



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 78/PUU-XXI/2023**

**Concerning  
Crime of Defamation**

- Petitioners** : **Haris Azhar, et al.**
- Type of Case** : Judicial Review of Law Number 1 of 1946 concerning Criminal Law Regulations (Law 1/1946), Indonesian Criminal Code (*Kitab Undang-undang Hukum Pidana* or KUHP) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Law 19/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 14 and Article 15 of Law 1/ 1946, Article 310 paragraph (1) of Indonesian Criminal Code, Article 27 paragraph (3) and Article 45 paragraph (3) of Law 19/2016 against Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3), Article 28F and Article 28G paragraph (1) of the 1945 Constitution.
- Verdict** : **On Preliminary Injunction:**  
To dismiss the petition of preliminary injunction of the Petitioners in its entirety;
- On the Merits:**
1. To grant the Petitioners' petition in part.
  2. To declare that the petition of the Petitioners in relation to Article 27 paragraph (3) and Article 45 paragraph (3) of Law Number 19 of 2016 concerning the Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of 2016 Number 251, Supplement to the State Gazette of the Republic of Indonesia Number 5952) is inadmissible;
  3. To declare that Article 14 and Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations (State Gazette of the Republic of Indonesia II Number 9) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
  4. To declare that Article 310 paragraph (1) of Indonesian Criminal Code which states, "Any person who deliberately attacks someone's dignity or good name by accusing him/her of something, with the clear intention of making it

known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah”, is contrary to the 1945 Constitution of the Republic of Indonesia and it does not have binding legal force to the extent that it is not interpreted as, "Any person who deliberately attacks someone's dignity or good name by **verbally** accusing him/her of something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."

5. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
6. To dismiss the remainder of the Petitioners' petition.

**Date of Decision** : Thursday, March 21, 2024

**Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens (Petitioner I and Petitioner II) and private legal entities namely Yayasan Lembaga Bantuan Hukum (YLBHI or Indonesian Legal Aid Foundation) and Aliansi Jurnalis Independen (AJI or Alliance of Independent Journalists) [Petitioner II and Petitioner III].

Regarding the authority of the Court, because the Petitioners petition for a judicial review of the constitutionality of statutory norms, *in casu* Article 14 and Article 15 of Law 1/1946, Article 310 paragraph (1) of Indonesian Criminal Code, Article 27 paragraph (3) and Article 45 paragraph (3) of Law 19/2016 against Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3), Article 28F, and Article 28G paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding the legal standing of the Petitioners, they in principle argue that Petitioner I and Petitioner II believe that the articles being petitioned for review have been used to criminalize any parties who express criticism against the state officials and government policies, because Petitioner I and Petitioner II have been reported to Polda Metro Jaya (Greater Jakarta Metropolitan Regional Police) by Luhut Binsar Pandjaitan, Coordinating Ministry for Maritime and Investment Affairs, because they are accused of having committed the criminal act as regulated in the articles being petitioned for review. Likewise, Petitioner III and Petitioner IV believe that their rights to guarantees, protection and fair legal certainty as well as equal treatment before the law is diminished by the state officials who cannot accept criticism, instead the state official abuses the law to undermine any advocacy efforts for law enforcement, human rights, democracy, and freedom of the press conducted by Petitioner III and Petitioner IV, the state official uses the articles being petitioned for review in the *a quo* case. The Court is of the opinion that Petitioner I and Petitioner II have been able to explain specifically the presumed loss of constitutional rights as well as the direct relationship that has a causal relationship (*causal verband*) with the law being petitioned for review, because Petitioner I and Petitioner II believe that the enactment of the articles being petitioned for review have actually hampered and criminalized Petitioner I and Petitioner II who are working on advancing human rights and eradicating Corruption, Collusion and Nepotism. Likewise, Petitioner III and Petitioner IV have also been able to describe the existence of a causal relationship (*causal verband*) between the presumed loss of constitutional rights that could potentially occur and the enactment of the legal norms being petitioned for review. Petitioner III and IV believe that the existence of the articles being petitioned for review is directly or indirectly, and in general, has harmed various kinds of businesses and activities that have been carried out continuously by Petitioner III and Petitioner IV in order to fight for the values of democracy, human rights and supremacy of law. Pursuant to the description of

the aforementioned legal considerations, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that Petitioner I, Petitioner II, Petitioner III and Petitioner IV have the legal standing to act as Petitioners in the *a quo* petition.

Whereas regarding the Petitioners' preliminary injunction which requests the Court to postpone the trial examination at the East Jakarta District Court registered under registration Number 202/Pid.Sus/2023/PN Jkt.Tim and No. 203/Pid.Sus/2023/PN Jkt.Tim., since the articles charged against the Defendant in this case are being reviewed in the Court, the Court is of the opinion that, as determined in the 1945 Constitution, one of the Court's authority is reviewing the laws against the Constitution 1945. Meanwhile, other courts also have other authority as determined in the applicable laws and regulations, therefore the Court has no authority to order the postponement, even if it is temporary, of an ongoing legal proceeding in any court in a judicial are under the Supreme Court. Moreover, judicial review by the Court is not adversarial in nature and is not a matter of interparty in nature or is not a dispute over the interests of the parties, instead the review of constitutionality of norms of laws are general in nature and apply to all citizens, it is not limited by certain deadlines. Therefore, pursuant to these considerations, the Court is of the opinion that the Petitioners' petition for preliminary injunction is legally unjustifiable.

Whereas regarding the subject matter of the petition, the Petitioners substantially argued as follows:

- (a) The *a quo* case is not *ne bis in idem* as specified in Article 60 of the Constitutional Court Law and Article 78 of Constitutional Court Regulation (*Peraturan Mahkamah Konstitusi*) Number 2 of 2021 concerning Procedures in Judicial Review Cases (hereinafter referred to as PMK 2/2021).
- (b) Provisions of Article 14 and Article 15 of Law 1/1946, Article 310 paragraph (1) of Indonesian Criminal Code, and Article 27 paragraph (3) *juncto* Article 45 paragraph (3) of Law 19/2016 violate the right to guarantees, protection and fair legal certainty as well as equal treatment before the law and the right to feel safe and free from fear to act which are human rights therefore it is contrary to Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.

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

1. Whereas there are differences in the basis of review and the reasons used in the *a quo* petition compared to the petition that has been previously decided by the Court in accordance with the provisions of Article 60 of the Constitutional Court Law *juncto* Article 78 PMK 2/2021, therefore the *a quo* petition may be resubmitted,
2. Whereas on 2 January 2024, the President has ratified and promulgated Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic Indonesia Number 6905, hereinafter referred to as Law 1/2024). Therefore, with the promulgation of Law 1/2024, some of the material norms of Law 11/2008 and Law 19/2016 have been amended and some norms have been declared no longer valid, the amendment includes the articles being petitioned for review by the Petitioners. Therefore, since the articles being petitioned for review by the Petitioners, namely the articles contained in Law 11/2008 and Law 19/2016 which are the objects of the petition by the Petitioners in this *a quo* petition, have been amended as stated in Law 1/2024, the Court is of the opinion that the objects of the petition submitted by the Petitioners are no longer exist. Therefore, the Court is of the opinion that the Petitioners' petition has lost its object. Since the petition of the Petitioners for judicial review of Article 27 paragraph (3) and Article 45 paragraph (3) of Law 19/2016 has lost its objects, the Petitioners' petition for judicial review of these articles shall not be considered further.

3. Whereas the formulation of the norms of Article 14 and Article 15 of Law 1/1946 is broad and unclear so that it can be interpreted indefinitely and differently, thus the *a quo* Articles are contrary to Article 28D paragraph (1) of the 1945 Constitution since they do not provide recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law for every citizen. Therefore, the Petitioners' arguments regarding the unconstitutionality of the norms of Article 14 and Article 15 of Law 1/1946 are legally justifiable.
4. Whereas regarding the provisions of the norms of Article 310 paragraph (1) of Indonesian Criminal Code, the Decision of the Constitutional Court Number 14/PUU-VI/2008 which was declared in a plenary session open to the public on 15 August 2008 has reviewed Article 310 paragraph (1) of Indonesian Criminal Code. Upon careful examination by the Court on Article 310 paragraph (1) of Indonesian Criminal Code, it has been accommodated in Article 433 of Law Number 1 of 2023 concerning Indonesian Criminal Code (hereinafter referred to as Law 1/2023). From an examination of the material content of the provisions of Article 433 of Law 1/2023, the Court is of the opinion that there is a difference between the provisions of the norms in Article 310 paragraph (1) of Indonesian Criminal Code and the norms of Article 433 of Law 1/2023, namely in Article 433 of Law 1/2023 there is an affirmation that the perpetrator committed an act of defamation including a "verbal" act, meanwhile this element is not regulated in Article 310 paragraph (1) of Indonesian Criminal Code. Therefore, without any intention of the Court to review the constitutionality of Article 433 of Law 1/2023, which shall only have binding legal force three years after its promulgation (2 January 2026), the affirmation in relation to the element of "verbal" action contained in Article 433 of Law 1/2023 may be adopted or accommodated in order to provide legal certainty in implementing the provisions of the norms of Article 310 paragraph (1) of Indonesian Criminal Code. Therefore, the norms of Article 310 paragraph (1) of Indonesian Criminal Code are able to provide legal certainty and have a range of equality that is able to reduce the potential for differences in treatment or discrimination against *addresat norm* regarding the provisions of the norms of Article 310 paragraph (1) of Indonesian Criminal Code, so that its application it does not cause any ambiguity. Pursuant to the legal considerations above, the Court decides that the provisions of Article 310 paragraph (1) of Indonesian Criminal Code must be declared conditionally unconstitutional, as will be stated in full in the verdict of the *a quo* decision. However, since the *a quo* decision of the Court is not as petitioned by the Petitioners, the Petitioners' argument regarding the unconstitutionality of the norms of Article 310 paragraph (1) of Indonesian Criminal Code is legally justifiable in part.

Accordingly, the Court passed down a decision which verdicts are as follows:

**On Preliminary Injunction:**

To dismiss the petition of preliminary injunction of the Petitioners in its entirety;

**On the Merits:**

1. To grant the Petitioners' petition in part.
2. To declare that the petition of the Petitioners in relation to Article 27 paragraph (3) and Article 45 paragraph (3) of Law Number 19 of 2016 concerning the Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of 2016 Number 251, Supplement to the State Gazette of the Republic of Indonesia Number 5952) is inadmissible;
3. To declare that Article 14 and Article 15 of Law Number 1 of 1946 concerning Criminal Law Regulations (State Gazette of the Republic of Indonesia II Number 9) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
4. To declare that Article 310 paragraph (1) of Indonesian Criminal Code which states, "Any person who deliberately attacks someone's dignity or good name by accusing

him/her of something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah", is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as, "Any person who deliberately attacks someone's dignity or good name by **verbally** accusing him/her of something, with the clear intention of making it known to the public, is threatened for defamation with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."

5. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
6. To dismiss the remainder of the Petitioners' petition.