy. This is because the People's Consultative Assembly is no longer the highest state institution holding popular sovereignty as stated in the Elucidation to the 1945 Constitution prior to the amendment. The changes in the state institutional structure as referred to result in the changes in the position, function, duties and authority of existing state institutions and government institutions. These changes affect the applicable regulations under the 1945 Constitution, resulting in the need for a review of the material and legal status of the Temporary People's Consultative Assembly Decree and the People's Consultative Assembly Decree of the Republic of Indonesia [*vide* Consideration letter d and letter e of People's Consultative Assembly Decree Number I/MPR/2003]. In addition, it is important to review the material and legal status of all decrees of Temporary People's Consultative Assembly/People's Consultative Assembly due to the order to amend the 1945 Constitution which is mandated through Article I of the Additional Regulations to the 1945 Constitution, which substantially states that the People's Consultative Assembly is tasked with reviewing the material and legal status of the People's Consultative Assembly Decrees and the People's Consultative Assembly Decrees at the 2003 People's Consultative Assembly session. Therefore, the People's Consultative Assembly Decree Number I/MPR/2003 is the implementation of Additional Regulations to the 1945 Constitution which must be carried out before the 2003 People's Consultative Assembly session.

In accordance with the results of the review of material and legal status of Temporary People's Consultative Assembly/People's Consultative Assembly Decrees, 6 (six) categories of juridical status and material content of Temporary People's Consultative Assembly/People's Consultative Assembly Decrees were decided from 1960 to 2002. Of the six categories, the one that actually needs to be followed up is the juridical category which states "shall remain in force in accordance with its respective provisions". This means that if the mandated provisions have been implemented then the provisions will automatically no longer in force. Next, the juridical category which mandates 11 (eleven) provisions "shall remain in force until the formation of a law" [*vide* Article 4 of People's Consultative Assembly Decree No. I/MPR/2003]. In fact, some of these eleven decrees have been implemented, for example Law 10/2004 as an implementation of the People's Consultative Assembly Decree no. III/MPR/2000. However, most of these decrees have not been implemented as mandated by Article 4 of the *a quo* Decree.

The placement of the People's Consultative Assembly Decrees as part of the types and hierarchy of statutory regulations is intended to acknowledge the existence of the People's Consultative Assembly Decrees which until today have not been implemented in accordance with their respective provisions and for which the relevant laws have not yet been formed. The norms of the *a quo* Article 7 paragraph (1) of Law 12/2011 may not be interpreted as an

arrangement that gives the People's Consultative Assembly authority to issue any People's Consultative Assembly Decrees that are legally binding externally and *regeligen* in nature upon the Amendment of 1945 Constitutional. If the People's Consultative Assembly wishes to form any regulations, by referring to Article 8 of Law 12/2011, other than those specified in Article 7 paragraph (1) of Law 12/2011, the types of statutory regulations are determined, one of which is the People's Consultative Assembly Regulation. However, the People's Consultative Assembly Regulation is recognized and has binding legal force to the extent that it is ordered by the higher laws and regulations or it is formed pursuant to the authority [*vide* Article 8 paragraph (2) of Law 12/2011]. This means that the People's Consultative Assembly still has to refer to the 1945 Constitution as a higher regulation that determines whether or not there is an order or pursuant to its authority, for example the People's Consultative Assembly's authority to inaugurate the president and/or vice president, the People's Consultative Assembly may establish the procedure in the People's Consultative Assembly Regulation, however such regulation is not *regeligen* in nature and has no externally binding legal force, likewise the People's Consultative Assembly Decree prior to the amendment to the 1945 Constitution. The People's Consultative Assembly Decree referred to in the norms of Article 7 paragraph (1) of the *a quo* Law may not be separated from the existence of the People's Consultative Assembly Decree Number I/MPR/2003 which provides confirmation regarding which People's Consultative Assembly Decrees are still in force and the conditions for the validity of each People's Consultative Assembly Decree. The Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 has the meaning that in addition to giving recognition to a number of People's Consultative Assembly Decrees which considered to remain in force, it also confirms that the People's Consultative Assembly upon the changes to the constitutional system following the amendment to the 1945 Constitution no longer has the authority to issue People's Consultative Assembly Decrees which are regulatory (*regeligen*) in nature and legally binding externally. Therefore, the Court is of the opinion that the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 does not have a contradictory meaning to Article 7 paragraph (1) letter b of Law 12/2011.

If the norms of Article 7 paragraph (1) Law 12/2011 are interpreted without the Elucidation to Article 7 paragraph (1) letter b of the *a quo* Law as petitioned by the Petitioner, and the Elucidation to the norm is declared unconstitutional and has binding legal force, then this will actually give rise to constitutional issue and legal uncertainty. This is because, the norm of Article 7 paragraph (1) of the *a quo* Law places the People's Consultative Assembly Decree as one of the types and hierarchies of legislative regulations in the legal system. Meanwhile, to understand the norms of Article 7 paragraph (1), it cannot be separated from paragraph (2) of the *a quo* Law, which emphasizes that the legal force of the laws and regulations is in accordance with its hierarchy. Furthermore, the norm of Article 7 paragraph (2) is stated in the Elucidation, whereas "In this provision what is meant by "hierarchy" is the ranking of each type of Statutory Regulations which principle is that the lower Statutory Regulations must not be contrary to the higher Statutory Regulations". This means that as a juridical consequence of the norms of Article 7 paragraph (2) of Law 12/2011 and its Elucidation, the People's Consultative Assembly Decree which is then ranked above the law will have a legal force that is hierarchically higher than the law, and the principle of ranks of statutory regulations shall apply to it. Therefore, to assess compliance with the principle of ranks, the People's Consultative Assembly Decree should be able to be reviewed or become the legal basis for review. However, by referring to the provisions of the 1945 Constitution, neither the Supreme Court nor the Constitutional Court has the authority to review the People's Consultative Assembly Decrees [*vide* Article 24A paragraph (1) and Article 24C paragraph (1) of the 1945 Constitution]. The Court has no authority to review the People's Consultative Assembly Decrees as affirmed in the Decision of the Constitutional Court Number 24/PUU-XI/2013 which was declared in a plenary session open to the public on 10 September 2013, and reaffirmed in the Decision of the Constitutional Court Number 75/PUU-XII /2014 which was declared in a plenary session open to the public on 11 November 2014, and the Decision of the Constitutional Court Number 59/PUU-XIII/2015 which was declared in a plenary session open to the public on 7 September 2016.

Therefore, even if the Petitioner's petition is granted, *quod non* namely by eliminating the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011, it will actually create uncertainty regarding the People's Consultative Assembly Decree which is referred to in Article 7 paragraph (1) of Law 12/2011 as one of the types and hierarchy of statutory regulations. Without this elucidation, the People's Consultative Assembly will in fact appear to be a state institution that is not on par with other state institutions, because it may issue decrees that cannot be examined or reviewed by other constitutional institutions and the position of the People's Consultative Assembly Decrees shall be above the law.

In the end, such issue will actually give rise to legal uncertainty, especially in the system of statutory and constitutional regulations which has eliminated the authority of the People's Consultative Assembly to establish and issue any People's Consultative Assembly Decrees that are regulatory (*regeling*) in nature and are legally binding externally. In addition, if the Elucidation to Article 7 paragraph (1) letter b is declared unconstitutional, it will also cause legal issue because the provisions in the juridical category of the People's Consultative Assembly Decree no. I/MPR 2003, which is a mandate from Article I of the Additional Regulations of the 1945 Constitution, have not been completely implemented until today, *in casu* Article 2 and Article 4 of the People's Consultative Assembly Decree no. I/MPR/2003. Therefore, the function of the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 is clear regarding the purpose of mentioning the People's Consultative Assembly Decree in the norms of Article 7 paragraph (1) of Law 12/2011. The Elucidation to the *a quo* Article is not a norm because the elucidation only provides affirmation to Article 2 and Article 4 of the People's Consultative Assembly Decree No. I/MPR/2003 which is still exist because until today it has not been fully implemented. Pursuant to the series of legal considerations above, the Court is of the opinion that the Petitioner's argument that the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011 is contrary to Article 28D paragraph (1) of the 1945 Constitution is legally unjustifiable. Therefore, the Court is of the opinion that the argument of the Petitioner's petition is legally unjustifiable in its entirety. The Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.

Dissenting Opinion

Regarding this decision, there are dissenting opinions from 2 (two) Constitutional Justices, namely Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra, who substantially stated as follows:

Whereas by carefully reading the *a quo* decision, the type of legal product of "People's Consultative Assembly Decree" which is included and ranked in the hierarchy of statutory regulations has been described comprehensively, including its impact or implications in the practice of state administration upon the amendments to the 1945 Constitution. However, the reason for our dissenting opinions to the *a quo* decision is we wish for this substance to be included in the verdict of this decision instead of stopping at the legal considerations (*ratio decidendi*). In this case, to avoid any implications of including the People's Consultative Assembly Decree in the hierarchy of statutory regulations, we wish for an affirmation to delete the Elucidation to Article 7 paragraph (1) letter b of Law 12/2011. Because, in theory and in practice of the formation of statutory regulations, the elucidation functions as an official interpretation by the legislators of certain norms within the body. Therefore, elucidation solely contain descriptions of foreign words, phrases, sentences or equivalent words/terms in the main norms which are also accompanied by examples. In addition, the elucidation does not use a formulation which contains hidden changes in statutory regulations. Moreover, the formulation of the elucidation to articles must not expand, narrow or add to the meaning of the norms contained in the body (*vide* Appendix I to Law 12/2011). However, deleting the relevant elucidation will still not eliminate the legal issue of including the People's Consultative Assembly Decree in the hierarchy of statutory regulations. Therefore, in addition to the elucidation to Article 7 paragraph (1) letter b of Law 12/2011, we should also declare that the People's Consultative Assembly Decree is unconstitutional in the hierarchy of statutory regulations as regulated in Article 7 paragraph (1) letter b of Law 12/2011. Pursuant to the legal considerations above, because the material

that have been granted is different from the material in the Petitioner petitions for, the Constitutional Court should have granted the *a quo* petition in part.