CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION FOR CASE NUMBER 152/PUU-XXI/2023

Concerning

Meaning of the Word "May" in Article 54 of the Constitutional Court Law

Petitioner	:	**Rega Felix**
Type of Case	:	Judicial Review of Law Number 24 of 2003 concerning Constitutional Court (Constitutional Court Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	:	Review of Article 54 of the Constitutional Court Law against the 1945 Constitution
Verdict	:	To dismiss the Petitioner's petition in its entirety.
Date of Decision	:	Wednesday, January 31, 2024
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen who works as an advocate and has constitutional rights as regulated by Article 28D paragraph (1) of the 1945 Constitution. Petitioners often take proceedings at the Constitutional Court and he is confused about the application of Article 54 of the Constitutional Court Law;

Regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of norms of law, *in casu* Article 54 of the Constitutional Court Law against Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority hear the *a quo* petition*;*

Regarding the Petitioner's legal standing, the Petitioner is able to describe the causal relationship (*causal verband*) between the presumed, actual or at least potential, constitutional injury and the enactment of the norms being petitioned for review. Therefore, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* Petition;

Whereas since the *a quo* petition is clear, therefore, pursuant to Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas the Petitioner questions the constitutionality of the word "may" in the norms of Article 54 of the Constitutional Court Law which has created legal uncertainty if it is not conditionally interpreted as "must" as per the Petitioner's *petitum*.

Whereas the word "may" in statutory norms is a common practice because "norm operators" are not always formulated with the words obliged to or must, where the norms are mandatory or related to obligations that have been determined and if these obligations are not fulfilled they are subject to sanctions. Meanwhile, normatively, the word "may" contains a discretionary nature [*vide* number 267 and number 268 of Appendix II to Law Number 12 of 2011 concerning the Formation of Laws and Regulations as most recently amended by Law

Number 13 of 2022, hereinafter referred to as Law 12/2011]. Due to its discretionary nature, in its implementation, the word "may" is able to become mandatory to be realized due to various factors requiring it [*vide* the Decision of the Constitutional Court Number 36/PUU-XVIII/2020, p. 121-122, which was declared in a plenary session open to the public on 25 November 2020].

By following the Petitioner's argument that the word "may" be changed to "must" under the parameters as argued by the Petitioner, namely (1) the condition of actual constitutional injury; (2) there is a direct causal relationship between the norm being petitioned for review and the constitutional injury; and (3) the norms being petitioned for review have never been reviewed previously, this actually makes the Court inflexible. In other words, it will limit the Court's freedom in applying the norms of Article 54 of the Constitutional Court Law because its scope becomes narrow and/or rigid or restrict the discretion of the justices in determining the parties whose statements will be requested to explore the substance of the petition which the Court deems unclear. Because, by following the Petitioner's argument, the application of Article 54 of the Constitutional Court Law causes the Court to solely hear the statement of the legislator. In fact, hearing the statement as intended in Article 54 of the Constitutional Court Law is only part of the trial examination process (plenary session) which is carried out with the agenda of hearing the statement from the information giver, hearing the statement from related parties, hearing the statement from experts/witnesses, examining and/or ratifying written evidence, examining a series of data, information, actions, circumstances, and/or events that correspond to other pieces of evidence that may be used as clues, examining other pieces of evidence in the form of information that is spoken, sent, received, or stored electronically with an optical device or something similar [*vide* Article 49 of the Constitutional Court Regulation 2/2021]. In fact, the Court may take the initiative to present experts or witnesses if necessary to obtain confirmation regarding the law or part of the law that is being petitioned for review.

In this regard, not every case for which a review is petitioned requires an Examination Hearing (plenary session). The decision whether to apply Article 54 of the Constitutional Court Law or not is adjusted to the needs of the case being reviewed, including the three parameters as petitioned by the Petitioner. Because each case has different characteristics and needs, the word "may" in the norms of Article 54 of the Constitutional Court Law allows freedom for the Court in accordance with the justices' beliefs as decided in the deliberation meeting of justices. In this case, if the petition and the evidence submitted are considered to be "sufficiently clear" in accordance with the assessment and belief of the justices, then the Court will, without hesitation, decide on the said case and there is no longer a need to hold an Examination Hearing (plenary session). This is part of the application of the principles of judicial process that is simple, fast and low cost [*vide* Article 2 Law 48/2009]. Therefore, in several cases submitted to the Court, it is not necessary to carry out an examination hearing including hearing the statements of the parties as intended in the norms of Article 54 of the Constitutional Court Law.

Pursuant to the legal considerations above, the word "may" in statutory regulations is something that is common, as is the case in Article 54 of the Constitutional Court Law. In connection with this, the justices' assessment in using the word "may" to decide the application of Article 54 of the Constitutional Court Law is different from the discretion carried out by the state officials as argued by the Petitioner. Thus, the Petitioner's argument for changing the word "may" into "must" in the *a quo* provisions would in fact be seen as something that could narrow the freedom of the justices in determining the parties to be heard in the examination hearing (plenary session). Moreover, if the word "may" is interpreted as "must", including the three parameters argued by the Petitioner, this will force the Court to always examine any case in the Examination Hearing (plenary session).

Whereas regarding the Petitioner's argument that the norms of Article 54 of the Constitutional Court Law are contrary to the principle of due process of law. The Court is of the opinion that the principle of due process of law is an embodiment of the recognition of human rights in the judicial process, a principle that must be upheld by all parties. In this context, Indonesia as a rule of law state must automatically uphold the principles of a constitutional democratic rule of law, including the principle of due process of law. Therefore, the Constitution also stipulates that any Indonesian citizen has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law [*vide* Article 28D paragraph (1) of the 1945 Constitution]. In this regard, as with the judicial process in general, in Constitutional judiciary there is a Constitutional Court Procedural Law which is a guideline and principle that guides constitutional justices in administering justice and a guideline and principle that must be adhered to by the parties in the proceedings at the Constitutional Court, especially in reviewing the constitutionality of a law against the 1945 Constitution.

In the context of the *a quo* petition, the statement and evidence required by the Court is for the Court's interest in examining and deciding on judicial review cases. Moreover, in judicial review cases there is no such thing as *interpartes*, so that the opportunity of the parties to carry out *inzage* is not a right or obligation of the parties. This means that the function of submitting the statements and evidence is to meet the needs of the Court (not the parties) in obtaining relevant and adequate information, especially relating, among other things, to academic texts and minutes of discussion of bill to serve as a basis for assessing the constitutionality of a law or part of the law that is petitioned for review so that the Court may provide appropriate decision pursuant to the evidence and the beliefs of the justices, unless in the event that the petition and the evidence submitted by the Petitioner are deemed sufficient.

Pursuant to all the legal considerations above, the Court is of the opinion that the Petitioner's petition regarding the constitutionality of the word "may" in the norms of Article 54 of the Constitutional Court Law, has evidently not created fair legal uncertainty and it is in line with Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioner. 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.