



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 132/PUU-XXI/2023**

Concerning

**Disclosure of Information on the List of Participants' Names
and Minimum Qualification Requirements in the Open Selection Process
for Candidates for Public Officials**

- Petitioner** : Rega Felix
- Type of Case** : Judicial review of Law Number 14 of 2008 concerning Transparency of Public Information (Law 14/2008) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Judicial Review of Article 18 paragraph (2) of Law 14/2008 against Article 27 paragraph (2) and paragraph (3), Article 28D paragraph (3), and Article 28F of the 1945 Constitution.
- Verdict** : **On the Preliminary Injunction**
To dismiss the Petitioner's petition for preliminary injunction entirely
- On the Merits**
To dismiss the Petitioner's petition entirely
- Date of Decision** : Thursday, March 21, 2024
- Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen who feels that his constitutional rights have been injured by the enactment of the phrase "the position of an individual in his/her public position" in Article 18 paragraph (2) letter b of Law 14/2008 which raises the issue of whether the information is excluded when the person has officially held office or since the person starts the selection process to occupy the public position. In the Petitioner's opinion, the phrase is multi-interpretative and needs to be given a constitutional interpretation so that the "rules of the game" regarding the selection process are clear and the selection participants obtain the right of objection to get the same opportunity so as not to cause the injury of constitutional rights.

Regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of norms of law, *in casu* Article 18 paragraph (2) letter b of Law 14/2008 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, to the Petitioner's legal standing, in the Court's opinion, the Petitioner in describing his legal standing above has been able to describe the Petitioner's assumptions regarding the injury of constitutional rights due to the enactment of the norms of Article 18 paragraph (2) letter b of Law 14/2008. In addition, the Petitioner has been able to describe a causal relationship (*causal verband*) between the assumptions regarding such injury and the enactment of the norms of the law being petitioned for judicial review. Therefore, if the petition is granted, the injury of constitutional rights as intended by the Petitioner will no longer occur. Thus, regardless of whether the issue of the unconstitutionality of the norms as argued by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas the Petitioner submits a petition for preliminary injunction which essentially asks the Court to grant an interlocutory order on the basis as follows, whereas the main problem experienced by the Petitioner is the failure to pass the selection process for hiring employees at the Bank Indonesia for the targeted position of the Islamic law expert due to health reasons not openly disclosed to the Petitioner. In fact, according to the Petitioner, the qualification requirements announced by the Bank Indonesia for the selection process did not include a requirement that the applicants met certain physical or health qualifications. Whereas the Petitioner communicated with the Bank Indonesia requesting the Bank Indonesia's transparency regarding the selection results, including the Petitioner requesting that the Bank Indonesia postpone the appointment of the Bank Indonesia employees with the position of the Islamic law expert manager in the process of the 2023 pro hire until all legal processes were completed, including the legal processes at the Court. However, the Petitioner did not receive answers to his questions and requests, while the answer given by the Bank Indonesia stated that the Bank Indonesia needed time to provide the information requested by the Petitioner. Therefore, if the Constitutional Court does not grant an Interlocutory (Preliminary Injunction) Order, then the Petitioner has lost the opportunity to restore the Petitioner's constitutional rights which have been injured. Whereas the Petitioner cannot submit the *a quo* petition to other institutions, because the selection announcement is made through a third party (the PPM Management which is a private institution), so it will be difficult to determine which one will be the object of State Administrative Order (KTUN). In addition, given the lack of information regarding the list of participants' names and the qualification requirements, the Petitioner will have difficulty finding comparative references to state that there are legal problems in the selection process at the Bank Indonesia.

Whereas in the Petitioner's opinion, the Court has the authority to grant interlocutory decisions as provided in Article 69 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (PMK 2/2021), and previously there have been precedents that the Court granted interlocutory (preliminary injunction) decisions to protect Petitioners' constitutional rights.

Regarding the Petitioner's petition for preliminary injunction, the Court is of the opinion that the Court does not have the authority to order the Bank Indonesia to postpone the exercise of authority regarding the objection process and/or the information dispute between the Petitioner and the Bank Indonesia and to postpone the appointment of the Bank Indonesia employees with the position of the Islamic law expert manager in the 2023 selection process because the Court is a judicial body that is given the authority to adjudicate law norms against the 1945 Constitution. In addition, the Court does not find a broad impact if the norms requested for review remain in effect. Therefore, the Petitioner's petition for preliminary injunction is legally unjustifiable.

Then, the Court considers the subject matter of the Petitioner's petition. According to the Petitioner, the constitutional injury that he experiences is actual or concrete, but if abstracted, the issue is regarding the constitutionality of norms of Article 18 paragraph (2) letter b of Law 14/2008 that is multi-interpretative. The Petitioner did not obtain information regarding his failure to pass the selection as the Islamic law expert at the Bank Indonesia because the minimum qualification requirements for each position were not stated in detail from the beginning. If there were requirements that appear later, this would cause the selection participants to be trapped because they chose positions that turn out to have requirements that appear later, which did not suit their conditions. If only the Petitioner had known, he would have been able to use the opportunity in another position. Whereas according to the Petitioner, the reason the list of participants' names is not published is because the information requested is public information which is excluded under Article 18 paragraph (2) letter b of Law 14/2008. This has prevented the Petitioner from exercising the right of objection. Such an interpretation results in the obstruction of the Petitioner's rights

guaranteed in Article 27 paragraph (2) and paragraph (3), Article 28D paragraph (3), and Article 28F of the 1945 Constitution. Therefore, an interpretation of the norms of Article 18 paragraph (2) letter b of Law 14/2008 is needed. Whereas in the Petitioner's opinion, there are constitutional reasons for submitting a review of Article 18 paragraph (2) letter b of Law 14/2008, namely: The list of participants' names and minimum qualification requirements do not constitute a personal associated conception so that they are public information; The list of participants' names and minimum qualification requirements are limited to an open selection process so that they are not related to job secrets. The transparency regarding the list of participants' names and minimum qualification requirements in the selection process for public positions are the initial conditions for accountability to guarantee the right to equal opportunities in government. Whereas in the Petitioner's opinion, pursuant to these constitutional reasons, in order to avoid multiple interpretations due to disclosing information in accordance with Article 18 paragraph (2) letter b of Law 14/2008 as a consequence of Article 17 letter h of Law 14/2008, it needs to be interpreted further in the context of the purpose for which the information is presented. Thus, norms that can be used to decide a concrete case must be sought so that a person does not lose his constitutional rights without injuring the constitutional rights of other parties who have been appointed as employees in case of the list of participants' names and minimum qualification requirements not being published. In the Petitioner's opinion, the information announced in the context of the implementation of Article 18 paragraph (2) letter b of Law 14/2008, which is carried out in the form of a list of participants' names and minimum qualification requirements, will not injure the constitutional rights of other people because the list of participants' names is not personal, confidential data.

Pursuant to the description of the arguments above, the Petitioner petitions the Court to declare that Article 18 paragraph (2) letter b of Law 14/2008 which states, "the disclosure pertains to the position of an individual in his/her public position" is contrary to the 1945 Constitution to the extent that it is not interpreted as "the disclosure pertains to the position of an individual in his/her public position regarding the information as referred to in Article 17 letter h, which can also be done in the form of a list of participants' names and minimum qualification requirements in the open selection process for placement in public positions."

Regarding the arguments of the Petitioner's petition, if we carefully examine, the constitutionality issue questioned by the Petitioner boils down to the phrase "the position of an individual in his/her public position" in the norms of Article 18 paragraph (2) letter b of Law 14/2008 which, in the Petitioner's petition, is unconstitutional if it is not interpreted as "the disclosure pertains to the position of an individual in his/her public position regarding the information as referred to in Article 17 letter h, which can also be done in the form of a list of participants' names and minimum qualification requirements in the open selection process for placement in public positions." Regarding the *a quo* Petitioner' argument, the Court considers as follows:

The right to obtain information is part of human rights protected by the constitution as stated in Article 28F of the 1945 Constitution. This is because the availability of public information is everyone's basic need for personal development and social environment, and is also an important part of national resilience. In addition, transparency of public information is important because it is one of the characteristics that show democratic state life that upholds the sovereignty of the people to realize good state administration. In other words, the mechanism of information transparency will have positive implications on the accountability of state administration because it opens up space for community involvement in the public decision-making process.

The public information is information that is produced, stored, managed, sent, and/or received by a public body relating to the administrators and administration of the state and/or the administrators and administration of other public bodies in accordance with Law 14/2008 as well as other information related to the public interest. The public bodies that are part of the public information providers are the executive, legislative, judicial, and other bodies whose main functions and duties are related to state administration, some or all of whose funds come from the state revenue and expenditure budget and/or the regional revenue and expenditure budget, or non-governmental organizations to the extent that some or all of the funds are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget, community donations, and/or overseas.

Regarding the Petitioner's argument petitioning that the phrase "the disclosure pertains to the position of an individual in his/her public position" in the norms of Article 18 paragraph (2) letter b of Law 14/2008 is interpreted to also include candidates for public office, it is important to comprehensively understand the substance of Article 18 of Law 14/2008, *in casu* Article 18 paragraph (2) of Law 14/2008 which in principle states, "Excluded from the information that is excepted as referred to in Article 17 letter g and letter h among other things are if: a. the party whose privacy is disclosed gives his/her approval in writing; and/or b. the disclosure pertains to the position of an individual in his/her public position." This means that a person who is still in a position at the selection stage is part of the regulatory realm in the norms of Article 18 paragraph (2) letter a of Law 14/2008, because that person has not yet definitively occupied a public position, so they are still classified as anyone in general whose disclosure requires written approval from the person concerned as regulated in Article 18 paragraph (2) letter a of Law 14/2008. This is in line with the thoughts in the discussion of the *a quo* norms formulation as stated in the minutes of the meeting on the Bill on Freedom to Obtain Public Information dated 15 January 2007, which basically states that "only the secrets of public officials who must be known to the public must be able to access such as their assets or all kinds of things" [*vide* the President's Evidence PK-2b, p. 30]. Therefore, if the Petitioner's *petitum* petitioning that the information of an individual who is still in a selection stage and has not yet definitively occupied a public position is interpreted as within the scope of the phrase "the position of an individual in his/her public position", which can be expressed through the provisions of Article 18 paragraph (2) letter b of Law 14/2008, is granted, then, in the Court's opinion, it will actually cause legal uncertainty because it mixes up the regulation of 2 (two) different things which will then lead to the unclear meaning of the norms of Article 18 paragraph (2) of Law 14/2008 and negates the obligation to have written approval in the provisions of Article 18 paragraph (2) letter a of Law 14/2008.

Whereas the Petitioner's *petitum* petitions Article 18 paragraph (2) letter b of Law 14/2008 to be interpreted as "the disclosure pertains to the position of an individual in his/her public position regarding the information as referred to in Article 17 letter h, which can also be done in the form of a list of participants' names and minimum qualification requirements in the open selection process for placement in public positions." If carefully considered, the Petitioner emphasizes in the *petitum* what has actually been accommodated in the norms of Article 18 paragraph (2) of Law 14/2008 that the *a quo* norms are closely related to the norms of Article 17 letter h of Law 14/2008. In this regard, it is important to understand the complete substance of the norms of Article 17 letter h of Law 14/2008.

The provisions of the norms of Article 17 of Law 14/2008 are in principle parts of the regulations that provide exceptions to the public information that can be accessed by the public. The provisions of the norms of Article 17 letter h of Law 14/2008 are not absolute exception regulations because they may not be included in the excluded information to the extent that they fulfill the requirements as stipulated in Article 18 paragraph (2) of Law 14/2008, among others if: a. the party whose privacy is disclosed gives his/her approval in writing; and/or b. the disclosure pertains to the position of an individual in his/her public position. Concerning the *a quo* Petitioner's *petitum*, if you look carefully at Law 14/2008, basically all public information is open and can be accessed by every user of public information, but this does not apply to excepted information which is strictly and limited in nature. Public Information that is excluded because it is confidential has been determined in accordance with Law 14/2008. In addition, in the case of disclosing information that is excepted, one must pay attention to propriety and the public interest pursuant to an examination of the consequences that will arise if the information is provided to the public, and after carefully considering whether hiding public information can protect greater interests than disclosing it or vice versa.

In the Court's opinion, the provisions of the norms of Article 18 paragraph (2) letter b of Law 14/2008 are regulations that allow the disclosure of information pertaining to the position of an individual in his/her public position as has been considered above. Law 14/2008 does not state what is meant by public office, but in the general provisions, especially Article 1 number 3 of Law 14/2008, the meaning of public body is described. If we refer to Law 14/2008, the types of information regulated in the *a quo* Law is public information, as well as the body that manages the information is a public body, and the position of an individual in his/her position as referred to in the *a quo* norms is a position that is attached to someone who has become part of the public bodies in question, and cannot be attached to someone who is still in the position of a candidate for public office. To a person who is still in the position of the candidate for public office, the provisions of Article 18 paragraph (2) letter b of Law 14/2008 cannot be applied, while the information attached to him may be personal confidential information which is excluded as regulated in

Article 17 letter h of Law 14/2008 and the disclosure needs to obtain written consent from the party whose secret will be disclosed. Thus, in the Court's opinion, the Petitioner cannot equate the meaning of the phrase "the position of an individual in his/her public position" with the position of someone who is still a "candidate for public office".

Whereas because Article 18 paragraph (2) letter b of Law 14/2008 is only intended to reveal information about someone in a public position (existing position), then the *a quo* Article, in the Court's opinion, cannot accommodate the Petitioner's argument requesting the disclosure of the list of participants' names and minimum qualification requirements for an individual who is still in the selection process for placement in public positions, as has been considered above. Because someone who is still in the selection process for placement in public office cannot be categorized as a public official, he or she falls into the realm of protecting personal information, the use of which is protected by Law Number 27 of 2022 concerning the Protection of Personal Data (UU 27/2022), not included in Law 14/2008. In this regard, the norms of Article 4 paragraph (1) of Law 27/2022 determine that personal data consists of specific personal data and general personal data. Regarding full name, gender, nationality, religion, marital status, and/or personal data that is combined to identify a person is within the category of general personal data. Indeed, a person's name is not classified as confidential data, but it is still personal data. Even though there is no violation in the announcement of participants' names, it is not related to the norms of the article petitioned for review, because Article 18 paragraph (2) letter b of Law 14/2008 is only related to an individual who is currently holding in a public position [*vide* Presidential Expert Statement in Trial Case Number 132/PUU-XXI/2023 dated 20 February 2024, p. 28]. Then regarding the Petitioner's petition to obtain information on the list of participants' names and minimum qualification requirements in the open selection process for placement in public positions, in the Court's opinion, the Petitioner has confused the request for data relating to a person's personality and an individual who has held a public position. Pursuant to the statements of the parties and the facts revealed at the trial, the mechanism for announcing the results of employee recruitment selection is within the realm of the policy of the employee recruitment selection organizer. This policy is not a policy that must be provided in Law 14/2008.

However, it is important for the Court to emphasize that in the era of information disclosure, to the extent that it is not related to excluded matters, because it is part of public information needs, *in casu* the selection process, for example regarding the selection results (scores) and participants' rankings, it is important to provide information openly and easily accessible to the public, especially for selection participants. If there are parties who object to the selection results, *in casu* the Petitioner, they can take legal action by submitting an objection to the relevant agency and if they still do not receive it, they can submit a petition for public information dispute resolution to the Information Commission, both at the central and regional level.

Thus, the Petitioner's arguments regarding Article 18 paragraph (2) letter b of Law 14/2008 which states, "the disclosure pertains to the position of an individual in his/her public position" should be interpreted as "the disclosure pertains to the position of an individual in his/her public position regarding the information as referred to in Article 17 letter h, which can also be done in the form of a list of participants' names and minimum qualification requirements in the open selection process for placement in public positions" is legally unjustifiable.

Pursuant to legal considerations as described above, it is evident that the norms of Article 18 paragraph (2) letter b of Law 14/2008 do not violate the fulfillment of the right to work and a decent living, the right to participate in national defense, the right to obtain information guaranteed in Article 27 paragraph (2) and paragraph (3), Article 28D paragraph (3) and Article 28F of the 1945 Constitution, not as argued by the Petitioner. Thus, the Petitioner's argument is entirely legally unjustifiable.

Subsequently, the Court passed down a decision in which the verdict was:

On the Preliminary Injunction:

To dismiss the Petitioner's petition for preliminary injunction

On the Merits:

To dismiss the Petitioner's petition entirely