CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 130/PUU-XXI/2023

Concerning

Constitutionality of Formal Requirements for the Formation of Law Number 17 of 2023 concerning Health

Petitioners	:	**The Executive Board of the Indonesian Medical Association (PB IDI) which in this case is represented by Adib Khumaidi, the General Chair of PB IDI, and Ulul Albab as the Secretary General of PB IDI, et al.**
Type of Case	:	Formal Review of Law Number 17 of 2023 concerning Health (Law 17/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Formal requirements regarding the involvement of the Regional Representatives Council (*Dewan Perwakilan Daerah* or DPD), meaningful public participation, the form and format of Law 17/2023, and the inclusion of Court Decisions in the consideration of the Academic Text and the Legal Text, in the Formation of Law 17/2023;
Verdict	:	To dismiss the Petitioners' petition entirely
Date of Decision	:	Thursday, February 29, 2024
Overview of Decision	:	

The Petitioners are legal entities of professional organizations of medical personnel and health workers, who consider that they have a close connection with Law 17/2023 which is petitioned for formal review, and deem that their constitutional rights have been injured due to the enactment of Law 17/2023 which is argued by the Petitioners as a formally flawed law;

Regarding the Court's authority, because the petition is a review of the constitutionality of the formation of law, *in casu* Law 17/2023, the Court has the authority to hear the *a quo* Petitioners' petition;

The Petitioners' petition was submitted on 21 September 2023. Meanwhile, according to Constitutional Court Decision Number 47/PUU-XX/2022 which was pronounced in a plenary session open to the public on 31 May 2022, a petition for formal review of law against the 1945 Constitution shall be submitted within 45 (forty-five) days of the promulgation in the State Gazette of the Republic of Indonesia and the Supplement to the State Gazette of the Republic of Indonesia. Given that Law 17/2023 was promulgated on 8 August 2023 as contained in State Gazette of the Republic of Indonesia of 2023 Number

105, Supplement to the State Gazette of the Republic of Indonesia Number 6887, the Petitioners' petition was submitted within the time limit for submitting a petition for formal review of law;

Regarding the Petitioners' legal standing, in the Court's opinion, the Petitioners have been able to describe the presumed injury of their constitutional rights as professional organizations of medical personnel and health workers who are directly affected by the enactment of Law 17/2023 which is petitioned for review. In addition, it is also evident that there is a causal relationship (*causal verband*) between the Petitioners' presumptions regarding the injury of their constitutional rights and the formation process of Law 17/2023 being petitioned for formal review in the *a quo* petition. Thus, in the Court's opinion, regardless of whether the arguments regarding the unconstitutionality of the formation process of Law 17/2023 are proven or not, the Court considers that the Petitioners have the legal standing to submit the *a quo* petition.

Regarding the Petitioners' argument stating that Law 17/2023 is formally flawed because the formation does not involve the DPD in the discussion on the bill, there is no consideration of the DPD in the formation of Law 17/2023 and does not comply with the procedures of joint discussion between the DPR (*Dewan Perwakilan Rakyat* or House of Representatives), the President and the DPD as mandated by Article 22D paragraph (2) of the 1945 Constitution, the Court is of the opinion that the DPD has a legislative function as provided in Article 22D paragraph (1) and paragraph (2) of the 1945 Constitution. The DPD's authority was then connected to Constitutional Court Decision Number 92/PUU-X/2012, in which the Court concluded that the DPD has the same stance as the DPR and the President with respect to submitting Bills related to regional autonomy, relations between the central and the regional governments, formation and expansion as well as merger of regions, management of natural resources and other economic resources, as well as those related to financial balance between the central and the regional governments. Meanwhile, regarding the authority to participate in the discussion on bills, in the Court's opinion, it must be interpreted that the DPD must be involved or participate in the discussion on bills to the extent that they are related to regional autonomy, relations between the central and the regional governments, formation, and expansion as well as merger of regions, management of natural resources and other economic resources, as well as the financial balance between the central and the regional governments. Meanwhile, regarding the DPD's authority to render consideration on Bills, the Court again refers to Constitutional Court Decision Number 92/PUU-X/2012, in which the Court interprets that to the extent that the Bills are regarding the State Budget of Income and Expenditure and Bills related to taxation, education, and religion, then the DPR and the President have to ask the DPD to render consideration.

Whereas the Court then assesses whether Law 17/2023 is a law relating to regional autonomy; relations between the central and the regional governments; formation, expansion, and merger of regions; management of natural resources and other economic resources; as well as financial balance between the central and the regional governments and thereby the DPD must take part in the discussion, or whether Law 17/2023 is a law relating to the State Budget of Income and Expenditure, education, taxation, and religion, and thereby the DPD must render consideration? Regarding this question, the Court is of the opinion that, although Law 17/2023 regulates several matters relating to regions, Law 17/2023 does not specifically regulate regional autonomy; relations between the central and the regional governments; formation, expansion, and merger of regions; management of natural resources and other economic resources; as well as financial balance between the central and the regional governments. The regional regulations in Law 17/2023 only relate to health matters. In the Court's opinion, intersections in terms of regional matters exist in almost every law. If a discussion on bills that have regional intersections must involve the DPD, then almost all law formation processes will involve the DPD, which ultimately makes no difference between the functions of the DPD and the DPR. Then the Court refers to the original intent of the amendments to the 1945 Constitution where it appears that, from the beginning, the institutional design of the DPD in carrying out legislative functions is not as full as the DPR's legislative powers. Therefore, regarding bills that have intersections with regions, it does not necessarily mean that the DPD has the authority to participate in the discussions. In the Court's opinion, Bills in which the DPD has the authority to participate in the discussions are constitutionally limited by the 1945 Constitution. Therefore, in the Court's opinion, even though Law 17/2023 contains regional aspects and intersects with regional government, it does not necessarily mean that Law 17/2023 is directly related to regional autonomy or relations between the central and the regional governments.

Whereas regarding the DPD's authority to participate in rendering consideration to the DPR on bills regarding the state budget of income and expenditure and bills related to taxation, education, and religion, the Court's opinion is similar to the opinion regarding the DPD's authority to participate in the discussions of bills. Even though Law 17/2023 contains educational aspects, it does not necessarily mean that the DPD has the authority to render consideration to the bill. Moreover, in Law 17/2023 the education regulated is about higher education, as provided in Article 209 of Law 17/2023 which states that professional education in the health sector as part of higher education is provided by universities. Therefore, in accordance with the provisions in Law Number 23 of 2014 concerning Regional Government (Regional Government Law), with respect to the division of government affairs in the field of education, the management of higher education is under the authority of the central government, provinces manage secondary education and special education, and regencies/municipalities have the authority to manage basic education, early childhood education, and non-formal education.

In addition, the Court also explains the legal fact that the DPD does not submit itself as a party related to the *a quo* case. In fact, in the process of examining the *a quo* case, the Court has sent a copy of the petition and revisions to the petition via Registrar's Letter Number. Moreover, there is no evidence from the parties to the *a quo* case that shows that the DPD objected that it was not involved in the discussion or asked to render consideration in the formation process of Law 17/2023. Therefore, the Court concludes that the DPD does not question the absence of its involvement in the formation of Law 17/2023. Thus, in the Court's opinion, the fact that the discussion of the bill of Law 17/2023 did not involve the DPD nor ask for the DPD's consideration, did not make Law 17/2023 formally flawed as argued by the Petitioners. Therefore, the argument of the *a quo* petition is legally unjustifiable.

Regarding the Petitioners' argument stating that Law 17/2023 is formally flawed because its planning, discussion, and formation do not satisfy the formal requirement regarding meaningful public participation and involvement and there has been an act of inhibiting participation in the discussion of the Health Bill which damaged constitutional democracy after the Court carefully examines the statements of the parties at the trial, the statements of experts and witnesses submitted by the Petitioners, the government, and Relevant Parties, which are heard at the trial or written to the Registrar's Office of the Court, the Court finds the following:

1. Whereas the Petitioners, who are 5 professional organizations, in the formation of Law 17/2023 were invited for public consultation or public hearing;

2. The legislators have carried out activities of public hearing, focus group discussion, and dissemination in order to fulfill the right to be heard; the right to be considered; and the right to be explained regarding information or opinions of experts and the public in the formation of the law;

3. The witnesses presented by the Petitioners, the Government, and Relevant Parties representing various organizations, in their statements admitted that they were invited to participate in public consultation activities carried out by the legislators and might provide input and suggestions regarding the contents of the Health Bill;

4. The government through the Ministry of Health has provided open access for the public to the bill and the academic text and provided a channel for conveying public opinion through the official website of the Ministry of Health, namely https://partisipasisehat.kemkes.go.id/ by filling an online form of opinion and input.

Regarding these legal facts, in the Court's opinion, it is evident that the legislators have made efforts to attract public involvement, even actively inviting them through various forums and creating a website that could be accessed by the public, especially any stakeholders who wish to participate, not only those from the medical profession or health workers. This means that the legislators could sort and select/filter all suggestions and input from the public to be used in making decisions and formulating norms in every formation of law *in casu* the *a quo* Law. Thus, in the Court's opinion, the Petitioners' argument that Law 17/2023 is formally flawed as a result of not fulfilling the requirement regarding meaningful public participation, is legally unjustifiable.

Regarding the Petitioners' argument that Law 17/2023 is formally flawed because the Court Decisions are not taken into consideration in the juridical basis of the Academic Text and the Health Bill and therefore it does not satisfy the provisions for the formation of a Law under the 1945 Constitution, the Court is of the opinion that, if there is no Constitutional Court Decision with respect to a judicial review of a law against the 1945 Constitution, then the consideration of the Bill does not need to include Constitutional Court Decisions. Likewise, the Health Bill was formed not based on a Constitutional Court Decision, but based on the provisions of Article 20, Article 21, Article 28H paragraph (1), and Article 34 paragraph (3) of the 1945 Constitution, so that there is no need that the preamble refers to a Constitutional Court Decision. In addition, the Health Bill is also not included in the open cumulative list as referred to in the provisions of Article 23 paragraph (1) of Law 12/2011. Therefore, there is no obligation to include a Constitutional Court Decision in the preamble.

Regarding the absence of the Court decisions in the Academic Text of Law 17/2023, the Court refers to the written statement of the House of Representatives on page 27, as presented at the Court hearing on 11 January 2024 [*vide* Minutes of Case Hearing Number 130/PUU-XXI/2023]. It is known and becomes the fact of the trial that Chapter III of the Academic Text of the Health Bill clearly accommodates a Constitutional Court Decision as one of the reasons for the need to amend the Health law. So the legislators have considered the Constitutional Court Decision as a juridical basis in the process of the formation of Law 17/2023 even though it is not included explicitly in the juridical basis of the Health Bill.

Regarding the Petitioners' argument stating that Law 17/2023 is formally flawed because the form and format of Law 17/2023 do not comply with the procedures for forming statutory regulations, the Court is of the opinion that the Health Bill was formed using the omnibus method, which is based on Article 64 paragraph (1b) of Law 13/2022 which is a follow-up to Constitutional Court Decision Number 91/PUU-XVIII/2020). The Court considers that the use of the omnibus method is not contrary to the formal procedures for forming laws because it is chosen validly based on a strong legal basis as provided in Article 64 paragraph (1b) of Law 13/2022 and becomes a strategic choice because it is expected to overcome overlapping relevant regulations in the health sector and be the latest legal instrument which is expected to be able to provide a comprehensive legal basis for the country *cq* the government and other stakeholders in providing health services to the public. The Court considers that the technical formation of Law 17/2023 is in accordance with Attachment II to Law 12/2011, which systematically consists of chapters, sections, subsections, articles, paragraphs, or points. Even in the Court's opinion, the structure and systematization of Law 17/2023 are in accordance with the rules for forming good laws using the omnibus method which applies a systematic numbering structure so that it is easy to read and understand by users and stakeholders of Law 17/2023. Thus, the Petitioners' petition argument that Law 17/2023 is formally flawed because the form and format do not comply with the procedures for forming statutory regulations, is legally unjustifiable.

Pursuant to the legal considerations above, in the Court's opinion, it is evident that formally the process of the formation of Law 17/2023 is not contrary to the 1945 Constitution. Therefore, Law 17/2023 still has binding legal force. Thus, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision in which the verdict was to dismiss the Petitioners' petition entirely.

DISSENTING OPINIONS

Against the *a quo* Court's decision, 4 (four) Constitutional Justices have dissenting opinions, namely Constitutional Justice Suhartoyo, Constitutional Justice Saldi Isra, Constitutional Justice Enny Nurbaningsih, and Constitutional Justice Ridwan Mansyur as follows:

Dissenting Opinion of Constitutional Justice Suhartoyo

Whereas regarding the *a quo* Decision Number 130/PUU-XXI/2023, I, Constitutional Justice Suhartoyo, regarding the Court's authority, the time limit for submitting the petition, and the Petitioners' legal standing, am of the opinion that the Court has the authority to hear the *a quo* petition, the petition is submitted within the time limit provided by statutory regulations, and the Petitioners have the legal

standing to act as Petitioners in the *a quo* petition. However, I have a dissenting opinion regarding the subject of the petition to the extent that it relates to the DPR and the President not asking the DPD for consideration with respect to educational aspects with legal considerations. Whereas I am of the opinion that the formation of Law 17/2023 must be declared conditionally constitutional to the extent that the education section must be asked for the DPD's consideration.

Dissenting Opinion of Constitutional Justice Saldi Isra

Whereas the Petitioners in Case Number 130/PUU-XXI/2023 in principle argue that the formation of Law 17/2023 does not comply with the procedures for forming statutory regulations under the 1945 Constitution and petition the Court to declare that the process of the formation of Law 17/2023 is formally flawed and therefore is contrary to the 1945 Constitution and must be declared to have no binding legal force. In the *a quo* verdict, the Court states that it dismisses the Petitioners' petition.

Whereas regarding the *a quo* verdict, I, Constitutional Justice Saldi Isra have a dissenting opinion on the basis that it is evident that the DPD was not involved and/or requested to participate in the formation of Law 17/2023 and thereby it is sufficient to state that formal defects exist in the formation of Law 17/2023. Thus, I do not need to consider the Petitioners' other arguments and evidence.

Dissenting Opinion of Constitutional Justice Enny Nurbaningsih

Whereas in principle there are two constitutional issues in the formal review of UU 17/2023, namely the lack of meaningful public participation and the DPD not being involved in the process of the formation of Law 17/2023. Regarding the issue of meaningful public participation in the process of the formation of Law 17/2023, Constitutional Justice Enny Nurbaningsih has the same opinion as the majority judges. However, regarding the second issue of the non-involvement of the DPD, I have a dissenting opinion.

Whereas given that Law 17/2023 has a significant connection with regional autonomy as referred to in Article 22D of the 1945 Constitution, and the sector Law is a determining instrument in the implementation of regional policies, *in casu* regional health policies that must be based on the NSPK (*Norma, Standar, Prosedur dan Kriteria* or Norm, Standard, Procedure and Criteria), the Court should declare that the formation of Law 17/2023 which do not involve the DPD does not comply with the provisions under the 1945 Constitution.

Dissenting Opinion of Constitutional Justice Ridwan Mansyur

Whereas regarding the *a quo* Court Decision, Constitutional Justice Ridwan Mansyur has a dissenting opinion regarding the formal review of Law Number 17 of 2023 concerning Health (State Gazette of the Republic of Indonesia of 2023 Number 105, Supplement to the State Gazette of the Republic of Indonesia Number 6887) against the 1945 Constitution of the Republic of Indonesia considering:

Whereas given that *a quo* Law 17/2023 is formed by the omnibus law method which has a broad and strategic impact, the legislators must carefully pay attention to the involvement of the DPD in the discussion stages of the *a quo* bill, by at least asking the DPD's consideration. In the legal political framework of regional autonomy, the involvement of the DPD is an important balance between central and regional interests. Therefore, the existence of Article 22D paragraph (2) of the 1945 Constitution is a clause that protects regional interests (protection clause). Thus, in my opinion, the Court should declare the *a quo* Law does not satisfy the formal requirements for the formation of the law, so the Court should grant the Petitioners' petition.