



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 84/PUU-XXI/2023**

**Concerning**

**Prohibition on Managers of Trading Places and/or User Generated Content-Based (UGC) Digital Service Platforms from Allowing the Sale, Display, and/or Duplication of Goods Resulting from Infringements of Copyrights and/or Any Related Rights on Trading Places and/or Digital Service Platforms They Manage**

- Petitioners** : **PT. Aquarius Pustaka Musik represented by Rita Marlina as President Director, et al.**
- Type of Case** : Judicial Review of Law Number 28 of 2014 concerning Copyright (Law 28/2024) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 10 and Article 114 of Law 28/2014 against Article 1 paragraph (3), Article 28C paragraph (1), Article 28D paragraph (1), Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution.
- Verdict** :
1. To grant the Petitioners' petition in part.
  2. To declare that Article 10 of Law Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to State Gazette of the Republic of Indonesia Number 5599) which reads, "Managers of trading places are prohibited from allowing the sale and/or duplication of goods resulting from infringements of Copyrights and/or any Related Rights on the trading places they manage" is contrary to the 1945 Constitution and it does not have binding legal force to the extent that it is not interpreted as, "Managers of trading places and/or User Generated Content (UGC) based Digital Service Platforms are prohibited from allowing the sale, display and/or duplication of goods resulting from infringements of Copyrights and/or any Related Rights on the trading places and/or Digital Service Platforms they manage";
  3. To dismiss the remainder of the Petitioners' petition.
  4. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
- Date of Decision** : Thursday, February 29, 2024
- Overview of Decision** :

Petitioner I and Petitioner II are Limited Liability Companies that carry out business activities in the field of management services for intellectual copyright works in general, specifically for music and song creations, as well as sound recording services, especially in the field of music recording in the form of cassette tapes, vinyl records, compact disc, digital video, discs, laser discs and any other formats. Petitioner III is an individual Indonesian citizen who works as a singer and songwriter.

Regarding the Court's authority, the Petitioners petition for judicial review of Article 10 and Article 114 of Law 28/2014 against Article 1 paragraph (3), Article 28C paragraph (1), Article 28D paragraph (1), Article 28I paragraph (4) and paragraph (5) of the 1945 Constitution, the Court has the authority to hear the Petitioners' petition;

Regarding the legal standing of Petitioner I and Petitioner II, who in principle argue that since the provisions of Article 10 and Article 114 of Law 28/2014 only determine the qualifications for the managers of trading places and do not reach the managers of UGC-based digital service platforms, it has injured the constitutionality rights of Petitioner I and Petitioner II, because the formulation of such provisions is very narrow or cannot fulfill the sense of justice of the industrial community in the field of copyright, specifically copyrights of music and songs. In addition, the lack of diversity in the conducts of digital service platform managers is triggered by the unclear formulation of Article 10 and Article 114 of Law 28/2014 which solely prohibits and provides criminal penalties for Managers of Trading Places, without including the Managers of Digital Service Platform. The use and/or availability of master sound recordings of songs belonging to Petitioner II by the managers of digital service platforms by utilizing UGC created and uploaded by users, is clearly an action that has confiscated property rights and violated the human rights of Petitioner I and Petitioner II. Likewise, Petitioner III believes that his property rights, namely copyrights and moral rights, have been unlawfully taken away, while the existing legal regulations have not or cannot penalize these digital service platforms. Therefore, according to Petitioner III, Article 10 and Article 114 of Law 28/2014 do not provide a guarantee of fair legal certainty. Whereas regarding the Petitioners' arguments in relation to the legal standing, the Court is of the opinion that Petitioners I and Petitioners II have been able to describe the existence of a causal relationship (*causal verband*) between the presumed loss of constitutional rights that could potentially occur due to the enactment of the legal norms for which judicial review is petitioned because Petitioner I and II believe that the existence of such articles directly or indirectly, and in general, has injured various kinds of businesses and activities that have been carried out by Petitioner I and Petitioner II in the field of management services for intellectual copyright works in general, specifically for music, song creations, and sound recording services. Therefore, the Court is of the opinion that the Petitioner I and Petitioner II have the legal standing to act as Petitioners in the *a quo* petition. The Court is of the opinion that Petitioner III has been able to specifically describe the presumed loss of constitutional rights and the direct relationship with the law for which judicial review is petitioned and the causal relationship (*causal verband*) with the enactment of the norms of Article 10 and Article 114 of Law 28/2014 for which judicial review is petitioned. Therefore, Petitioner I to Petitioner III (the Petitioners) have the legal standing to submit the *a quo* petition.

Whereas in the subject matter of the petition, the Petitioners in principle argue that Article 10 of Law 28/2014 regulates the prohibition on the managers of trading places from allowing the sale and/or duplication of goods resulting from copyright infringement. However, the prohibition which is intended as a preventive measure cannot be fully useful because it only regulates the management of trading places in all their forms, even though currently there are technology-based digital service platform managers who deliberately provide media for storing, publishing (making available) and displaying contents which have caused copyright infringement or at least misuse of copyrights, specifically music and songs without permission from the copyright holders and/or owners of any related rights. Meanwhile, regarding Article 114 of Law 28/2014, according to the Petitioners, the penalties contained in the *a quo* article are unable to be used to penalize the managers of UGC-based digital service platforms due to the narrow meaning of trading place managers.

Regarding the Petitioners' arguments, the Court in principle considers the following:

- (1) Whereas in order to protect the creators, copyright holders and any related rights owners, so that they do not increasingly become victims of copyright infringements, the Court is of the opinion that strict and clear provisions are needed so that managers of UGC-based digital service platforms can be held accountable for the any contents that infringe copyrights, the UGC-based digital service platform must not allow the sale, display and/or reproduction of goods resulting from infringements of copyrights and/or any related rights on the trading places and/or digital service platforms they manage without the permission from the creators/copyright holders/ owners of any related rights. Because, in the current era of digital technology, UGC-based digital platforms are definitely able to detect early copyright infringements with the help of the technology they have.
- (2) Article 10 of Law 28/2014 needs to be strengthened and expanded to be able to cover the governance and provision of security technology for every UGC-based digital service platform, so that it can prevent copyright infringement in Indonesia, namely by requiring the technology/UGC-based digital platform managers to ensure that any content displayed or published is not a content that violates the laws and regulations. In other words, a content that contains any copyrighted work of a creator must obtain the permission from the creator or copyright holder/owner of any related rights, so that the copyright holders or owners of any related rights would be respected for their creation (moral rights) and their economic rights would be protected. Therefore, in order to uphold fair legal certainty, it is necessary to emphasize that the prohibitions contained in Article 10 of Law 28/2014 are also including the trading places and/or UGC-based digital service platforms. Therefore, the Court is of the opinion that the Petitioners' argument that Article 10 of Law 28/2014 has created fair legal uncertainty is legally justifiable, and the norms of Article 10 of Law 28/2014 must be interpreted conditionally.
- (3) Whereas the formulation of Article 114 of Law 28/2014 contains the following aspects:
  - a. regarding the prohibition of allowing sales and/or duplication of goods resulting from infringements of Copyrights and/or any Related Rights in the trading places they manage as stated in Article 10 of Law 28/2014.
  - b. regarding the formulation of criminal penalties if the prohibition is violated. Whereas regarding these two matters, the Court is of the opinion that the norms of Article 114 of Law 28/2014 are secondary norms attached to the primary norms, namely Article 10 of Law 28/2014. The Court is of the opinion that having been given a new interpretation related to the prohibition on allowing the sale and/or duplication of goods resulting from infringements of copyrights and/or any related rights in the trading places they manage as stated in Article 10 of Law 28/2014, then as a juridical consequence the application of the provisions of Article 114 of Law 28/2014 must conform to this new interpretation. This means that if law enforcement officials are to apply the provisions of Article 114 of Law 28/2014 which refers to Article 10 of Law 28/2014, then its application cannot be separated from the new interpretation of Article 10 of Law 28/2014 with a wider reach after it is interpreted by the Court. In this regard, since the provisions of Article 114 of Law 28/2014 are part of the provisions of criminal law, the Court has taken a stance as stated in the Decision of the Constitutional Court Number 46/PUU-XIV/2016 which was declared in a plenary session open to the public on 14 December 2017. Therefore, the criminal provisions contained in Article 114 of Law 28/2014 which was petitioned for review by the Petitioners, the legal considerations of the Decision of the Constitutional Court Number 46/PUU-XIV/2016 apply *mutatis mutandis* in the legal consideration of the *a quo* Decision. However, it is important for the Court to emphasize that the application of Article 114 of Law 28/2014 cannot be separated from Article 10 of Law 28/2014 which has been interpreted by the Court in the *a quo* Decision, therefore, in enforcing

Article 114 of Law 28/2014 the law enforcement officials must subject to and be bound by Article 10 of Law 28/2014 which has been interpreted by the Court as considered above. Therefore, even though the *a quo* Decision has binding legal force from the moment it is declared, it is important for the legislators to immediately revise Article 114 of Law 28/2014 to conform with the new interpretation of Article 10 of Law 28/2014. Therefore, the *a quo* argument of the Petitioners is legally unjustifiable.

- (4) Whereas pursuant to the entire description of the legal considerations above, it is evident that the provisions of Article 10 of Law 28/2014 give rise to legal uncertainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, so that the Petitioners' arguments regarding Article 10 of Law 28/2014 are legally justifiable. Meanwhile, the norm of Article 114 of Law 28/2014 have provided legal certainty, therefore the arguments of the Petitioners which stated that it is contrary to Article 28D paragraph (1) of the 1945 Constitution is incorrect, so that the Petitioners' argument regarding the norm of Article 114 of Law 28/2014 is legally unjustifiable.

Therefore, the *a quo* petition is legally justifiable in part, and the Court passed down a decision which verdicts are as follows:

1. To grant the Petitioners' petition in part.
2. To declare that Article 10 of Law Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to State Gazette of the Republic of Indonesia Number 5599) which reads, "Managers of trading places are prohibited from allowing the sale and/or duplication of goods resulting from infringements of Copyrights and/or any Related Rights on the trading places they manage" is contrary to the 1945 Constitution and it does not have binding legal force to the extent that it is not interpreted as, "Managers of trading places and/or User Generated Content (UGC) based Digital Service Platforms are prohibited from allowing the sale, display and/or duplication of goods resulting from infringements of Copyrights and/or any Related Rights on the trading places and/or Digital Service Platforms they manage."
3. To dismiss the remainder of the Petitioners' petition.
4. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.