



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 151/PUU-XXI/2023**

Concerning

"Legal Remedies" against Court Decisions

Petitioners	: Sugeng Nugroho, et al.
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	: Material review of Article 10 paragraph (1) and Article 28 paragraph (1) of Law 24/2003 against the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition in its entirety.
Date of Decision	: Tuesday, January 16, 2024
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens. In this case, Petitioner I and Petitioner II work as Entrepreneurs, while Petitioner III is a Student. The Petitioners described that the provisions of Article 10 paragraph (1) and Article 28 paragraph (1) of Law 24/2003 give rise to multiple interpretations, ambiguity, and have been proven to make the Court not impartial or not neutral and take sides, as decided in the Decision of the Constitutional Court Number 90/PUU-XXI /2023. In this case, the Court is deemed to be not impartial or not neutral and is partial to Gibran Rakabuming Raka. Furthermore, the Petitioners have interests in supervising the course of the trial process at the Court, are entitled to a decision that is as definite and fair as legally possible, free from any issue that threatens the independence, impartiality and integrity of the constitutional justices in the decision making process. Because the Court's decision will be generally binding (*erga omnes*) and affect the entire legal system in Indonesia, especially the Petitioners;

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of norms of Article 10 paragraph (1) and Article 28 paragraph (1) of Law 24/2003 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Court is of the opinion that the Petitioners have been able to describe their constitutional rights which, according to them, have been injured by the enactment of the norms being petitioned for review, namely Article 10 paragraph (1) and Article 28 paragraph (1) of Law 24/2003. Within the limits of reasonable reasoning, the Court is of the opinion that the presumed constitutional injury is specific and potential, instead of actual as argued by the Petitioners in the description of their legal standing. Because, at some point, the Petitioners may wish to nominate themselves as elected officials, including in this case becoming the presidential and/or vice presidential candidates. In addition, the presumed injury of constitutional right has a causal relationship (*causal verband*) with the enactment of the legal

norm being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed injury of the Petitioners' constitutional rights will not occur. Thus, regardless of whether or not the unconstitutionality of the norm being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners 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 before further considering the arguments of the *a quo* petition of the Petitioners, the Court will first consider the Petitioners' petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (Constitutional Court Regulation 2/2021), so that the *a quo* norms may be resubmitted.

Whereas regarding this issue, the Court has considered the provisions of Article 10 paragraph (1) of Law 24/2003 which had been petitioned previously and had been decided in the Decision of the Constitutional Court Number 105/PUU-XIV/2016 which was declared in a plenary session open to the public on 28 September 2017 which verdict states, "To declare that the Petitioners' petition is inadmissible." Furthermore, after careful examination, it has been apparent that the Case Number 105/PUU-XIV/2016 uses Article 1 paragraph (3), Article 24 paragraph (1) and paragraph (2), Article 24C paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution as the basis for review, while the Petitioners' petition uses Article 24 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution as the basis for review. Meanwhile, regarding the constitutional reason in the Case Number 105/PUU- XIV/2016 is to interpret the provisions of Article 10 paragraph (1) of Law 24/2003 which contains the phrase "the Constitutional Court has the authority to adjudicate at the first and final levels whose decision is final....etc." Provided that it is mandatory for all parties to implement the decision of the Constitutional Court which has permanent legal force (*inkracht*). Meanwhile, the constitutional reason for the *a quo* petition is to interpret the provisions of Article 10 paragraph (1) of Law 24/2003 which contains the phrase "The Constitutional Court has the authority to adjudicate at the first and final levels whose decision is final... etc." provided that to the extent that there is no violation of ethics and/or propriety as determined or decided by the Honorary Council of the Constitutional Court or any institution authorized by the laws and regulations;

Whereas pursuant to the description above, there are differences between the basis for review of petition for Case Number 105/PUU-XIV/2016 and the basis for review of the *a quo* petition. In addition, there are also differences in the constitutional reason between the petition for Case Number 105/PUU-XIV/2016 and the constitutional reason for the *a quo* petition. Therefore, regardless of whether or not the *a quo* petition of the Petitioners is legally justifiable, pursuant to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of Constitutional Court Regulation 2/202, the *a quo* petition may be re-submitted. Meanwhile, regarding Article 28 paragraph (1) of Law 24/2003, the Court considers that there is no relevance in linking it with the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Constitutional Court Regulation 2/2021 because the Court has never reviewed the *a quo* norms previously

Subject Matter

Whereas after the Court has carefully read the Petitioners' petition, examined the evidence submitted, and considered the Petitioners' arguments, the Court will then consider the subject matter of the Petitioners' petition as follows:

1. Whereas, after careful examination of the Petitioners' petition by the Court, as fully stated in the section of main issue, the constitutional issues that the Court must answer are 1). Whether the formulation of the norms of Article 10 paragraph (1) of Law 24/2003 which does not contain the phrase "to the extent that there is no violation of ethics and/or propriety as

determined or decided by the Honorary Council of the Constitutional Court or any institution authorized by the laws and regulations" is contrary to Article 24 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution? 2) whether the formulation of the norm of Article 28 paragraph (1) of Law 24/2003 which does not contain the phrase "and the constitutional justice who judge and decide in the plenary session as intended have absolutely no conflict of interest, including potential conflicts of interest with the case being examined, tried and decided" is contrary to Article 24 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution?

2. Whereas the phrase "The Constitutional Court has the authority to adjudicate at the first and final levels whose decision is final for: ..." as stipulated in the norms of Article 10 paragraph (1) of Law 24/2003, has apparently also been regulated in Article 29 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power (Law 48/2009). The regulation of the two phrases in these articles is a follow-up to the provisions of the norms of Article 24C paragraph (1) of the 1945 Constitution. Therefore, if it is linked to Article 24C paragraph (1) of the 1945 Constitution, the addition of the phrase as argued by the Petitioners is actually contrary to Article 24C paragraph (1) of the 1945 Constitution. Moreover, in the Decision of the Constitutional Court Number 141/PUU-XXI/2023, which was declared in a plenary session open to the public on 29 November 2023, which substantially states that the decision of the Constitutional Court has permanent legal force since it was pronounced in a plenary session open to the public. Therefore, the arguments of the Petitioners' petition in relation to the norms of Article 10 paragraph (1) of Law 24/2003 which does not contain the phrase "to the extent that there is no violation of ethics and/or propriety as determined or decided by the Honorary Council of the Constitutional Court or any institution authorized by the laws and regulations" are legally unjustifiable;

- (1) Whereas regarding other constitutional issues, as argued by the Petitioners in their *a quo* petition, it is substantially the same as what has been decided by the Court in the Decision of the Constitutional Court Number 131/PUU-XXI/2023, although the article being petitioned for review is different, the basis for review is different, and the constitutional reasons used by the Petitioner were also different. It has been clear that the essence used as a reason for the petition submitted in the *a quo* case is the same as the one used in the previous case, namely questioning the application of the provisions of Article 17 of Law 48/2009, specifically regarding conflicts of interest or potential conflicts of interest in a case that is examined, adjudicated and decided by the Constitutional Court. Therefore, the legal considerations in the Decision of the Constitutional Court Number 131/PUU-XXI/2023 in Paragraph [3.12], *mutatis mutandis* applies to answer the Petitioners' arguments in the *a quo* petition. Thus, the Petitioners' argument which states that the norm of Article 28 paragraph (1) of Law 24/2003 which does not contain the phrase "and the constitutional justice who judge and decide in the plenary session as intended have absolutely no conflict of interest, including potential conflicts of interest with the case being examined, tried and decided" and thus contrary to Article 24 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution is legally unjustifiable

Whereas pursuant to the entire description of the legal considerations above, the Court is of the opinion that the norms of Article 10 paragraph (1) and Article 28 paragraph (1) of Law 24/2003 have evidently not caused issues that injure the judicial power which is an independent power in upholding the law and justice, and they indeed reflect the recognition, guarantee, protection, fair legal certainty and equal treatment before the law as stipulated in the provisions of Article 24 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioners. Therefore, the arguments of the Petitioners are entirely legally unjustifiable.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioners' petition in its entirety.