CONSTITUTIONAL COURT
OF THE REPUBLIC OF
INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 168/PUU-XXI/2023

Concerning

Protection of Labor Rights in the Job Creation Law

Petitioners	:	**The Labor Party represented by Agus Supriyadi as Vice President of the Labor Party and Ferri Nuzarli as Secretary General of the Labor Party, et al.**
Type of Case	:	Judicial Review of the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial Review of Article 42 paragraph (1) and paragraph (4) in Article 81 number 4; Article 56 paragraph (3) in Article 81 number 12; Article 57 paragraph (1) in Article 81 number 13; Article 64 paragraph (2) in Article 81 number 18; Article 79 paragraph (2) letter b and Article 79 paragraph (5) in Article 81 number 25; Article 88 paragraph (1), Article 88 paragraph (2), Article 88 paragraph (3) letter b in Article 81 number 27; Article 88C, Article 88D paragraph (2), Article 88F in Article 81 number 28; Article 90A in Article 81 number 31; Article 92 paragraph (1) in Article 81 number 33; Article 95 paragraph (3) in Article 81 number 36; Article 98 paragraph (1) in Article 81 number 39; Article 151 paragraph (3) and paragraph (4) in Article 81 number 40; Article 157A paragraph (3) in Article 81 number 49; and Article 156 paragraph (2) in Article 81 number 47, Article 42 paragraph (3) letter a and letter c, and paragraph (5) in Article 81 number 4; Article 56 paragraph (4) in Article 81 number 12; Article 59 paragraph (3) in Article 81 number 15; Article 61 paragraph (1) letter c in Article 81 number 16; Article 61A in Article 81 number 17; Article 65 in Article 81 number 19 of Law 6/2023 which repeals Article 65 of Law 13/2003; Article 66 in Article 81 number 20; Article 79 paragraph (2) in Article 81 number 25 of Law 6/2023 which is linked to the norms of Article 84 in Article 81 number 26; Article 88 paragraph (3) letter j of Law 13/2003 which has been repealed by Article 88 paragraph (3) in Article 81 number 27; Article 88 paragraph (4) in Article 81 number 27; Article 88A paragraph (7), Article 88B, Article 88E in Article 81 number 28; Article 89 in Article 81 number 29; Article 90 in Article 81 number 30; Article 90B in Article 81 number 31; Article 91 in Article 81 number 32; Elucidation

of Article 94 in Elucidation of Article 81 number 35; Article 97 in Article 81 number 38; Article 151A in Article 81 number 41; Article 154A paragraph (1) letter b in Article 81 number 45; Article 157A paragraph (1) in Article 81 number 49; Article 161 in Article 81 number 53; Article 162 in Article 81 number 54; Article 163 in Article 81 number 55; Article 164 in Article 81 number 56; Article 165 in Article 81 number 57; Article 166 in Article 81 number 58; Article 167 in Article 81 number 59; Article 169 in Article 81 number 61; and Article 172 in Article 81 number 64 of Law 6/2023 against the 1945 Constitution of the Republic of Indonesia

Verdict : 1. To grant the Petitioners' petition in part**.**

2. To declare that the phrase **"Central government"** in Article 42 paragraph (1) in Article 81 number 4 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"the minister responsible for labor affairs, *in casu* Minister of Manpower";**

3. To declare that Article 42 paragraph (4) in Article 81 number 4 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Foreign workers may be employed in Indonesia only in employment relations for certain positions and a certain period and have competencies in accordance with the position to be occupied" 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 "**Foreign workers may be employed in Indonesia only in employment relations for certain positions and a certain period and have competencies in accordance with the position to be occupied, taking into account the priority of using Indonesian workers";**

4. To declare that Article 56 paragraph (3) in Article 81 number 12 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The period or completion of a certain job as referred to in paragraph (2) is determined pursuant to an Employment Agreement" 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 **"The period for completion of a particular job is not to exceed a maximum of 5 (five) years, including if there is an extension";**

5. To declare that Article 57 paragraph (1) in Article 81 number 13 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "A fixed-term employment agreement is made in writing and must use Indonesian language and latin letters", 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 **“A fixed-term employment agreement must be made in writing using Indonesian language and latin letters”;**

6. To declare that Article 64 paragraph (2) in Article 81 number 18 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The Government shall stipulate part of the implementation of the work as referred to in paragraph (1)" 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 **"The Minister shall stipulate part of the implementation of the work as referred to in paragraph (1) in accordance with the types and fields of outsourcing work agreed in written outsourcing agreements";**

7. To declare that Article 79 paragraph (2) letter b in Article 81 number 25 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "weekly rest of 1 (one) day for 6 (six) working days in 1 (one) week", 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 to include the phrase, **“or 2 (two) days for 5 (five) working days in 1 (one) week”;**

8. To declare that the word "**may**" in Article 79 paragraph (5) in Article 81 number 25 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;

9. To declare that Article 88 paragraph (1) in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State

Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Every Worker/Laborer has the right to a decent living in accordance with human dignity", 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 **"including income that meets a living standard, which is the amount of receipts or income received by workers/laborers from their work so that they are able to meet the reasonable living needs of workers/laborers and their families, which include food and drink, clothing, housing, education, health, recreation, and old age security"**;

10. To declare that Article 88 paragraph (2) in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The Central Government establishes wage policies as part of efforts to realize the rights of workers/laborers to a decent living in accordance with human dignity", 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 **"involving regional wage councils that include regional government representatives in formulating wage policy recommendations, which serve as input for the central government in establishing wage policies";**
11. To declare that the phrase 'wage structure and scale' in Article 88 paragraph (3) letter b in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"a proportional wage structure and scale"**;
12. To declare that Article 88C in Article 81 number 28 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"including the governor being obligated to set sectoral minimum wages at the provincial level and may set at the regency/city level"**;
13. To declare that the phrase "a specific index" in Article 88D paragraph (2) in Article 81 number 28 of the Appendix to Law

Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“a specific index is a variable representing the contribution of labor to the economic growth of provinces or regencies/cities, taking into account the interests of companies and workers/laborers, as well as the principle of proportionality to meet the decent living needs (KHL) of workers/laborers"**;

14. To declare that the phrase “under certain circumstances” in Article 88F in Article 81 number 28 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“The term "under certain circumstances" includes, among others, natural or non-natural disasters, including extraordinary global and/or national economic conditions determined by the President in accordance with the provisions of laws and regulations”**;

15. To declare that Article 90A in Article 81 number 31 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Wages above the minimum wage are determined pursuant to an agreement between the Employer and Workers/Laborers in the Company," 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 **"Wages above the minimum wage are determined pursuant to an agreement between the Employer and Workers/Laborers or Labor Unions/Trade Unions in the company"**;

16. To declare that Article 92 paragraph (1) in Article 81 number 33 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, “Employers are required to establish Wage structure and scale in the Company by taking into account the Company’s capability and productivity,” 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 **“Employers are required to establish Wage structure and scale in the Company by taking into account the Company’s capability and productivity, as well as class, position, length of service, education, and competence”**;

17. To declare that Article 95 paragraph (3) in Article 81 number 36 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors, except creditors holding collateral rights," 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 **"Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors, including preferred creditors, except creditors holding collateral rights"**;

18. To declare that Article 98 paragraph (1) in Article 81 number 39 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "In order to provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council shall be established," 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 **"In order to provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council that participates actively shall be established"**;

19. To declare that the phrase "must be carried out through bipartite negotiations between Employers and Workers/Laborers and/or Labor Unions/Trade Unions" in Article 151 paragraph (3) in Article 81 number 40 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"must be carried out through bipartite negotiations pursuant to deliberation to reach consensus between Employers and Workers/Laborers and/or Labor Unions/Trade Unions"**;

20. To declare that the phrase "termination of employment is carried out through the next stage in accordance with the mechanism for resolving industrial relations disputes" in Article 151 paragraph (4) in Article 81 number 40 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"In the event that bipartite negotiations as referred to in paragraph (3) do not result in an agreement, the Termination of Employment may only be carried out after obtaining a ruling from an industrial relations dispute resolution body whose decision has permanent legal force";**

21. To declare that the phrase "carried out until the completion of the industrial relations dispute resolution process in accordance with its stages" in the norms of Article 157A paragraph (3) in Article 81 number 49 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"until the completion of the industrial relations dispute resolution process with permanent legal force in accordance with the provisions in the PPHI law"**;

22. To declare that the phrase "granted with the following provisions" in Article 156 paragraph (2) in Article 81 number 47 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"at least"**;

23. To order the publication of this decision in the State Gazette of the Republic of Indonesia;

24. To declare that the Petitioners' petition concerning the norms of Article 156 paragraph (4) in Article 81 number 47 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is inadmissible;

25. To dismiss the remainder of the Petitioners' petition.

Date of Decision : Thursday, 31 October 2024

Overview of Decision :

The Petitioners are political parties and Labor organizations (Petitioners I to V) as well as individual Indonesian citizens (Petitioners VI and VII) who care about the rights of workers/laborers in Indonesia.

Regarding the Court's authority, because the Petitioners' petition is a Review of Article 42 paragraph (1) and paragraph (4) in Article 81 number 4; Article 56 paragraph (3) in Article 81 number 12; Article 57 paragraph (1) in Article 81 number 13; Article 64 paragraph (2) in Article 81 number 18; Article 79 paragraph (2) letter b and Article 79 paragraph (5) in Article 81 number 25; Article 88 paragraph (1), Article 88 paragraph (2), Article 88 paragraph (3) letter b in Article 81 number 27; Article 88C, Article 88D paragraph (2), Article 88F in Article 81 number 28; Article 90A in Article 81 number 31; Article 92 paragraph (1) in Article 81 number 33; Article 95 paragraph (3) in Article 81 number 36; Article 98 paragraph (1) in Article 81 number 39; Article 151 paragraph (3) and paragraph (4) in Article 81 number 40; Article 157A paragraph (3) in Article 81 number 49; and Article 156 paragraph (2) in Article 81 number 47, Article 42 paragraph (3) letter a and letter c, and paragraph (5) in Article 81 number 4; Article 56 paragraph (4) in Article 81 number 12; Article 59 paragraph (3) in Article 81 number 15; Article 61 paragraph (1) letter c in Article 81 number 16; Article 61A in Article 81 number 17; Article 65 in Article 81 number 19 of Law 6/2023 which repeals Article 65 of Law 13/2003; Article 66 in Article 81 number 20; Article 79 paragraph (2) in Article 81 number 25 of Law 6/2023 which is linked to the norms of Article 84 in Article 81 number 26; Article 88 paragraph (3) letter j of Law 13/2003 which has been repealed by Article 88 paragraph (3) in Article 81 number 27; Article 88 paragraph (4) in Article 81 number 27; Article 88A paragraph (7), Article 88B, Article 88E in Article 81 number 28; Article 89 in Article 81 number 29; Article 90 in Article 81 number 30; Article 90B in Article 81 number 31; Article 91 in Article 81 number 32; Elucidation of Article 94 in Elucidation of Article 81 number 35; Article 97 in Article 81 number 38; Article 151A in Article 81 number 41; Article 154A paragraph (1) letter b in Article 81 number 45; Article 157A paragraph (1) in Article 81 number 49; Article 161 in Article 81 number 53; Article 162 in Article 81 number 54; Article 163 in Article 81 number 55; Article 164 in Article 81 number 56; Article 165 in Article 81 number 57; Article 166 in Article 81 number 58; Article 167 in Article 81 number 59; Article 169 in Article 81 number 61; and Article 172 in Article 81 number 64 of Law 6/2023 against the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the Petitioners' petition;

Regarding legal standing of the Petitioners, who substantially argue that the norms being petitioned for reviewed by the Petitioners related to the regulation of Foreign Workers (TKA), Fixed-Term Employment Agreements (PKWT), outsourcing, leave, wages, Termination of Employment (PHK), and severance pay, potentially violate the constitutional rights of workers/laborers as guaranteed in Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. According to the Court, Petitioners I through VII have adequately described their legal standing and described their alleged constitutional loss specifically and actually, or at least potentially, due to the enactment of the norms being petitioned for review. Petitioners I through VII have also successfully demonstrated a causal relationship (*causal verband*) concerning the alleged constitutional loss due to the enactment of the norms being petitioned for review, as these norms directly or indirectly violate various attempts and activities undertaken by Petitioners I through VII to protect and defend workers' rights and interests while improving the welfare and decent living conditions for workers and their families. Therefore, if the petition of Petitioners I through VII is granted, the alleged constitutional loss that is specific and actual or at least potential would no longer occur or be prevented. Thus, regardless of whether the argument of Petitioners I through VII concerning the unconstitutionality of the norms petitioned for review is proven, the Court is of the opinion that Petitioner I to Petitioner VII (hereinafter referred to as the Petitioners) have the legal standing to act as Petitioners in the

a quo petition.

Whereas the subject matter of the petition's main points is divided into seven arguments/clusters as follows:

1. Arguments on Foreign Workers (TKA)

- Whereas regarding the Petitioners' argument substantially stating that the central government's authority does not explicitly delegate responsibility to a specific institution, the Court emphasizes that the term "central government" in the norms of Article 42 paragraph (1) in Article 81 number 4 of Law 6/2023 refers to the minister responsible for labor affairs, *in casu* the Minister of Manpower. Therefore, the phrase **"central government"** in Article 42 paragraph (1) in Article 81 number 4 of Law 6/2023, which is not found in Article 1 of the General Provisions of Law 13/2003, creates legal uncertainty. Thus, the Petitioners argue that the phrase "central government" 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 "the minister responsible for labor affairs, *in casu* **the Minister of Manpower**."
- Whereas regarding the Petitioners' argument concerning Article 42 paragraph (3) letter a and letter c in Article 81 number 4 of Law 6/2023, the Court emphasizes that every employer must prioritize the use of Indonesian workers for all vacant positions. If a position cannot be filled by Indonesian workers, it may be occupied by TKA. However, the use of TKA must also consider domestic labor market conditions. Regarding the obligation to employ Indonesian workers, employers are also required to appoint Indonesian workers as assistants to TKA, so that technology and skills transfer can occur from the hired TKA to the accompanying Indonesian workers, enabling them to acquire the capabilities to eventually replace the TKA they assist [*vide* Elucidation of Article 45 paragraph (1) letter a in Article 81 number 7 of Law 6/2023]. In this context, in the Court's opinion, it is important to carry out intensive supervision in the implementation of the employment of TKA, education and job training for the TKA assistants, as well as the transfer of technology and skills from TKA to their Indonesian assistants, in order to uphold legal provisions in accordance with the limitations on TKA use, which are only allowed for certain positions and a specific period, and must also align with the competencies required for those positions, so that the goal of labor development in Indonesia can be achieved as mandated by Article 4 of Law 13/2003. Therefore, the Petitioners' argument regarding the concern that the exception to the RPTKA obligation in Article 42 paragraph (3) letter c in Article 81 number 4 of Law 6/2023 will harm Indonesian workers is unjustifiable.
- Whereas regarding the Petitioners' argument questioning the constitutionality of the norms of Article 42 paragraph (4) in Article 81 number 4 of Law 6/2023, which states, "Foreign workers may be employed in Indonesia only in Employment Relations for certain positions and a certain period and have competencies in accordance with the position to be occupied", according to the Petitioners, the *a quo* norms is feared to be a gateway for unskilled TKA to enter massively, thereby reducing job opportunities for Indonesian workers. In response to the Petitioners' *a quo* argument, the Court understands that providing opportunities for TKA in Indonesia is something that cannot be avoided, especially for sectors that require specialized skills that Indonesian workers are not yet able to fulfill. However, it is important to emphasize that the employment of TKA must be based on clear and measurable needs and should not harm job opportunities for Indonesian workers. This means that when statutory norms do not impose restrictions, lower regulations could potentially violate such limitations on TKA, allowing companies to employ TKA without specific skills (unskilled labor). In fact, the spirit of the norms of Article 42 paragraph (4) in Article 81 number 4 of Law 6/2023 is to emphasize the competence that must be possessed in accordance with

the position to be occupied. Therefore, data on prospective TKA in the approval of RPTKA must be supported by documents that demonstrate the required competencies, namely competency certificates, including educational diplomas. Thus, the norms of the article that do not explicitly state the limitation criteria for "specific positions" and delegate it to lower regulations have the potential to create multiple interpretations or could be interpreted differently, which is inconsistent with the principle of guaranteeing the right to work and a decent living in accordance with human dignity, *in casu* the guarantee for Indonesian workers. Pursuant to the above legal considerations, because the norms of Article 42 paragraph (4) in Article 81 number 4 of Law 6/2023, which state, "Foreign workers may be employed in Indonesia only in Employment Relations for certain positions and a certain period and have competencies in accordance with the position to be occupied" and do not explicitly regulate the limitations rigidly and only use the phrase "only in" result in uncertainty (multiple interpretations) as feared by the Petitioners, in order to prevent deviations in its implementation, it is important for the Court to declare that Article 42 paragraph (4) in Article 81 number 4 of Law 6/2023 is contrary to the 1945 Constitution of the Republic of Indonesia, to the extent that it is not interpreted as "**Foreign workers may be employed in Indonesia only in employment relations for certain positions and a certain period and have competencies in accordance with the position to be occupied, taking into account the priority of using Indonesian workers**".

- Whereas regarding the Petitioners' argument questioning the constitutionality of the norms of Article 42 paragraph (5) in Article 81 number 4 of Law 6/2023, which states, "Foreign Workers are prohibited from holding positions related to personnel management" due to the absence of broader prohibitions on specific positions, the Court emphasizes that the approval process for the RPTKA must consider various provisions, such as the limitation regarding TKA employment for certain positions and a certain period in accordance with their competencies, proven by, among other things, competency certificates. Employers are also prohibited from employing TKA in positions related to personnel management, including individual employers being prohibited from employing TKA. In addition, employers must pay compensation funds for each TKA they employ, appoint Indonesian workers as TKA assistants for technology and skill transfers from the TKA, and conduct education and job training for Indonesian workers serving as TKA assistants. In relation to that matter, in the Court's opinion, the entire process must be completed before granting approval for the RPTKA to employers, including in the case of granting of its extension. If these requirements are not met, Employers employing TKA are subject to sanctions in the form of revocation of approval or rejection of RPTKA extension, in accordance with applicable laws and regulations, so that without RPTKA, employers employing TKA will no longer be able to continue their business operations. Therefore, the Petitioners' *a quo* argument is legally unjustifiable;

2. Arguments on Fixed-Term Employment Agreements (PKWT)

- Whereas the Petitioners argue against the norms of Article 56 in Article 81 number 12 of Law 6/2023, specifically the addition of paragraph (3) and paragraph (4), concerning work duration or completion in fixed-term employment agreements (PKWT), previously regulated under Article 59 paragraph (4) of Law 13/2003, which explicitly limited PKWT to 2 (two) years, with a one-time extension of up to 1 (one) year. Regarding the Petitioners' *a quo* argument, in the Court's opinion, the norms regulating PKWT duration are crucial to be stipulated in law so that fixed-term employment agreements made between employers and workers/laborers must be made in accordance with the statutory norms and the provisions on PKWT duration are prevented from being changed not in accordance with law. Regarding the determination of the definitive duration of PKWT, in the Court's opinion, this is an area of open legal policy for legislators to regulate, as long as it does not prejudice the rights of workers or laborers.

However, given the unequal bargaining position between workers and employers in employment agreements, within the limits of reasonable reasoning, the norms of Article 56 paragraph (3) in Article 81 number 12 of Law 6/2023 create intolerable injustice. Therefore, to protect the right to work and a decent living for workers/laborers, before Article 81 number 12 of Law 6/2023 is amended, in the Court's opinion, it is necessary to affirm the current regulation on PKWT duration, namely a maximum of 5 (five) years, including any PKWT extensions, as the basis for employment agreements as specified in Article 56 paragraph (3) in Article 81 number 12 of Law 6/2023.

- Regarding the Petitioners' argument against the norms of Article 56 paragraph (4) in Article 81 number 12 of Law 6/2023, which states, "Further provisions regarding fixed-term employment agreements in accordance with the period or completion of a certain job shall be regulated in a Government Regulation", and raise concerns that delegating the regulation of PKWT to a Government Regulation (PP) might exclude public representation, *in casu* workers/laborers, in the Court's opinion, a PP is still needed to regulate the content of the law further, provided that it does not address substantive matters that should be stipulated in the law. In this sense, the PP should only cover technical aspects to simplify the adjustment process should amendments to the PP be required in the future. Without the Court assessing the legality of implementing regulations, PP No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment (PP 35/2021) has already been issued. Considering that the regulation of PKWT duration, as previously considered, is no longer within the scope of a PP but must be regulated by law and further technical provisions concerning PKWT can still be regulated in a PP as long as they are not contrary to the law, thus the Petitioners' *a quo* argument is legally unjustifiable.
- Whereas regarding the Petitioners' argument questioning norms of Article 57 in Article 81 number 13 of Law 6/2023 that, according to them, potentially cause workers or laborers employed under non-written PKWT to lose their legal right to obtain PKWTT, the Court finds ambiguity in the use of the term "must" in relation to the requirement that PKWT shall be in writing because the term "must" is currently formulated for the phrase "use Indonesian language and latin letters". It is important for the Court to emphasize the norms in question in the *a quo* Decision, to bring legal clarity and certainty in applying Article 57 paragraph (1) in Article 81 number 13 of Law 6/2023, therefore the *a quo* norms are reformulated to be interpreted as, "A fixed-term employment agreement must be made in writing using Indonesian language and latin letters". Pursuant to the legal reasoning above, the Petitioners' argument concerning the unconstitutionality of the norms of Article 57 paragraph (1) in Article 81 number 13 of Law 6/2023 is legally reasonable though not in the manner petitioned by the Petitioners.
- Whereas the Petitioners argue against the constitutionality of the norms of Article 59 in Article 81 number 15 of Law Number 6/2023. According to the Petitioners, the revocation of Article 59 paragraph (3) of Law Number 13/2003 could prejudice workers/laborers due to the absence of clear limits on the duration of extensions or renewals of PKWT, potentially resulting in indefinite or even lifelong employment under PKWT terms. Regarding the Petitioners' *a quo* argument, in the Court's opinion, Article 8 of PP 35/2021 stipulates that, in essence, "a PKWT based on a period may be made for a maximum of 5 (five) years. In the event that the PKWT period is about to end and the work being carried out has not been completed, the PKWT may be extended for one period according to the agreement between the employer and the worker/laborer, provided the total period of the PKWT and its extensions is no more than 5 (five) years". This means that the maximum time limit for PKWT is currently set at a maximum of 5 (five) years for PKWT workers. If the initial period of a PKWT has been

set at 5 (five) years, then the employer can no longer extend the term of the PKWT because this is not only inconsistent with the nature of the PKWT but also violates the rights of workers/laborers. Meanwhile, when compared with Law 13/2003, the time limit for PKWT, including its extensions, is longer because it was originally a maximum of 3 (three) years [vide Article 59 paragraph (4) of Law 13/2003]. Furthermore, because a characteristic of PKWT is a fixed term, a PKWT carried out without fulfilling the provisions of Article 59 paragraph (1) in Article 81 number 15 of Law 6/2023, namely made for certain work which, according to the type and nature or activity of the work, will be completed within a certain period, as well as Article 59 paragraph (2) in Article 81 number 15 of Law 6/2023, namely it is made for permanent work, is not actually a PKWT. However, in this context, Article 59 paragraph (3) in Article 81 number 15 of Law 6/2023 provides, "A fixed-term employment agreement that does not fulfill the provisions as referred to in paragraph (1) and paragraph (2) shall by law become an indefinite-term employment agreement." This means that the norms of Article 59 paragraph (3) in Article 81 number 15 of Law 6/2023 confirm that the PKWT automatically becomes a PKWTT to bring clear legal protection for workers/laborers. Thus, pursuant to the description of the legal considerations, the Petitioners' *a quo* argument is legally unjustifiable.

- Whereas the Petitioners argue against the norms of Article 61 in Article 81 number 16 of Law 6/2023. According to the Petitioners, an amendment to the norms of Article 61 of Law 13/2003 by adding provisions regarding the conditions for the end of the employment agreement, with the phrase "the completion of a certain job" in Article 61 paragraph (1) letter c in Article 81 number 16 of Law 6/2023, causes losses for workers/laborers, both those with the status of permanent workers (PKWTT) and contract workers (PKWT). Regarding the Petitioners' *a quo* argument, in the Court's opinion, the provisions for the termination of employment agreements are alternative so that the word "or" is used, which is basically almost the same as that stipulated in Article 59 of Law 13/2003. In this regard, there is only an addition of one new provision in letter c which is then questioned by the Petitioners, namely "the completion of a specific job". Article 61 paragraph (1) letter c in Article 81 number 16 of Law 6/2023 which contains the new provisions has a correlation with other norms in Law 6/2023 which regulate types of employment agreements, namely PKWT and PKWTT. This means that the provisions regarding the termination of the employment agreement as stated in Article 61 paragraph (1) letter c are to provide clarity regarding PKWT only, not PKWTT as concerned by the Petitioners. However, if a PKWT is to be terminated before the agreed period, as long as it has been agreed by the employer and employee and the time limit can be known from the beginning as stated in the employment agreements, company regulations, or joint employment agreements, in this regard, Law 13/2003 has provided legal protection for employees/laborers with respect to the termination of employment agreement before the end of the period set in the employment agreement, namely the party terminating the employment relation is required to pay compensation to the other party equal to the employee's wages up to the end period stated in the employment agreement. The provisions of Article 62 of Law 13/2003 are still in effect to this day, without any amendments, so that the rights of the parties, especially workers/laborers, are still under protection. Pursuant to the description of the legal considerations, in the Court's opinion, the Petitioners' *a quo* argument is an argument that cannot be confirmed by the Court. Therefore, the Petitioners' argument is legally unjustifiable.
- Whereas the Petitioners argue against the norms of Article 61A in Article 81 number 17 of Law 6/2023 which contain new norms and, according to the Petitioners, detrimental to workers/laborers in PKWT. This is because contract workers whose employment period is terminated due to the phrase "the completion of a certain job", which is regulated in Article 61 in Article 81 number 16 of Law 6/2023, will only be given compensation, the amount of which is not stated, but will be regulated in a PP.

Regarding the Petitioners' *a quo* argument, according to the Court, employees/laborers shall receive compensation as referred to in Article 62 of Law 13/2003 when: (1) PKWT is terminated before the period set in the employment agreement ends; or (2) the termination of the work relation is not due to the provisions of Article 61 paragraph (1). In this regard, it is important for the Court to emphasize that Article 61 paragraph (1) referred to in Article 62 of Law 13/2003 has been amended by Article 61 paragraph (1) in Article 81 number 16 of Law 6/2023 because the substance is almost the same, there is only an addition in letter c, namely regulating "the end of employment agreement". Thus, "worker/laborer wages up to the end period of employment agreement" are only given if the conditions are met before the PKWT period ends. Meanwhile, if the PKWT ends due to the period agreed in the employment agreement or the completion of a certain job, both of which are the essence of the PKWT, then the worker/laborer will receive compensation as referred to in Article 61A in Article 81 number 17 of Law 6/2023. The provision of workers' wages or compensation in accordance with these provisions is intended to provide a guarantee of certainty and protection of a decent life for workers/laborers as guaranteed in Article 27 paragraph (2) and Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Pursuant to these legal considerations, there is no issue of the unconstitutionality of the norms of Article 61A in Article 81 number 17 of Law 6/2023, thus the Petitioners' argument is legally unjustifiable.

3. Arguments on Outsourcing

- Whereas the Petitioners argue against Article 64 in Article 81 number 18 of Law 6/2023, the *a quo* norms of which, according to the Petitioners, tend to give a blank check to the government to further stipulate part of the implementation of the work related to outsourcing agreements. These provisions bring obscurity and uncertainty in terms of the government's stipulation on the part of the work that may be outsourced. Regarding the Petitioners' *a quo* argument, according to the Court, in order to avoid problems in the implementation, the word "government" as referred to in the *a quo* norms is "the minister responsible for labor affairs". This is important because the nomenclature of "government" is not specifically mentioned in Article 1 of the General Provisions in Law 13/2003, except for the nomenclature of "minister" which is the minister responsible for labor affairs. Meanwhile, regarding the Petitioners' arguments questioning the absence of a clear and definite legal basis regarding the types of work that can be outsourced, potentially raising concerns from the parties involved in the outsourcing scheme, including the Petitioners, then according to the Court, there needs to be clarity in the law stating that the minister shall stipulate types of work that can be outsourced under the outsourcing agreement. Thus, the parties involved in outsourcing agreements, such as the employer company, the outsourcing service provider company, and the workers, will have definitive standards regarding the types of work that can be outsourced, so that outsourced workers/laborers will only work on outsourced work in accordance with what has been agreed in written outsourcing agreements. This clarity will provide fair legal protection to workers/laborers regarding their employment status and basic rights, such as wages, social security, and decent working conditions because the types of outsourcing work have been determined in employment agreements. In addition, the provision on the types of outsourced work that must be set by the minister in future laws will make it clearer what can and cannot be done in the practice of outsourcing. Strict limitations on the work that can be outsourced can prevent mistakes in outsourcing work, which can lead to legal problems, and also reduce the possibility of conflict between companies and workers/laborers. Pursuant to the description of the legal considerations, the Petitioners' argument related to the issue of the constitutionality of the norms of Article 64 paragraph (2) in Article 81 number 18 of Law 6/2023 to the extent that it is not interpreted as "The Minister shall stipulate part of the implementation of the work as referred to in paragraph (1) in accordance with the types and fields of outsourcing work

agreed in written outsourcing agreements” is a justifiable argument. However, because the Court does not grant as petitioned by the Petitioners, the Petitioners' argument is legally justifiable in part.

- Whereas regarding the Petitioners' argument questioning the elimination of the norms of Article 65 in Article 81 number 19 of Law 6/2023, because it is contrary to the concept of in-house outsourcing on the basis that it prevents outsourcing from company’s guarantees and protection in terms of work system, according to the Court, the norms of Article 66 in Article 81 number 20 of Law 6/2023 as a follow-up to Constitutional Court Decision Number 27/PUU-IX/2011 are constitutional, so the Petitioners' argument stating that the elimination of the norms of Article 65 in Article 81 number 19 of Law 6/2023 and petitioning the re-enactment of the norms of Article 65 of Law 13/2003 is unreasonable. Thus, the Petitioners' argument regarding the norms of Article 65 in Article 81 number 19 of Law 6/2023 is legally unjustifiable.

4. Arguments on Leave

- Whereas the Petitioners substantially argue that Article 79 in Article 81 number 25 of Law 6/2023 has caused multiple interpretations and potentially leads to the absence of compensation and fair treatment in work relations related to rest/leave rights and paid rest/leave for workers, as stipulated in Article 84 of Law 13/2003. According to the Court, with the enactment of Article 79 in Article 81 number 25 of Law 6/2023, the norms argued by the Petitioners are not eliminated but reformulated and repositioned, emphasizing the obligation of employers to provide "annual leave of no less than 12 (twelve) working days after workers/employees have worked continuously for 12 (twelve) months" [vide Article 79 paragraph (3) in Article 81 number 25 of Law 6/2023]. In this context, the terminology used has changed, from "at least" to "no less than." This change aligns with provisions in Appendix II of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, as last amended by Law Number 13 of 2022 (Law 12/2011), in which the term "at least" is not used to indicate a minimum requirement but is replaced by "no less than" [vide number 256 of Appendix II of Law 12/2011]. Thus, the norms of Article 79 paragraph (2) letter (c) of Law 13/2003 remain regulated in Article 79 paragraph (3) in Article 81 number 25 of Law 6/2023. Meanwhile, regarding "extended rest," previously regulated in Article 79 paragraph (2) letter (d) of Law 13/2003, against which the Petitioners argue because it has not been contained in Article 79 in Article 81 number 25 of Law 6/2023, which stated, "In addition to rest and leave as referred to in paragraph (1), paragraph (2), and paragraph (3), certain Companies may provide extended rest regulated in Employment Agreements, Company Regulations, or Joint Employment Agreements". Subsequently, paragraph (6) mandates further regulation related to certain companies that will provide extended rest through government regulation. In this regard, without intending to assess the legality of the PP, PP 35/2021 does not further regulate the mandate of Article 79 paragraph (5) in Article 81 number 25 of Law 6/2023, as it merely reiterates the substance of Article 79 paragraph (5) *a quo* by stating, "certain companies may provide extended rest, and its implementation is regulated in employment agreements, company regulations, or joint employment agreements.” Pursuant to the legal considerations mentioned above, in the Court’s opinion, there is no constitutional issue with the norms of Article 79 paragraph (2) in Article 81 number 25 of Law 6/2023 being correlated with the norms of Article 84 in Article 81 number 26 of Law 6/2023. Thus, the Petitioners' argument is legally unjustifiable.

- Whereas the Petitioners' argument substantially states that Article 79 paragraph (2) letter (b) in Article 81 number 25 of Law 6/2023, which amends Article 79 paragraph (2) letter (b) of Law 13/2003 and does not accommodate the rights of workers/laborers working for employers or companies that implement a five-day workweek with two rest days, has caused discriminatory treatment against workers/laborers. According to the

Court, considering philosophical and sociological aspects, weekly rest is a form of recognition of workers' needs to maintain a balance between work and personal life of workers/laborers. In fact, workers are not merely individuals devoting their entire time to work but also have lives outside work requiring attention, such as family, education, health, and personal relaxation time. By providing rest days in accordance with the company conditions, companies can choose whether they implement one rest day for six working days per week or two rest days for five working days per week, depending on each company's needs to increase productivity while balancing the rights of workers/laborers. On the contrary, under Article 81 number 25 Law 6/2023, companies implementing two rest days for five working days per week are beyond the scope of the Article because such an option has been revoked, though regulated under Article 22 of PP 35/2021. Therefore, for the purposes of legal clarity and certainty, the Court finds it necessary to affirm the rest day provision as argued by the Petitioners, by declaring that the norms of Article 79 paragraph (2) letter (b) in Article 81 number 25 of Law 6/2023 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 to include the phrase "or 2 (two) days for 5 (five) working days in 1 (one) week." Pursuant to these legal considerations, because the petition is granted not in the manner petitioned by the Petitioners, the Petitioners' argument is legally justifiable in part.

- Whereas the Petitioners argue that the norms of Article 79 paragraph (5) in Article 81 number 25 of Law 6/2023, stating, "In addition to rest and leave periods as referred to in paragraph (1), paragraph (2), and paragraph (3), certain Companies may provide extended rest as regulated in Employment Agreements, Company Regulations, or Joint Employment Agreements", are unconstitutional. The *a quo* norms amend the provisions of Article 79 paragraph (2) letter d of Law 13/2003, resulting in extended leave being no longer mandatory to be provided for workers/laborers. Regarding the Petitioners' *a quo* argument, in the Court's opinion, extended leave is part of the rest determined as a constitutional right that must be granted by employers in certain companies. The provision of extended leave has been regulated for certain companies. This aligns with the original intent in Article 79 of Law 13/2003, which states, "The right to extended leave as referred to in paragraph (2) letter d only applies to workers/laborers employed in certain companies." This indicates that only clearly defined companies are required to provide extended leave. However, the term "may" in Article 79 paragraph (5) in Article 81 number 25 of Law 6/2023, along with its Elucidation, stating that "Companies that have implemented extended leave shall not reduce the existing provisions," implies that, in an *a contrario* way, companies not currently implementing extended leave could reduce or even entirely omit this extended leave. Pursuant to these legal considerations, to provide legal certainty for workers/laborers employed by certain companies so that they must be provided extended leave, in the Court's opinion, the word "may" in Article 79 paragraph (5) in Article 81 number 25 of Law 6/2023 must be declared unconstitutional as stated in the *a quo* verdict. Thus, the Petitioners' argument is legally justifiable in part.

5. Arguments on Wages

- Whereas according to the Petitioners, the norms of Article 88 in Article 81 number 27 of Law 6/2023 are contrary to Article 27 paragraph (2) and Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The Petitioners argue that the revocation of the Elucidation of Article 88 paragraph (1) of Law 13/2003, which previously described the meaning of "a decent living in accordance with human dignity," creates legal uncertainty by reducing the protection of constitutional rights of workers/laborers. Regarding the Petitioners' *a quo* argument, according to the Court, the Elucidation of Article 88 paragraph (1) of Law 13/2003, which has been revoked by Article 81 number 27 of Law 6/2023, remains relevant in interpreting the phrase "fulfilling a decent living in accordance with human dignity," as

this aligns with the essence of the norms of Article petitioned for review. Therefore, it is appropriate to incorporate the substance of the Elucidation of Article 88 paragraph (1) of Law 13/2003 into the interpretation of Article 88 paragraph (1) in Article 81 number 27 of Law 6/2023. Thus, to eliminate ambiguity and uncertainty while ensuring no violation of the right to employment and a decent living in accordance with human dignity as stipulated in Article 27 paragraph (2) of the 1945 Constitution, the Court considers it important to interpret Article 88 paragraph (1) in Article 81 number 27 of Law 6/2023 to become "including income that meets a living standard, which is the amount of receipts or income received by workers/laborers from their work so that they are able to meet the reasonable living needs of workers/laborers and their families, which include food and drink, clothing, housing, education, health, recreation, and old age security" Thus, the Petitioners' *a quo* argument is legally justifiable in part.

- The Petitioners also argue that Article 88 paragraph (2) in Article 81 number 27 of Law 6/2023, which states, “The Central Government establishes wage policies as part of efforts to realize the rights of workers/laborers to a decent living in accordance with human dignity” is contrary to the principle of regional autonomy as regulated in Article 18 of the 1945 Constitution of the Republic of Indonesia, due to granting exclusive authority over wage policy to the central government and eliminating the role of regional governments in determining minimum wages. Regarding the Petitioners' *a quo* argument, according to the Court, essential aspects of wage policy formulation include: minimum wages, proportional wage structures and scales, overtime pay, wages for absences and/or not working due to specific reasons, wage payment methods, components included in wages, and wages as the basis for calculating or paying other rights and obligations. These matters cannot be decided and stipulated solely by the central government. In other words, wage policy formulation requires the involvement of multiple parties. The Petitioners' concern about the lack of regional government involvement is unreasonable, as Article 98 paragraph (1) in Article 81 number 39 of Law 6/2023 explicitly affirms the role of regional governments in formulating wage policies and developing wage systems through wage councils. This involvement allows regional governments to ensure that wage policies are responsive to efforts in realizing workers' rights to a decent living, on the basis that regional governments have deeper insights into the local workforce's potential, challenges, and realities experienced by workers and employers in their regions. In addition to regional governments, wage councils play a vital role by actively providing meaningful advice and recommendations for wage policy formulation that will be stipulated by the central government. Moreover, these councils include representatives from the government, employer organizations, trade unions/labor unions, experts, and academics at corresponding regional levels. Therefore, the central government cannot establish a wage policy without genuinely considering regional aspirations through a bottom-up process. In this regard, careful examination of the norms of Article 88 paragraph (2) in Article 81 number 27 of Law 6/2023 shows the absence of any provision explicitly involving regional wage councils. In fact, wage policy formulation as provided in Article 98 paragraph (1) in Article 81 number 39 of Law 6/2023 requires the involvement of wage councils that include regional government representatives. Therefore, to provide clarity and certainty in wage policy formulation, the Court finds it necessary to interpret Article 88 paragraph (2) in Article 81 number 27 of Law 6/2023 as "involving regional wage councils that include regional government representatives in formulating wage policy recommendations, which serve as input for the central government in establishing wage policies”. Pursuant to these legal considerations, the Court concludes that the Petitioners' argument is legally justifiable in part.
- Whereas the Petitioners also argue against the constitutionality of the norms of Article 88 paragraph (3) in Article 81 number 27 of Law 6/2023, which amended provisions on wage structure and scale, eliminated severance pay, and revoked the determination of minimum wages on the basis of decent living needs, productivity, and economic

growth as previously regulated in Articles 88 paragraphs (3) and (4) of Law 13/2003, resulting in infringement upon workers/laborers' constitutional rights to decent wages. Regarding the Petitioners' argument, according to the Court, the phrase "proportional" was previously affirmed in Article 88 paragraph (3) letter i of Law 13/2003, then was revoked from wage policy provisions under the amendment of Article 88 paragraph (3) letter b in Article 81 number 27 of Law 6/2023. With respect to such revocation of the phrase “proportional”, the Court finds it important to emphasize that, although the Petitioners do not explicitly argue against the omission of the phrase, it has correlation and relevance to wage policy considerations in, among others, ensuring a decent living in accordance with human dignity, and therefore the Court needs to consider the phrase “proportional” comprehensively in relation to wage matters as argued by the Petitioners. Within the limits of reasonable reasoning, the phrase "proportional" is crucial in determining compensation from employers to workers, consistent with the legal definition of wages as workers' rights received in monetary form as remuneration from employers, determined and paid in accordance with employment agreements, agreements, or statutory regulations, including allowances for workers/laborers and their families, for work and/or service that they have or will provide. Compensation should be determined proportionally by considering the company's capacity and productivity in determining wages for workers with one year of service or more [vide Article 92 in Article 81 number 33 of Law 6/2023, amending Article 92 paragraph (1) and paragraph (2) of Law 13/2003]. Establishing a proportional wage structure and scale can serve as a guideline for wage determination, ensuring wage certainty for each worker/laborer and reducing wage disparities within a company, reflecting the essence of the Elucidation of Article 92 in Article 81 number 33 of Law 6/2023. This approach aligns with efforts to realize workers/laborers’ rights to a decent living in accordance with human dignity. Therefore, the norms of Article 88 paragraph (3) letter b in Article 81 number 27 of Law 6/2023, which state, "wage structure and scale," are contrary to the efforts to realize the right to work and a decent living as guaranteed in Article 27 paragraph (2) of the 1945 Constitution. Thus, according to the Court, the norms of Article 88 paragraph (3) letter b in Article 81 number 27 of Law 6/2023 are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force, to the extent that it is not interpreted as “a proportional wage structure and scale”. Thus, the norms of Article 88 paragraph (3) letter b in Article 81 number 27 of Law 6/2023 read, “b. a proportional wage structure and scale”; as completely stated in the *a quo* verdict. Pursuant to these legal considerations, the Petitioners' argument concerning the unconstitutionality of the norms of Article 88 paragraph (3) letter b in Article 81 number 27 of Law 6/2023, particularly regarding "wage structure and scale," is legally justifiable in part.

- Whereas regarding the Petitioners' argument questioning the revocation of the norms of Article 88 paragraph (3) letter j of Law 13/2003 containing the phrase "wages for severance pay", and Article 88 paragraph (4) of Law 13/2003, which stipulates that "The Government sets the minimum wage as referred to in paragraph (3) letter a pursuant to decent living needs and considering productivity and economic growth," in which the Petitioners argue that the elimination of such norms prejudices constitutional rights of workers/laborers to fair wages, in the Court’s opinion, there is no issue of unconstitutionality arising from the revocation of Article 88 paragraph (3) letter j of Law 13/2003. This is because the Petitioners still retain the right to severance pay or compensation in the event of Termination of Employment (PHK), as stipulated in Article 156 in Article 81 number 47 of Law 6/2023.
- Whereas regarding the Petitioners’ argument that the revocation of Article 88 paragraph (4) of Law 13/2003, which previously regulated "minimum wages pursuant to decent living needs and considering productivity and economic growth" is unconstitutional, in the Court’s opinion, upon reviewing the substantive norms of Article 88C in Article 81 number 28 of Law 6/2023, the Court finds that the *a quo* norms

outline minimum wage determination criteria similar in essence to Article 88 paragraph (4) of Law 13/2003. Additionally, Article 92A in Article 81 number 34 of Law 6/2023 regulates periodic wage reviews by employers, considering the company's capabilities and productivity. This review does not necessarily mean that workers/laborers' wages fall below the minimum wage. Moreover, the Court has interpreted Article 88 paragraph (1) in Article 81 number 27 of Law 6/2023 to become the basis for the fulfillment of decent living standards for workers/laborers. Therefore, in the Court's opinion, there is no issue of unconstitutionality of the norms of Article 88 paragraph (4) of Law 13/2003 due to the revocation of the provision which stipulates that "The Government sets the minimum wage as referred to in paragraph (3) letter a pursuant to decent living needs and considering productivity and economic growth". Pursuant to these legal considerations, the Court needs to emphasize that the revocation of Article 88 paragraph (3) letter j and Article 88 paragraph (4) of Law 13/2003 is legally justifiable. Consequently, the Court does not have a strong basis to re-enact Article 88 paragraph (3) letter j and Article 88 paragraph (4) of Law 13/2003. Thus, the Petitioners' argument is legally unjustifiable.

- Whereas regarding the Petitioners' argument questioning the constitutionality of the norms of Article 88A paragraph (7) in Article 81 number 28 of Law 6/2023, which impose a fine on workers/laborers who commit intentional or negligent violations that could potentially reduce fair legal protection and prejudice workers' rights, thereby are contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, according to the Court, the mechanism for fines for employers and workers/laborers has been regulated in detail in PP 36/2021. For example, fines may only be imposed if they are regulated in the employment agreement or applicable regulations. The fines imposed must be used for the benefit of workers/laborers, in accordance with the type of violation and usage as regulated in the agreement. Employers who are late in paying wages will be fined in accordance with the percentage of the delay, and those who are late in paying religious holiday allowances will be fined 5%, without eliminating the obligation to pay the allowances. Pursuant to these legal considerations, in the Court's opinion, the Petitioners' argument regarding the norms of Article 88A paragraph (7) in Article 81 number 28 of Law 6/2023, which regulate fines for workers/laborers who commit intentional or negligent violations, it is not contrary to the principles of justice and legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Instead, they strengthen efforts to create a fair and balanced employment relationship between employers and workers/laborers. Thus, the Petitioners' *a quo* argument is legally unjustifiable.
- Whereas the Petitioners argue that the norms of Article 88B in Article 81 number 28 of Law 6/2023, which regulate that the determination of wages is in accordance with the time units and/or output, have raised concerns about uncertainty and potential for multiple interpretations. Regarding the Petitioners' *a quo* argument, according to the Court, the provisions regarding wages in accordance with the time units include hourly, daily, or monthly schemes. Hourly wages are specifically for part-time workers only and must be in accordance with an agreement that cannot be lower than the formula for hourly wages that has been set above. This formula may be reviewed if there is a significant change in the median part-time working hours. Daily wages are calculated in accordance with the working time system, where companies with a six-day workweek divide the monthly wage by 25 (twenty-five), while companies with a five-day workweek divide the monthly wage by 21 (twenty-one). Furthermore, wages in accordance with the output are determined according to the work results agreed upon between workers/laborers and employers, which then serve as the basis for determining compensation. Pursuant to the above legal considerations, the provision regarding wages in accordance with the time units and/or output as regulated in Article 88B in Article 81 number 28 of Law 6/2023 aims to provide flexibility in the wage

system, while still ensuring a fair mechanism that protects and does not harm workers' rights in fulfilling a decent living. Therefore, the norms of Article 88B in Article 81 number 28 of Law 6/2023, which regulate the determination of wages in accordance with the time units and/or output, have not caused legal uncertainty or multiple interpretations. Thus, the Petitioners' argument is legally unjustifiable.

- Whereas the Petitioners argue that Article 88C in Article 81 number 28 of Law 6/2023, which eliminates the provisions on Sectoral Minimum Wage (UMS) and Regency/City Minimum Wage (UMK), may in practice reduce protection for workers, thus the state no longer provides adequate protection for workers' rights. Regarding the Petitioners' *a quo* argument, according to the Court, sectoral minimum wages are an important instrument to ensure the welfare of workers in specific sectors that have characteristics and work risks different from other sectors. The regulation of sectoral minimum wages provides more specific and fair protection to workers in these sectors, especially in situations where certain sectors require higher wage standards due to more demanding work or specialized skills. The elimination of provisions regarding sectoral minimum wages in Law 6/2023 may result in a decline in the protection standards that were previously provided to workers, especially in sectors that require special attention from the state. Therefore, the revocation of the sectoral minimum wage provision is contrary to the principle of protecting workers' rights, which are part of human rights, especially the right to work and receive fair and decent remuneration and treatment in employment relations, as stipulated in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Pursuant to the above legal considerations, the regulation in the norms of Article 88C in Article 81 number 28 of Law 6/2023 must still guarantee protection by providing a minimum wage for workers in specific sectors. According to the Court, Article 88C in Article 81 number 28 of Law 6/2023 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 "including the governor being obligated to set sectoral minimum wages at the provincial level and may set at the regency/city level". Thus, the Petitioners' argument is legally justifiable in part.

- Whereas the Petitioners also argue that Article 88D in Article 81 number 28 of Law 6/2023 disregards the achievement of a Decent Living Needs (KHL) in the calculation of the minimum wage, referring to the provisions of Article 3 of ILO Convention No. 131, recommending to consider the KHL, the cost of living, and other economic factors in setting the minimum wage. Regarding the Petitioners' *a quo* argument, according to the Court, after carefully reading the norms of Article 88D in Article 81 number 28 of Law 6/2023, the *a quo* provision must be understood in the context of the national wage policy, which seeks to maintain a balance between economic factors and workers' interests, through calculating the minimum wage using a formula in accordance with variables such as economic growth or inflation and a specific index, aiming to ensure that the minimum wage remains relevant to the evolving economic conditions. Furthermore, regarding the phrase “a specific index” as referred to in Article 88D paragraph (2) in Article 81 number 28 of Law No. 6/2023, without the Court intending to assess the legality of Government Regulation No. 51/2023, pursuant to the provisions of Article 26 paragraph (3) of PP 51/2023, the “specific index” is symbolized by “α,” a variable representing the contribution of labor to the economic growth of the province or regency/city. This index is determined by the wage council of the province or regency/city, taking into account factors such as employment absorption rates and average or median wages. Additionally, the determination of this index must consider the interests of both parties, namely companies and workers/laborers, and the principle of proportionality to meet the needs of a decent living standard for laborers. Pursuant to these legal considerations, in the Court’s opinion, to eliminate any ambiguity regarding the meaning of the phrase “a specific index” in Article 88D paragraph (2) in Article 81 number 28 of Law 6/2023, interpretation is needed. Therefore, the phrase “a specific index” in Article 88D

paragraph (2) in Article 81 number 28 of Law 6/2023 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 “a specific index is a variable representing the contribution of labor to the economic growth of provinces or regencies/cities, taking into account the interests of companies and workers/laborers, as well as the principle of proportionality to meet the decent living needs (KHL) of workers/laborers” as stated in the *a quo* verdict. Thus, the Petitioners' argument is legally justifiable in part.

- Whereas subsequently, the Petitioners argue that Article 88E in Article 81 number 28 of Law 6/2023, which regulates the determination of different minimum wages in accordance with the term of service, could lead to multiple interpretations and legal uncertainty. Regarding the Petitioners' *a quo* argument, according to the Court, the concerned multiple interpretations could arise if there is no further clarification regarding the wage mechanism for workers with more than one year of service. In fact, the *a quo* norms explicitly only regulate workers with less than one year of service and do not automatically eliminate or disregard the rights of workers with longer service periods. On the contrary, the determination of wages for workers with more than one year of service can still be arranged through different mechanisms, such as agreements between workers and employers or arrangements in joint employment agreements that allow for wage adjustments that are more appropriate to the conditions of work experience, expertise, or greater responsibility. This means that the Petitioners' concerns are unfounded because Article 88E paragraph (2) in Article 81 number 28 of Law 6/2023 also explicitly prohibits employers from paying wages lower than the minimum wage. Pursuant to these legal considerations, the Court concludes that the norms of Article 88E in Article 81 number 28 of Law 6/2023 do not create legal uncertainty nor multiple interpretations as argued by the Petitioners. Thus, the Petitioners' argument is legally unjustifiable.
- Whereas the Petitioners argue that Article 88F in Article 81 number 28 of Law 6/2023 weakens the protection of workers' rights by granting excessive power to the government to determine a different formula for calculating the minimum wage. Whereas after the Court carefully reads the norms of the *a quo* Article, it is evident that the issue raised by the Petitioners concerns the phrase “under certain circumstances” which is feared could be misused by the government to establish a formula for calculating the minimum wage that differs from the “normal” conditions, thus disadvantaging workers. Regarding the Petitioners' *a quo* argument, according to the Court, there must be provisions that constitutionally and measurably provide the government with the flexibility to respond to unforeseen events, such as an economic crisis or other emergencies, like the COVID-19 Pandemic, which may require an adjustment of a different minimum wage calculation formula because, during such 'certain circumstances,' not only workers/laborers but everyone, including employers, would feel the impact, and a prompt and accurate response would be needed to protect society from larger threats [vide Article 3 paragraph (2) letter a and Article 4 letter a of Law 24/2007]. Moreover, if the norms petitioned for review are correlated with Article 151 paragraph (1) in Article 81 number 40 of Law 6/2023, the opportunity to adjust the formula for calculating the minimum wage under certain circumstances by the employer is part of efforts to prevent layoffs, which would only burden workers/laborers who are also facing the certain circumstances. However, regarding the Petitioners' concerns about the possible abuse of the phrase 'under certain circumstances' by employers to adjust the different minimum wage calculation formula, it is important for the Court to affirm the Elucidation of “under certain circumstances” in Article 88F in Article 81 number 28 of Law 6/2023, by interpreting it as “The term "under certain circumstances" includes, among others, natural or non-natural disasters, including extraordinary global and/or national economic conditions determined by the President in accordance with the provisions of laws and regulations”. Thus, the Petitioners' argument concerning the phrase “under certain

circumstances” is legally justifiable in part.

- Whereas the Petitioners argue that the norms of Article 89, which have been repealed by Article 81 number 29 of Law 6/2023, are contrary to the 1945 Constitution of the Republic of Indonesia, and petition for the reinstatement of Article 89 of Law 13/2003.
- Regarding the norms that have been repealed, in the Court’s opinion, the abolition of Article 89 of Law 13/2003 by Article 81 number 29 of Law 6/2023 is part of the legislators’ effort to improve and adjust the wage system comprehensively in the context of labor reform. This is because the provision regarding 'minimum wage' has also been regulated and accommodated, among others, in Article 88C, Article 88D, Article 88E, and Article 88F in Article 81 number 28 of Law 6/2023. In this regard, the Court must emphasize that the abolition of the norms of Article 89 of Law 13/2003 is justifiable. Moreover, the minimum wage has been regulated and accommodated, among others, in Article 88C, Article 88D, Article 88E, and Article 88F in Article 81 number 28 of Law 6/2023. Therefore, there is no strong reason for the Court to reinstate the provision as requested by the Petitioners. Thus, the Petitioners' argument is legally unfounded.
- Whereas the Petitioners argue that the norm of Article 90 which has been repealed by Article 81 number 30 of Law 6/2023 is contrary to the 1945 Constitution of the Republic of Indonesia, and request that Article 90 of Law 13/2003 be reinstated. Regarding the Petitioners' arguments *a quo,* according to the Court, the repealed norm does not allow employers to freely pay wages below the minimum wage. The provisions in Law 6/2023 have regulated the principles of wages, for example, every worker/laborer has the right to a decent living in accordance with human dignity, and to realize this right, the central government determines wage policies. This policy covers various aspects, namely minimum wages, wage structure and scale, overtime wages, wages when not working for certain reasons, forms and methods of wage payments, components that can be calculated with wages, and the use of wages as a basis for calculating other rights and obligations [vide Article 81 number 27 of Law 6/2023 which amends Article 88 of Law 13/2003]. Furthermore, in accordance with an agreement between the employer and the worker/laborer in the company, wages can be set above the minimum wage. Moreover, the provisions that were revoked have actually been accommodated in Article 88E paragraph (2) in Article 81 number 28 of Law 6/2023, where employers are prohibited from paying wages lower than the minimum wage. Therefore, the elimination of the norm of Article 90 of Law 13/2003 can be justified. So, there is no basis for the Court to reinstate the *a quo* norms as petitioned by the Petitioners. Thus, the Petitioners’ *a quo* argument is legally unjustifiable.
- Whereas the Petitioners argue that the norms of Articles 90A and 90B in Article 81 number 31 of Law 6/2023 are contrary to the 1945 Constitution of the Republic of Indonesia. According to the Petitioners, under Article 90A in Article 81 number 31 of Law 6/2023, wages above the minimum wage are determined by an agreement between employers and workers/laborers within a company, not involving trade unions/labor unions. Regarding the Petitioners’ *a quo* argument, according to the Court, it is commendable for employers who can provide wages above the minimum wage to workers/laborers, thereby promoting the welfare of workers/laborers in securing a decent living as guaranteed by Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, without diminishing the merit of employers, there must be harmonization between Article 90A in Article 81 number 31 of Law 6/2023 and Article 88A in Article 81 number 28 of Law 6/2023, particularly concerning the involvement of trade unions/labor unions in the wage determination process above the minimum wage as petitioned by the Petitioners. This is because the norms of Article 90A in Article 81 number 31 of Law 6/2023 do not involve trade unions/labor unions in the wage negotiation process above the minimum wage. In this regard, trade unions/labor unions play a crucial role in maintaining a balance of

bargaining power between workers/laborers and employers. This aligns with the definition of a labor union as an organization formed by, from, and for workers/laborers, either within or outside the company, which is independent, open, democratic, and responsible, aimed at advocating for, defending, and protecting the rights and interests of workers/laborers and improving their welfare and that of their families [vide Article 1 number 17 of Law 13/2003]. Additionally, the norms petitioned for review should also align with the existence of the Wage Council as regulated in Article 98 of Article 81 number 39 of Law 6/2023, where the Wage Council includes representatives from the government, employer organizations, trade unions/labor unions, experts, and academics. Therefore, in the formulation of wage policies, including policies related to wages above the minimum wage, the involvement of trade unions/labor unions must be considered as part of the checks and balances mechanism in industrial relations. Pursuant to these legal considerations, according to the Court, the norms of Article 90A in Article 81 number 31 of Law 6/2023 are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force to the extent that they are not interpreted as "Wages above the minimum wage are determined in accordance with an agreement between the Employer and Workers/Laborers or Labor Unions/Trade Unions in the company". Thus, the Petitioners' argument is legally justifiable in part. Regarding the constitutionality of the norms of Article 90B in Article 81 number 31 of Law 6/2023, according to the Court, the minimum wage UMK has also been determined using a specific formula to ensure that the agreed wage does not fall below a threshold that endangers the welfare of workers/laborers, which is at least 50% of the average community consumption level at the provincial level or 25% above the poverty line at the provincial level. According to the Court, the norms of Article 90B in Article 81 number 31 of Law 6/2023 have clearly protected workers/laborers in micro and small enterprises (UMK) to fulfill their right to a decent living. Pursuant to these legal considerations, the Petitioners' argument regarding the norms of Article 90B in Article 81 number 31 of Law 6/2023 is legally unjustifiable.

- Whereas the Petitioners argue that the norms of Article 91, which have been repealed by Article 81 number 32 of Law 6/2023, are contrary to Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and petition for the reinstatement of Article 91 of Law 13/2003. Regarding the repealed norms, according to the Court, this is a consequence of policy changes in employment regulation as stipulated in Law 6/2023. However, the repeal of the norms does not automatically eliminate protection for workers/laborers in terms of wages, as other provisions in Law 6/2023 regulate that companies cannot arbitrarily determine wage agreements that harm workers/laborers. For example, wage agreements must be established through mutual agreement between employers and workers/laborers [vide Article 88A in Article 81 number 28 of Law 6/2023], and provisions on the determination of minimum wages [vide Article 88C, Article 88D, Article 88E, and Article 88F in Article 81 number 28 of Law 6/2023]. In light of these considerations, the Court needs to affirm that the repeal of Article 91 of Law 13/2003 is justified. Therefore, there is no strong basis for the Court to reinstate Article 91 of Law 13/2003. Thus, the Petitioners' argument is legally unjustifiable.
- Whereas the Petitioners also argue that the norms of Article 92 in Article 81 number 33 of Law 6/2023 are contrary to Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. According to the Petitioners, the norms of Article 92 paragraph (1) of Law 13/2003 initially required employers to establish a wage structure and scale by considering the employees' rank, position, years of service, education, and competence. However, the enactment of the norms of Article 92 in Article 81 number 33 of Law 6/2023 has altered these criteria for the company's ability and productivity. Regarding the Petitioners' *a quo* argument, according to the Court, the Court finds disparities in regulating the establishment of

proportional wage structures and scales due to the absence of indicators/parameters of workers/laborers considered by employers. Moreover, the *a quo* Article also justifies equal treatment for inherently distinct aspects, *in casu* rank, position, years of service, education, and competence, which naturally vary among individual workers/laborers. Additionally, revoking indicators/parameters of workers/laborers from wage structure formulation has eliminated the state's role in providing adequate protection to workers, ensuring fair compensation in accordance with their qualifications. This weakens the workers' bargaining power in employment relations. Such regulation evidently results in real injustice for workers/laborers. Therefore, the state should be present and play a role in providing fair and proper protection to workers/laborers in order to enhance the company's productivity. Pursuant to these legal considerations, the norms of Article 92 paragraph (1) in Article 81 number 33 of Law 6/2023 do not guarantee workers/laborers' right to a decent living in accordance with human dignity as protected under Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. Therefore, according to the Court, the norms of Article 92 paragraph (1) in Article 81 number 33 of Law 6/2023 are contrary to the 1945 Constitution and have no binding legal force to the extent that they are not interpreted as "Employers are required to establish wage structure and scale in the company by taking into account the company's capability and productivity, as well as class, position, length of service, education, and competence" Thus, the Petitioners' argument is legally justifiable in part.

- Whereas the Petitioners also question the constitutionality of the Elucidation of Article 94 in the Elucidation of Article 81 number 35 of Law 6/2023, which reads: "The term "fixed allowance" means payments made to Workers/Laborers regularly and not linked to the Workers/Laborers' attendance or specific work performance achievements", arguing that it reduces workers' rights to fair compensation, particularly regarding fixed allowances no longer taking into account of attendance and performance. Regarding the Petitioners' *a quo* argument, according to the Court, if "fixed" allowance amount is tied to attendance or specific work performance achievements, the amount would become dynamic/fluctuating/varying according to different levels of attendance or performance over time. Moreover, linking fixed allowances to attendance or specific performance would negate the "fixed" essence of such allowance. Therefore, according to the Court, there is no constitutional issue in the norms of the *a quo* Article that would harm workers/laborers' rights to work and a decent living and their right to fair and appropriate remuneration and treatment. This can be understood because fixed allowances constitute one of the wage components that are "regular" in terms of calculation. The absence of attendance and work performance calculations in determining fixed allowances does not result in unfair or inadequate wages, as these factors can still be considered by employers in determining other wage components beyond the basic salary and fixed allowances. Pursuant to these legal considerations, the Petitioners' argument regarding the unconstitutionality of the Elucidation of Article 94 in the Elucidation of Article 81 number 35 of Law 6/2023 is unjustifiable. Thus, the Petitioners' argument regarding the consideration of attendance and work performance in fixed allowances is legally unjustifiable.
- Whereas according to the Petitioners, the norms of Article 95 in Article 81 number 36 of Law 6/2023 are unconstitutional because they reduce workers/laborers' rights concerning the priority of wage payments and other entitlements when a company is bankrupt or liquidated. Regarding the Petitioners' *a quo* argument, according to the Court, the Court has emphasized the obligation to settle debts owed to workers/laborers, distinguishing between wage debts and debts related to other entitlements such as severance pay, service awards, religious holiday allowances, and compensation for unused leave, as long as these are stipulated in employment agreements, joint employment agreements, or company regulations. In the context of the *a quo* Article, the phrase "other entitlements" pertains to debt settlement

obligations when a company is bankrupt. Whereas the distinction between settling wage debts and debts related to other entitlements owed to workers/laborers is seen as a measure to ensure fair legal certainty not only for workers/laborers but also for secured creditors holding property security rights. However, the Court needs to emphasize the priority of settling debts related to workers/laborers' other entitlements under Article 95 paragraph (3) in Article 81 number 36 of Law 6/2023 to eliminate ambiguity in ranking payments of debts related to workers/laborers' other entitlements in cases of company bankruptcy. Pursuant to these legal considerations, as a form of protection for workers to receive fair and proper compensation and treatment in employment relations and to ensure fair legal certainty, in the Court's opinion, the norms of Article 95 paragraph (3) in Article 81 number 36 of Law 6/2023 are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force to the extent that they are not interpreted as "Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors, including preferred creditors, except creditors holding collateral rights" Thus, the Petitioners' argument is legally justifiable in part.

- Whereas according to the Petitioners, the norms of Article 97, which were revoked by Article 81 number 38 of Law 6/2023, stating, "The provisions concerning adequate income, wage policy, decent living needs, and wage protection as referred to in Article 88, the determination of the minimum wage as referred to in Article 89, and the imposition of fines as referred to in Article 95 paragraph (1), paragraph (2), and paragraph (3) shall be regulated by Government Regulation," are unconstitutional. Regarding the Petitioners' *a quo* argument, according to the Court, after carefully examining the provision of *a quo* norms, the amendment of Law 13/2003 by Law 6/2023 involves reorganization and rearrangement of the norms into new articles, as reflected in Article 88 in Article 81 number 27, Article 88A in Article 81 number 28, which relate to wage issues, and Article 88C in Article 81 number 28 of Law 6/2023, which relate to minimum wage. In this context, according to the Court, the revocation of the norms of Article 97 of Law 13/2003 is justified. Therefore, there is no reason for the Court to reinstate the norms that have been revoked as petitioned by the Petitioners. Thus, the Petitioners' *a quo* argument is legally unjustifiable.
- Whereas according to the Petitioners, the norms of Article 98 in Article 81 number 39 of Law 6/2023 are unconstitutional because they simplify the role of the Wage Council, making it merely an advisor without the authority to formulate policies, thereby reducing the access of labor unions to effectively advocate for workers' interests. Regarding the Petitioners' *a quo* argument, according to the Court, the existence of the Wage Council, consisting of government representatives, labor unions, employer organizations, experts, and academics, should not be limited to providing advice and recommendations. Instead, it should also actively participate in the formulation of policies, reflecting the essence of democratic principles in decision-making by involving all relevant parties. Moreover, wage policies are closely tied to the social, economic, and cultural conditions of each region. If the role of the Wage Council is limited to merely giving "advice and recommendations" without substantive authority to actively participate in policy formulation, there will be an imbalance in the representation of the interests of workers and employers, which could lead to wage policies that do not fully reflect the real conditions in the working environment. More active involvement would encourage the creation of wage policies that truly result from a fair consensus for all parties, *in casu* workers/laborers. Pursuant to these legal considerations, the norms of Article 98 paragraph (1) in Article 81 number 39 of Law 6/2023, which limit the authority of the Wage Council to provide advice and recommendations without the authority to formulate wage policies, have been found to prejudice the rights of labor unions to effectively advocate for workers' interests. Therefore, in the Court's opinion, Article 98 paragraph (1) in Article 81 number 39 of Law 6/2023 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, “In order to provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council that participates actively shall be established”. Thus, the Petitioners' argument is legally justifiable in part.

6. Arguments on Termination of Employment (PHK)

- Whereas the Petitioners argue that the norms of Article 81 number 40 of Law 6/2023, which amend Article 151 paragraph (4) of Law 13/2003, are contrary to Article 27 paragraph (2), Article 28D paragraph (1), and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The Petitioners believe that the addition of the phrase “termination of employment is carried out through the next stage according to the industrial relations dispute resolution mechanism” results in the absence of consequences for not following the Industrial Relations Dispute (PHI) resolution mechanism, creating legal uncertainty and potentially opening a space for employers to carry out PHK arbitrarily without a fair legal process. Regarding the Petitioners' *a quo* argument, according to the Court, to reach the final step of PHK, mutual consultation as emphasized in Article 136 of Law 13/2003 and Article 3 paragraph (1) of Law 2/2004 plays an important part in bipartite negotiations. Although the Petitioners do not submit a petition against the constitutionality of Article 151 paragraph (3) of Article 81 number 40 of Law 6/2023, the Court believes that in order to maintain the constitutionality of the norms of *a quo* Article in its entirety, it is necessary to emphasize that PHK is a last resort for severing the employment relationship with workers. Pursuant to these legal considerations, according to the Court, Article 151 paragraph (3) of Article 81 number 40 of Law 6/2023 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 “must be carried out through bipartite negotiations based on deliberation to reach consensus between Employers and Workers/Laborers and/or Labor Unions/Trade Unions”. Thus, the Petitioners’ petition is legally justifiable in part.
- Whereas subsequently, regarding the Petitioners’ argument questioning the norms of Article 151 paragraph (4) in Article 81 number 40 of Law 6/2023 that is feared not aligned with the Industrial Relations Dispute Resolution (PPHI) process as outlined in Law 2/2004, the Court also needs to emphasize that the phrase “termination of employment is carried out through the next stage according to the industrial relations dispute resolution mechanism”, constitutes an inseparable unity with the previous norms stating that if the bipartite negotiation does not reach an agreement, then the settlement process must automatically be carried out through the industrial dispute resolution process as stipulated in Law No. 2/2004. In this context, what the Petitioners are concerned about is that PHK has been carried out before a determination is obtained from the industrial dispute resolution (PPHI) body as previously stated in Article 151 paragraph (3) of Law No. 13/2003. Therefore, the Petitioners petition that if termination occurs before this decision, it should be "void by law." In fact, the substance petitioned by the Petitioners has become the essence of the norms of Article 151 paragraph (4) in Article 81 number 40 of Law 6/2023. This means that if the industrial relations dispute resolution process is still ongoing, workers cannot be terminated. Referring to Law 2/2004, there are 5 (five) ways to resolve industrial relations disputes: 1) bipartite negotiations, 2) conciliation, 3) arbitration, 4) mediation, and 5) the industrial relations court. In this context, Article 151 paragraph (4) in Article 81 number 40 of Law 6/2023 explicitly only mentions “bipartite negotiations” as the above consideration, where the termination process must first be attempted through bipartite negotiations based on deliberation to reach consensus [vide Article 3 paragraph (1) of Law 2/2004]. Thus, bipartite negotiations under the *a quo* Article are mandatory with respect to industrial relations dispute resolution mechanisms. If negotiations fail, the dispute is resolved through further mechanisms, such as conciliation or mediation, and if an agreement is not reached, it is then resolved through the industrial relations court. When a dispute is brought to the Industrial Relations Court as regulated in Article 24 of Law 2/2004, the dispute is considered not final nor binding until the court decision has permanent legal force [vide Legal Consideration Sub-paragraph **[3.10.3]** of Constitutional Court Decision Number 37/PUU-IX/2011]. Therefore, the PPHI process, *in casu* a PHK dispute that occurs since a worker rejects the PHK, must continue until it concludes with a decision from the industrial relations dispute resolution institution that is final. This clarification is

crucial to prevent arbitrary termination, which would conflict with Articles 27 paragraph (2), 28D paragraph (1), and 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as argued by the Petitioners. Pursuant to these legal considerations, according to the Court, Article 151 paragraph (4) in Article 81 number 40 of Law 6/2023 is contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as, "In the event that bipartite negotiations as referred to in paragraph (3) do not result in an agreement, the Termination of Employment may only be carried out after obtaining a ruling from an industrial relations dispute resolution body whose decision has permanent legal force", as stated in the *a quo* verdict. Thus, according to the Court, the Petitioners' *a quo* argument is legally justifiable in part.

- Whereas the Petitioners also argue that the norms of Article 81 number 41 of Law 6/2023, which insert Article 151A between Article 151 and Article 152 of Law 13/2003, are contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. According to the Petitioners, Article 151A letter a of Law 6/2023 states that employers are not required to notify PHK as stipulated in Article 151 paragraph (2) of Law 6/2023 if the worker resigns voluntarily. Regarding the Petitioners' *a quo* argument, according to the Court, the provision concerning "notification" is not related to the termination of employment due to the worker's own decision to resign. Understanding this norm must be linked to the reference provision, namely Article 151 paragraph (2) in Article 81 number 40 of Law 6/2023, which states, 'If Termination of Employment is unavoidable, the purpose and reason for the Termination of Employment must be notified by the Employer to the Worker/Laborer and/or Labor Unions/Trade Unions". Meanwhile, if a worker does not wish to continue the employment relationship and resigns, PHK may occur due to the worker/laborer's initiative by submitting a resignation letter in writing. Therefore, the employer does not need to provide notification as intended in Article 151 paragraph (2) in Article 81 number 40 of Law No. 6/2023 because the PHK occurs at the worker/laborer's initiative, and the employer only needs to respond to the resignation letter. Regarding the Petitioners' concern about the possibility of coercion for the worker to resign, this is not a constitutional issue. Even if there is an element of 'coercion' as claimed by the Petitioners, the PHK process will still follow the procedure as outlined in Article 151 in Article 81 number 40 of Law 6/2023, including if the Industrial Dispute Settlement (PPHI) mechanism is used, then it must comply with Law 2/2004. Pursuant to the legal considerations above, the Petitioners' argument regarding the unconstitutionality of the norms of Article 151A in Article 81 number 41 of Law 6/2023 is legally unjustifiable.
- Whereas the Petitioners argue that the norms of Article 81 number 45 of Law 6/2023, which inserts Article 154A paragraph (1) letter b between Article 154 and Article 155 of Law 13/2003, are contrary to Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Constitutional Court Decision No. 19/PUU-IX/2011. Furthermore, the phrase "or not followed by the closure of company" in Article 154A paragraph (1) letter b of Law 6/2023 opens the possibility for employers to carry out PHK without closing the company, which could lead to legal uncertainty and arbitrariness. Regarding the Petitioners' *a quo* argument, according to the Court, the norms of the *a quo* Article relate to companies carrying out efficiency measures due to financial losses. Efficiency efforts are made with various measures to avoid PHK, as stated in Article 151 paragraph (1) in Article 81 number 40 of Law 6/2023, which emphasizes that PHK is a "last resort". This effort is also explained in the Elucidation of Article 151 paragraph (1) in Article 81 number 40 of Law 6/2023, which states, 'What is meant by "efforts" are positive activities that can ultimately prevent Termination of Employment, including regulating working hours, cost-saving, improving work methods, and providing guidance to Workers/Laborers". Similarly, Constitutional Court Decision No. 19/PUU-IX/2011 clearly states that "companies cannot carry out PHK before undertaking the following efforts: (a) reducing wages and facilities for higher-level workers, such as managers and directors; (b) reducing shifts; (c) limiting/eliminating overtime; (d) reducing working hours; (e) reducing workdays; (f) furloughing or temporarily laying off workers on a rotating basis; (g) not renewing contracts for workers whose contracts have expired; (h) providing pensions for

those who are eligible". All of these efforts must be communicated to the workers because they are part of the "parties to be notified" regarding the purpose and reasons if eventually PHK is carried out. Because the norms of Article 154A paragraph (1) letter b in Article 81 number 45 of Law 6/2023 deals with the reasons for PHK. In this context, if after the workers have been notified of such reasons, PHK cannot be avoided and the workers do not accept it, the next step is a bipartite negotiation between the employer and workers/laborers and/or labor unions/trade unions must take place, as stipulated in Article 151 paragraph (3) in Article 81 number 40 of Law 6/2023. Therefore, efficiency efforts made by a company due to losses are not automatically followed by the closure of the company, as various steps must first be taken before a company closure can occur. The issue of PHK due to the closure of a company, which is permanent due to continuous losses, is regulated in Article 154A paragraph (1) letter c in Article 81 number 45 of Law No. 6/2023. Pursuant to the above legal considerations, according to the Court, the phrase "or not followed by the closure of company" in Article 154A paragraph (1) letter b in Article 81 number 45 of Law 6/2023 does not lead to arbitrary application of PHK. Therefore, the Petitioners' argument is legally unjustifiable.

- Whereas according to the Petitioners, the norms of Article 81 number 49 of Law 6/2023, which inserts Article 157A between Article 157 and Article 158 of Law 13/2003, are unconstitutional. This is because the phrase "must continue to fulfill their obligations" in Article 157A paragraph (1) in Article 81 number 49 of Law 6/2023 creates legal uncertainty as it can be interpreted in different ways. Furthermore, the phrase "by continuing to pay wages" in Article 157A paragraph (2) in Article 81 number 49 of Law 6/2023 does not provide clarity, which could lead to multiple interpretations if there is no obligation to pay wages. Moreover, the phrase "carried out until the completion of the industrial relations dispute resolution process in accordance with its stages" in the norms of Article 157A paragraph (3) of Law 6/2023 also causes legal uncertainty for the parties involved, as it is unclear when their obligations end. Regarding the Petitioners' *a quo* argument, according to the Court, the phrase "must continue to fulfill their obligations" in Article 157A paragraph (1), against which the Petitioners argue, is applied equally to both employers and workers/laborers during the PPHI process. The norms protect the interests of both the employers as well as workers/laborers, ensuring that workers continue to work and receive wages or other forms of compensation, while employers continue to employ workers and pay wages or other benefits, as agreed in the employment agreements so that workers/laborers still obtain guarantee of rights to a decent living. Whereas subsequently, regarding the phrase "by continuing to pay wages" in Article 157A paragraph (2) of Law 6/2023, which according to the Petitioners is unclear and could be subject to multiple interpretations, the Court has carefully examined the norms and it turns out that the norms are reformulation of the norms previously outlined in Article 155 paragraph (3) of Law 13/2003, stating that: "The employer may deviate from the provisions in paragraph (2) in the form of suspension of the workers/laborers during the termination of employment process, while still being obligated to pay wages and other rights normally received by the workers/laborers". In Article 81 of Law 6/2023, the norms have been reformulated, but the essence remains unchanged. That is, during the PPHI process for PHK, even if the suspension is implemented, the *a quo* norms clearly obligate the employer to continue paying wages and other benefits the workers/laborers are entitled to during the resolution of the PHK dispute. Therefore, there is no potential for multiple interpretations in the norms of Article 157A paragraph (1) in Article 81 number 49 of Law 6/2023 as argued by the Petitioners. Because employers are required to continue paying wages and other rights normally received by workers/laborers who are suspended during the PHK process. Pursuant to the above legal considerations, the Petitioners' argument concerning Article 157A paragraph (1) in Article 81 number 49 of Law 6/2023 is legally unjustifiable.
    - Whereas meanwhile regarding the Petitioners' argument questioning the phrase "carried out until the completion of the industrial relations dispute resolution process in accordance with its stages" in the norms of Article 157A paragraph (3) in Article 81 number 49 of Law 6/2023, the Petitioners believe may cause legal uncertainty for the parties involved, with regard to when their obligations end. The *a quo* norms

of Article 157A paragraph (3) are a continuation of the norms of paragraph (1) because they are related to the obligations of employers and workers/laborers that must be fulfilled before the PPHI process is completed according to its stages. In this context, workers/laborers perform their work and employers pay wages to workers/laborers. If the dispute has not reached an agreement at the bipartite negotiation stage, it will proceed to the next stage. At this level, both workers/laborers and employers must continue to fulfill their obligations, namely, workers/laborers continuing their work and employers paying wages to workers/laborers, and so on, until the dispute is resolved with a decision from the industrial relations dispute resolution institution (PPHI). In this regard, it is important for the Court to emphasize that the phrase “until the completion of the process” in Article 157A paragraph (3) in Article 81 number 49 of Law 6/2023 means “until the completion of the industrial relations dispute resolution process with permanent legal force in accordance with the provisions in the PPHI law”, *in casu*, Law 2/2004. Pursuant to these legal considerations, according to the Court, the phrase “carried out until the completion of the industrial relations dispute resolution process in accordance with its stages” in the norms of Article 157A paragraph (3) in Article 81 number 49 of Law 6/2023 does not establish a clear and systematic legal framework for the resolution of industrial relations disputes, because this phrase has not clarified that the dispute resolution process must be carried out according to its stages. Therefore, the norms of Article 157A paragraph (3) in Article 81 number 49 of Law 6/2023 are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force to the extent that they are not interpreted as “until the completion of the industrial relations dispute resolution process with permanent legal force in accordance with the provisions in the PPHI law”. Pursuant to these legal considerations, the Petitioners' argument regarding the constitutionality of the norms of Article 157A paragraph (3) in Article 81 number 49 of Law 6/2023 is legally reasonable.

7. Arguments on Severance Pay (UP), Compensation for Rights (UPH), and Long Service Award Payments (UPMK)

- Whereas the Petitioners question the constitutionality of the norms of Article 81 number 47 of Law 6/2023, which amend the provisions of Article 156 paragraph (2) of Law 13/2003, particularly the phrase “shall be given with the following provisions: …”, which according to the Petitioners closes the possibility for companies to pay severance pay to workers/laborers beyond the established minimum limit. In fact, many companies have been providing severance pay above the minimum limit as a way of honoring the services and dedication of workers/laborers who have served the company for an extended period. Therefore, the Petitioners argue that the *a quo* norms are contrary to Article 27 paragraph (2), Article 28D paragraph (1), and paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Regarding the Petitioners' *a quo* argument, according to the Court, there is no explanation for why the phrase “at least” was changed to “shall be given with the following provisions: …”, while the norms regulating the amount of severance pay remain the same. The elucidation in Law 6/2023 only states “Quite clear”. Moreover, referring to Article 156 paragraph (5) in Article 81 number 47 of Law 6/2023, it is stated that the further provisions regarding the payment of severance pay, long service bonuses, and compensation for rights will be regulated by government regulations. Without intending to assess the legality of Article 40 of PP 35/2021, the Court concludes that it does not provide further regulation, as it merely reiterates the norms stated in Article 156 paragraph (5) in Article 81 number 47 of Law 6/2023. Regarding the above issue, it is important for the Court to refer to the goal of labor development, which serves as the basis for the establishment of Law 13/2003, one of which states, “to protect workers in achieving welfare” [vide Article 4 letter c of Law 13/2003]. In this context, efforts to ensure the livelihood of workers/laborers affected by PHK should not close the opportunity for companies to consider providing severance pay exceeding the amount stipulated in Article 156 paragraph (2) in Article 81 number

47 of Law 6/2023, let alone if the workers have served with full dedication to the company's productivity. However, because the *a quo* norms use the phrase “shall be given with the following provisions: …”, the calculation of severance pay becomes definitive, limited to the amount specified in the norms. On the other hand, if the phrase “at least” is used, there is a possibility for workers/laborers to receive severance pay above the specified “minimum” amount, which could help meet the living needs of workers/laborers affected by PHK. Providing severance pay beyond the “minimum” amount in the workforce is commonly referred to as a “golden handshake”, meaning usually large payment made to people when they leave their job, either when their employer has asked them to leave or when they are leaving at the end of their working life, as a reward for very long or good service in their job [vide Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/golden- handshake]. This is done as a form of appreciation for the loyalty or performance of workers/laborers so that those whose employment ends will feel there is an additional benefit to help ensure a decent living after they stop working. Pursuant to these legal considerations, Article 156 paragraph (2) in Article 81 number 47 of Law 6/2023 with respect to the phrase “shall be given with the following provisions” are contrary to the 1945 Constitution of the Republic of Indonesia and do not have binding legal force to the extent that they are not interpreted as “at least”. Thus, the Petitioners' argument is legally reasonable.

- Whereas the petitioners further challenge the constitutionality of the norms of Article 156 paragraph (4) in Article 81 number 47 due to the elimination of the provision previously stipulated in Article 156 paragraph (4) letter c of Law 13/2003, which stated: “*The severance pay that should be received as referred to in paragraph (1) includes: ...* c. compensation for housing and medical treatment and care, set at 15% (fifteen percent) of severance pay and/or service appreciation for those who meet the requirements”. According to the Petitioners, this proves that the state intends to relinquish its responsibility in providing protection and legal certainty for workers, thus it is contrary to Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Regarding the Petitioners' *a quo* argument, according to the Court, the benefits that workers/laborers can obtain under unemployment insurance include cash, access to labor market information, and job training, which will be provided for a maximum of 6 (six) months of wages. These benefits are received by participants, *in casu* workers/laborers, after having a certain period of participation. The funding for unemployment insurance comes from: the government’s initial capital; the reallocation of social security program contributions; and/or operational funds of BPJS Employment [vide Article 46D and Article 46E in Article 82 number 2 of Law 6 of 2023]. Such reallocation of contributions refers to contributions not sourced from workers/laborers without reducing the benefits of other social security programs that are the rights of workers/laborers [vide the Elucidation of Article 46E paragraph (1) letter b in Article 82 number 2 of Law 6 of 2023]. In addition to changes made to Law 40/2004, changes were also made to Law No. 24 of 2011 on the Social Security Organizing Agency (Law 24/2011) in line with amendments to Law 13/2003. Initially, Article 6 of Law 24/2011 only determined that the Social Security Organizing Agency (BPJS) employment administers the following programs: a. work accident insurance; b. old-age insurance; c. pension insurance; and d. death insurance. However, with the amendment of Law 13/2003, it was also stipulated that BPJS Employment would administer unemployment insurance by amending Article 6 of Law 24/2011 [vide Article 6 paragraph (2) letter e number 1 of Law 6/2023]. Further provisions regarding the rights of workers who lose their jobs are outlined in Government Regulation No. 37 of 2021 on the Implementation of the Unemployment Insurance Program. Meanwhile, regarding compensation for housing for workers who are dismissed or lose their jobs, this does not include those specified in Law 6/2023 because the substance has already been regulated under Law 4/2016. However, in order to fully assess the constitutionality of the norms of Article petitioned by the *a quo* Petitioners, it cannot be separated from the constitutionality of Law 4/2016, which is currently still under review in the Court [vide Case No. 86/PUU-XXII/2024, Case No. 96/PUU-XXII/2024, and Case No. 134/PUU-XXII/2024]. Therefore, within the limits

of reasonable reasoning, the Court cannot comprehensively assess the constitutionality of the *a quo* petition regarding Article 156 paragraph (4) in Article 81 number 47 of Law 6/2023 without first evaluating the constitutionality of the provisions in Law 4/2016, which the Petitioners have not included in their petition. As a result, the issue of compensation for housing cannot yet be considered by the Court. Similarly, regarding compensation for medical treatment and care, because the constitutional review of the *a quo* right cannot be separated from the review of the right to housing compensation, the Petitioners' argument regarding compensation for medical treatment and care cannot yet be further considered. Thus, pursuant to these legal considerations, the Court concludes that the Petitioners' petition regarding the *a quo* norms must be declared premature.

- Whereas the Petitioners further question the norms of Article 161 in Article 81 number 53 of Law 6/2023, Article 162 in Article 81 number 54 of Law 6/2023, Article 163 in Article 81 number 55 of Law 6/2023, Article 164 in Article 81 number 56 of Law 6/2023, Article 165 in Article 81 number 57 of Law 6/2023, Article 166 in Article 81 number 58 of Law 6/2023, Article 167 in Article 81 number 59 of Law 6/2023, Article 169 in Article 81 number 61 of Law 6/2023, and Article 172 in Article 81 number 64 of Law 6/2023, which have revoked the provisions of Article 161, Article 162, Article 163, Article 164, Article 165, Article 167, Article 169, and Article 172 of Law 13/2003. According to the Petitioners, the revocation of these provisions is contrary to Article 27 paragraph (2), Article 28D paragraph (1), and paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and thus they petition the Court to reinstate the norms of the *a quo* Articles that have been revoked. Regarding this issue, the Court will first quote the norms of the articles that were revoked. In response to the Petitioners' *a quo* argument, according to the Court, some of the provisions have been addressed in other provisions, such as in the norms of Article 153 paragraph (2) in Article 81 number 43 and Article 154A in Article 81 number 45 of Law 6/2023, and they are also scattered in various articles including Article 36, Article 40, Article 41, Article 43, Article 44, Article 45, Article 46, Article 47 and its Elucidation, Article 52 and its Elucidation concerning audits, and Article 55, Article 56, Article 57, and Article 58 of PP 35/2021. The regulation is not made systematically, which makes it difficult to synchronize between the provisions that were revoked and those that remain in force under Article 81 of Law 6/2023. Moreover, it was found that the norms that were revoked are still enacted in PP 35/2021, creating a lack of clarity regarding the basis for the *a quo* PP. Pursuant to the above legal considerations, according to the Court, because some of the provisions that were revoked are still addressed in Law 6/2023, although not systematically arranged, it cannot be said that the substance of the provisions that were revoked has truly been eliminated. However, such an arrangement has caused difficulties in comprehensively understanding the norms of Article 81 of Law 6/2023. Meanwhile, regarding the provisions that have been revoked, some have indeed been regulated by government regulations. The Court believes that regulating these matters through government regulations is inappropriate because their substance should have been addressed in the law. Pursuant to the above legal considerations, since some of the norms petitioned for review remain relevant, it is up to the legislators to address them further. Thus, the Petitioners' *a quo* argument is legally unjustifiable.
- **Whereas before delivering the verdict, the Court addresses several points as follows:**

  First, it is factual that the substance of the labor law has been repeatedly subject to constitutional review by the Court. Referring to the data on constitutional reviews at the Court, some of the substance of Law 13/2003 has been reviewed 37 (thirty-seven) times. Pursuant to these reviews, out of the 36 (thirty-six) cases decided by the Court, 12 (twelve) petitions were granted entirely or partially. This means that before some of the provisions of Law 13/2003 were amended by Law 6/2023, several provisions in Law 13/2003 had already been declared by the Court to be contrary to the 1945 Constitution of the Republic of Indonesia and had no binding legal force, whether for all the reviewed provisions or for those declared

unconstitutional or conditionally constitutional. Given this fact, because some of its provisions have been declared unconstitutional, within the limits of reasonable reasoning, Law 13/2003 has not been intact.

Second, it is also factual that some of the substance of Law 13/2003 has been amended by Law 6/2023. Although amended by Law 6/2023, not all the substance of Law 13/2003 was amended by the legislators. This means that, as of now, labor-related matters are regulated by two laws, namely Law 13/2003 and Law 6/2023. Additionally, some labor matters still refer to various Court decisions. In light of these facts, within the limits of reasonable reasoning, there may be inconsistencies or disharmony between the provisions of these two laws. Moreover, the threat of inconsistency, lack of synchronization, and disharmony is increasingly difficult to avoid or prevent, due to the Court's prior decisions declaring certain provisions of Law 13/2003 to be contrary to the 1945 Constitution. Not only the provisions of Law 13/2003, as outlined in the *a quo* verdict but certain provisions of Law 6/2023 have also been declared contrary to the 1945 Constitution. Given this fact, there is a possibility of a clash between the norms declared unconstitutional in Law 13/2003 and those in Law 6/2023. Within the limits of reasonable reasoning, such a clash occurs because several provisions in Law 13/2003 correlate with the changes of the substance in Law 13/2003 amended in Law 6/2023.

Third, even though in the *a quo* petition the Petitioners primarily question the norms under the labor law cluster of Law 6/2023, to understand comprehensively all the norms being reviewed for constitutionality, the Court reads the implementing regulations of Law 6/2023, including other relevant regulations. Upon reading these regulations, the Court finds that several government regulations had been issued without proper delegation from Law 6/2023. Furthermore, many of the contents of these regulations, when placed within the context of the hierarchy of statutory regulations, should be governed by laws, not by lower regulations in the hierarchy. For example, provisions related to the restriction of citizens' rights and obligations, *in casu* the rights and obligations of workers/laborers and employers, while under Article 28J paragraph (2) of the 1945 Constitution restriction should only be regulated through laws.

Pursuant to all the facts presented above, the potential clash between the norms stipulated in Law 13/2003 and those in Law 6/2023 poses a risk to the protection of citizens' rights to recognition, guarantees, protection, and legal certainty, particularly for workers/laborers and employers, as mandated by Article 28D paragraph (1) of the 1945 Constitution. Moreover, the formulation of norms in Law 6/2023 in relation to the norms in Law 13/2003 that have been amended (whether in the form of articles or paragraphs) is difficult to understand by the public, including workers/laborers. If these issues are allowed to persist without resolution, the governance and labor law system could easily fall into uncertainty and prolonged injustice. Therefore, in the Court's opinion, the legislators should promptly create a new labor law and separate it from the regulations set out in Law 6/2023. With this new law, issues of disharmony and lack of synchronization in the substance of labor law can be addressed, reorganized, and resolved. Additionally, several provisions in regulations hierarchically below the law, including in government regulations, should be included in the new labor law. Furthermore, by regulating these matters in a specific law and separate from Law 6/2023, the labor law will be easier to understand. On the basis of these considerations, the Court believes that a maximum period of two (2) years is sufficient for legislators to pass a new labor law that incorporates the substance of Law 13/2003 and Law 6/2023, as well as the substance and spirit of several Court decisions related to labor, while actively involving trade unions/labor unions.

Whereas pursuant to all of the above considerations, the Court passed down a decision in which the verdicts were as follows:

1. To grant the Petitioners' petition partially**.**

2. To declare that the phrase **"Central government"** in Article 42 paragraph (1) in Article 81 number 4 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"the minister responsible for labor affairs, *in casu* Minister of Manpower";**
3. To declare that Article 42 paragraph (4) in Article 81 number 4 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Foreign workers may be employed in Indonesia only in employment relations for certain positions and a certain period and have competencies in accordance with the position to be occupied" 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 "**Foreign workers may be employed in Indonesia only in employment relations for certain positions and a certain period and have competencies in accordance with the position to be occupied, taking into account the priority of using Indonesian workers";**
4. To declare that Article 56 paragraph (3) in Article 81 number 12 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The period or completion of a certain job as referred to in paragraph (2) is determined in accordance with an Employment Agreement" 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 **"The period for completion of a particular job is not to exceed a maximum of 5 (five) years, including if there is an extension";**
5. To declare that Article 57 paragraph (1) in Article 81 number 13 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "A fixed-term employment agreement is made in writing and must use Indonesian language and latin letters", 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 **"A fixed-term employment agreement must be made in writing using Indonesian language and latin letters";**
6. To declare that Article 64 paragraph (2) in Article 81 number 18 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The Government shall stipulate part of the implementation of the work as referred to in paragraph (1)" 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 **"The Minister shall stipulate part of the implementation of the work as referred to in paragraph (1) in accordance with the types and fields of outsourcing work agreed in written outsourcing agreements";**
7. To declare that Article 79 paragraph (2) letter b in Article 81 number 25 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "weekly rest of 1 (one) day for 6 (six) working days in 1 (one) week", 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 to include the phrase, **“or 2 (two) days for 5 (five) working days in 1 (one) week”;**

8. To declare that the word "**may**" in Article 79 paragraph (5) in Article 81 number 25 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force;
9. To declare that Article 88 paragraph (1) in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Every Worker/Laborer has the right to a decent living in accordance with human dignity", 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 **"including income that meets a living standard, which is the amount of receipts or income received by workers/laborers from their work so that they are able to meet the reasonable living needs of workers/laborers and their families, which include food and drink, clothing, housing, education, health, recreation, and old age security"**;
10. To declare that Article 88 paragraph (2) in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "The Central Government establishes wage policies as part of efforts to realize the rights of workers/laborers to a decent living in accordance with human dignity", 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 **"involving regional wage councils that include regional government representatives in formulating wage policy recommendations, which serve as input for the central government in establishing wage policies”;**
11. To declare that the phrase 'wage structure and scale' in Article 88 paragraph (3) letter b in Article 81 number 27 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“a proportional wage structure and scale”**;
12. To declare that Article 88C in Article 81 number 28 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“including the governor being obligated to set sectoral minimum wages at the provincial level and may set at the regency/city level”**;
13. To declare that the phrase “a specific index” in Article 88D paragraph (2) in Article 81 number 28 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“a specific index is a variable representing the**

contribution of labor to the economic growth of provinces or regencies/cities, taking into account the interests of companies and workers/laborers, as well as the principle of proportionality to meet the decent living needs (KHL) of workers/laborers";

14. To declare that the phrase “under certain circumstances” in Article 88F in Article 81 number 28 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **“The term "under certain circumstances" includes, among others, natural or non-natural disasters, including extraordinary global and/or national economic conditions determined by the President in accordance with the provisions of laws and regulations”**;
15. To declare that Article 90A in Article 81 number 31 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Wages above the minimum wage are determined in accordance with an agreement between the Employer and Workers/Laborers in the Company," 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 **"Wages above the minimum wage are determined in accordance with an agreement between the Employer and Workers/Laborers or Labor Unions/Trade Unions in the company"**;
16. To declare that Article 92 paragraph (1) in Article 81 number 33 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, “Employers are required to establish Wage structure and scale in the Company by taking into account the Company’s capability and productivity,” 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 **“Employers are required to establish Wage structure and scale in the Company by taking into account the Company’s capability and productivity, as well as class, position, length of service, education, and competence”**;
17. To declare that Article 95 paragraph (3) in Article 81 number 36 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors, except creditors holding collateral rights," 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 **"Other rights of Workers/Laborers as referred to in paragraph (1) shall be prioritized for payment over all creditors, including preferred creditors, except creditors holding collateral rights"**;
18. To declare that Article 98 paragraph (1) in Article 81 number 39 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), which states, "In order to provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council shall be established," 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 **"In order to provide advice and considerations to the Central Government or Regional Government in formulating wage policies and developing the wage system, a wage council that participates actively shall be established"**;

19. To declare that the phrase "must be carried out through bipartite negotiations between Employers and Workers/Laborers and/or Labor Unions/Trade Unions" in Article 151 paragraph (3) in Article 81 number 40 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"must be carried out through bipartite negotiations based on deliberation to reach consensus between Employers and Workers/Laborers and/or Labor Unions/Trade Unions"**;
20. To declare that the phrase "termination of employment is carried out through the next stage in accordance with the mechanism for resolving industrial relations disputes" in Article 151 paragraph (4) in Article 81 number 40 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"In the event that bipartite negotiations as referred to in paragraph (3) do not result in an agreement, the Termination of Employment may only be carried out after obtaining a ruling from an industrial relations dispute resolution body whose decision has permanent legal force";**
21. To declare that the phrase "carried out until the completion of the industrial relations dispute resolution process in accordance with its stages" in the norms of Article 157A paragraph (3) in Article 81 number 49 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"until the completion of the industrial relations dispute resolution process with permanent legal force in accordance with the provisions in the PPHI law"**;
22. To declare that the phrase "granted with the following provisions" in Article 156 paragraph (2) in Article 81 number 47 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 **"at least"**;
23. To order the publication of this decision in the State Gazette of the Republic of Indonesia;
24. To declare that the Petitioners' petition concerning the norms of Article 156 paragraph (4) in Article 81 number 47 of the Appendix to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is inadmissible;
25. To dismiss the remainder of the Petitioners' petition.