CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 39/PUU-XXI/2023

Concerning

Constitutionality of the Unbundling System in the Electricity Law

Petitioners	:	Workers Union of PT. Perusahaan Listrik Nasional, et al.
Type of Case	:	Judicial review of Law Number Law 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia
Subject Matter	:	Judicial review of (i) Article 7 paragraph (1) in Article 42 point 5; (ii) Article 10 paragraph (2) in Article 42 point 6; (iii) Article 11 paragraph (1) in Article 42 point 7; (iv) Article 23 paragraph (2) in Article 42 point 15; (v) Article 33 paragraphs (1) and (2) in Article 42 point 23 against the 1945 Constitution of the Republic of Indonesia
Verdict	:	1. To grant the Petitioners' petition in part; 2. To declare Article 7 paragraph (1) in Article 42 point 5 of the Appendix to Law Number Law 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (State Gazette of the Republic of Indonesia Year 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) contrary to the 1945 Constitution of the Republic of Indonesia and not legally binding insofar as not interpreted as: “” 3. To declare the word “may” in Article 10 paragraph (2) in Article 42 point 6 of the Appendix to Law Number Law 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (State Gazette of the Republic of Indonesia Year 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) contrary to the 1945 Constitution of the Republic of Indonesia and not legally binding; 4. To order this Decision to be published in the State Gazette of the Republic of Indonesia as appropriate. 5. To declare the Petitioners' petition insofar as the constitutionality of the word “may” in Article 23 paragraph (2)

in Article 42 point 15 of the Appendix to Law Number Law 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (State Gazette of the Republic of Indonesia Year 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) inadmissible;

6. To reject the Petitioners' petition for the rest and the remainder.

Date of Decision : Friday, November 29, 2024

Overview of Decision :

The Petitioners consist of trade union organizations and individual Indonesian citizens who work as laborers and are also electricity consumers who consider themselves harmed by the application of the provisions under review, namely: (i) Article 7 paragraph (1) in Article 42 point 5; (ii) Article 10 paragraph (2) in Article 42 point 6; (iii) Article 11 paragraph (1) in Article 42 point 7; (iv) Article 23 paragraph (2) in Article 42 point 15; and (v) Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law Number 6 of 2023.

With respect to its authority, the Court notes that the petition is for constitutional review of statutory provisions, in this case the review of Law Number 6 of 2023 against the 1945 Constitution, and therefore the Court has jurisdiction to adjudicate the petition *a quo*.

Regarding legal standing, the Petitioners are trade union organizations and individual Indonesian citizens working as laborers, comprising ten organizations and 109 users/consumers of electric power, who claim to be harmed by amendment to the Electricity Law introduced by Law Number 6 of 2023, particularly concerning the unbundling system, the absence of oversight by the House of Representatives, and the leasing of electricity networks. In its legal considerations on standing, the Court essentially states that Petitioners I to CXIX have specifically described their constitutional rights, namely rights guaranteed under Article 28D paragraph (1), Article 28C paragraph (2), and Article 33 paragraph (2) of the 1945 Constitution, which they allege have been actually, or at least potentially, harmed in a manner that can reasonably be foreseen as a consequence of the application of Article 7 paragraph (1) in Article 42 point 5, Article 10 paragraph (2) in Article 42 point 6, Article 11 paragraph (1) in Article 42 point 7, Article 23 paragraph (2) in Article 42 point 15, and Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law Number 6 of 2023 that are being challenged. Petitioners I to X have also demonstrated through their deeds of establishment that they are authorized to represent and act on behalf of their respective organizations before the Court.

The alleged harm arises because the objectives of Petitioners I to X as organizations cannot be effectively pursued, given that the workers they represent, as well as Petitioners XI to CXIX who are also workers, are all electricity consumers whose constitutional rights are impaired if electric power, as a branch of production vital to the state and affecting the livelihood of the people at large, is not controlled by the state and thus ceases to be oriented toward the public interest. This explanation shows a causal relationship between the alleged constitutional harms suffered by Petitioners I to CXIX and the application of the provisions being reviewed. Consequently, if the petition *a quo* were to be granted, the alleged constitutional harms would no longer occur or would at least be prevented.

Furthermore, a careful reading of the wording "his/her" in the phrase "…who considers that his/her constitutional rights and/or authority…" in Article 51 paragraph (1) of the Constitutional Court Law indicates that the constitutional harm invoked must be specific and must be actual or potential in direct connection with the application of the statutory norms being challenged. In this regard, the alleged harms experienced by Petitioners I to CXIX are specific and clearly linked to the application of the provisions in the law.

Petitioners I to CXIX have set out arguments connecting their constitutional harms, on the one hand, to their status as workers'/laborers' organizations with particular visions, missions, and objectives (Petitioners I to X) and, on the other, to their status as workers/laborers (Petitioners XI to CXIX) who are electricity consumers that pay monthly electricity bills and face the risk of increasing burdens should dependence on private actors grow as a result of the application of Article 7 paragraph (1) in Article 42 point

5, Article 10 paragraph (2) in Article 42 point 6, Article 11 paragraph (1) in Article 42 point 7, Article 23 paragraph (2) in Article 42 point 15, and Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law Number 6 of 2023.

Accordingly, regardless of whether the arguments of Petitioners I to CXIX concerning the alleged inconsistency of those provisions with the 1945 Constitution are ultimately proven, the Court is of the view that Petitioners I to X and Petitioners XI to CXIX (hereinafter collectively referred to as the Petitioners) have legal standing to act as petitioners in this case.

In relation to the merits of the case, the Court's legal considerations can be stated as follows:

- When understood in a comprehensive manner, the substance of Article 7 paragraph (1) in Article 42 point 5 of Law Number 6 of 2023 is regulatory in nature, namely, it regulates the National Electricity General Plan (RUKN). In that position, and when read in light of Constitutional Court Decision Number 001-021-022/PUU-I/2003, Article 7 paragraph (1) in Article 42 point 5 of Law Number 6 of 2023 forms part of the State's regulatory function (*regelendaad*). That earlier decision unequivocally clarifies that the State's regulatory function is exercised through the legislative authority of the House of Representatives (DPR) together with the Government, as well as through regulation by the Government (the executive).

  Furthermore, because electricity constitutes a branch of production that affects the livelihood of the people at large and must therefore be controlled by the State, the House's legislative authority must be positioned as inseparable and intertwined with its oversight function. From the perspective of modern management concepts, oversight should begin at the very stage when the planning of an activity is formulated. As an embodiment of popular sovereignty in managing electricity as one of the vital branches of production that that affects the livelihood of the people at large and must be controlled by the State, the involvement of the House is thus increasingly unavoidable, particularly because Law 6/2023 appears to rely on House involvement only at the level of national energy policy. In this respect, Article 11 paragraph (2) of Law Number 30 of 2007 on Energy (Law 30/2007) essentially provides that national energy policy is determined by the Government with the approval of the House. As stipulated in Article 11 paragraph (1) of Law Number 30 of 2007, national energy policy includes, among other things, the availability of energy for national needs, priorities for energy development, utilization of national energy resources, and national energy buffer reserves.

  In reasonable terms, the regulation in Article 11 paragraph (1) of Law Number 30 of 2007 can be regarded as highly general, so that the House's involvement is anchored only in broad aspects of the RUKN and may overlook electricity's status as a branch of production that affects the livelihood of the people at large. This means that the House's approval at the level of general national energy policy cannot be used as a basis for waiving the obligation to involve the House in the drafting of the RUKN.

  Even though the House must still play a role in relation to the RUKN, the Court considers it inappropriate for that involvement to take the form of "approval." Since the determination of national energy policy—which also covers electricity—has already been made through a mechanism requiring the House's approval, the Court finds that, for the RUKN, the House's involvement need only be in the form of "consideration." This view rests on the understanding that obtaining "consideration" is procedurally simpler than obtaining "approval."

  Such consideration is needed to ensure that the RUKN is consistent with national energy policy. Since national energy policy, which also covers electricity, already requires the "the House's approval," the drafting of the RUKN—being the core of national electricity policy as referred to in Article 1 point 9 in Article 42 point 1 of Law 6/2023 and equally important as a key branch of production affecting the livelihood of the people at large—must still require "the House's consideration." In light of these legal considerations, the Petitioners' argument that Article 7 paragraph (1) in Article 42 point 5 of Law 6/2023 has removed the House's authority as the people's representative in the management of electricity as a vital state-controlled sector affecting the livelihood of the people at large is an argument that can be accepted and justified. However, because the Court's interpretation does not fully correspond to the wording requested in the *petitums*, the Petitioners' claim in this regard is only partially well-founded in law.

- In factual terms, there is no difference in the wording of the relevant provisions between the two statutes concerned. Such formulation means that the word “may” in Article 10 paragraph (2) of Law 30/2009, which has been declared unconstitutional by the Court, has been “reactivated” or brought back into effect by Article 10 paragraph (2) in Article 42 point 6 of Law 6/2023. This, as the Petitioners argue, revives the unbundling system.

  In the electricity supply business, two models are recognized: *first*, an integrated model in which generation, transmission, distribution, and sale of electricity are carried out together (bundling); and *second*, a non-integrated model in which generation, transmission, distribution, and sale of electricity are separated (unbundling). Thus, in essence, the electricity business system is known in two forms: integrated (bundling) and non-integrated (unbundling). From these two business models, when viewed in relation to the core components of electricity supply, unbundling in the electricity business system refers to the separation of generation, transmission, distribution, and sale of electricity, each carried out by different business entities. Bundling, by contrast, exists when generation, transmission, distribution, and retail supply are integrated, so that control over electricity rests in a single hand. On the basis of this understanding, bundling can only be regarded as ensured, in normative terms, if the governing provisions restrict or do not leave room for flexible interpretation that would allow the bundled system, in practice, to shift into an unbundled one.

  In this respect, the wording of Article 10 paragraph (2) in Article 42 point 6 of Law 6/2023, which states that “The business of providing electricity for the public interest as referred to in paragraph (1) may be carried out in an integrated manner,” can be seen as a flexible formulation. In the Court’s view, this flexibility arises because the word “may” in Article 10 paragraph (2) in Article 42 point 6 of Law 6/2023 has been reactivated or brought back into effect.

  Therefore, the Petitioners’ argument that Article 10 paragraph (2) in Article 42 point 6 of Law 6/2023 openly revives the word “may” in Article 10 paragraph (2) of Law 30/2009—previously declared unconstitutional and regarded as the core of the unbundling system—is an argument that can be accepted. Accordingly, the word “may” in the provision in question must be declared contrary to the 1945 Constitution of the Republic of Indonesia and to have no binding legal force. Thus, the Petitioners’ claim in this respect is well-founded in law.

- On the basis of the foregoing legal considerations, in the Court’s view, if the possibility for “regional government-owned enterprises, private enterprises, cooperatives, and community-based entities engaged in electricity supply” to participate were removed by declaring the relevant phrases unconstitutional and without binding force, this would, within reasonable judgment, risk creating both short-term and long-term problems, including making it more difficult to ensure adequate electricity supply. PT PLN (Persero), as a matter of fact, still has limitations in reaching and fulfilling electricity needs throughout the entire territory of Indonesia.

  Moreover, from a normative standpoint, declaring Article 11 paragraph (1) in Article 42 point 7 of Law 6/2023 contrary to the 1945 Constitution and without binding force would disrupt the coherence of the remaining provisions in Article 11 in Article 42 point 7 of the same law. Systematically, paragraphs (2) to (5) of Article 11 in Article 42 point 7 would lose the basis for their continued application. For this reason, Article 11 in Article 42 point 7 of Law 6/2023 must be read systematically and comprehensively together with the other provisions, including paragraphs (2) to (5).

  Indeed, the entirety of Article 11 in Article 42 point 7 expressly affirms a commitment to give first priority to state-owned enterprises (BUMN) in the business of electricity supply [Article 11 paragraph (2) in Article 42 point 7 of Law 6/2023] and to prioritize domestic products and capabilities [Article 11 paragraph (3) in Article 42 point 7 of Law 6/2023]. This emphasis is consistent with several constitutional reasoning previously cited in the Court’s decisions. Furthermore, allowing the possibility for “regional government-owned enterprises, private enterprises, cooperatives, and community-based entities engaged in electricity supply” to operate, while maintaining priority for PT PLN (Persero), would not lead to a loss of state control over electricity.

  On the basis of these legal considerations, the Petitioners’ arguments relating to the phrase “state-owned enterprises” in Article 11 paragraph (1) in Article 42 point 7 of Law 6/2023 and to the

phrase “regional government-owned enterprises, private enterprises, cooperatives, and community-based entities engaged in electricity supply” in the same paragraph have been shown not to result in any loss of state control over electricity, bearing in mind the strategic importance of electricity as guaranteed in Article 33 paragraph (2) of the 1945 Constitution. Accordingly, the Petitioners’ claims in this respect are not legally well-founded.

- The Petitioners further argue that the word “may” in Article 23 paragraph (2) in Article 42 point 15 of Law 6/2023 is contrary to the 1945 Constitution and has no binding legal force unless it is interpreted to mean that “the sale of surplus electricity may only be carried out in areas where electricity is not yet available and where there is no electricity surplus.” After carefully examining the position of the word “may” in relation to the *petitums*, the Court finds that this same word, which the Petitioners wish to qualify, reappears in the qualified interpretation they propose. In other words, the new interpretation the Petitioners request still reads “the sale of surplus electricity may only be carried out in areas where electricity is not yet available and where there is no electricity surplus,” so that the word “may” remains.

  With the reappearance of the word “may” in that proposed interpretation, the underlying concern raised by the Petitioners about “the sale of surplus electricity for the public interest…” is not actually resolved. Furthermore, if the word “may” is reinterpreted as “the sale of surplus electricity may only be carried out in areas where electricity is not yet available and where there is no electricity surplus,” as stated in the *petitums*, the resulting new norm becomes difficult to understand and creates legal uncertainty. A careful reading of the Petitioners’ explanation shows that their concern is that including the word “may” in Article 23 paragraph (2) in Article 42 point 15 allows a business license holder for self-supply electricity to choose, when having surplus electricity, either to sell that surplus to areas not yet served or, potentially, also to areas that are already served. However, because the word “may” continues to appear in the new interpretation they request, the very possibility they fear would still remain.

  In light of this explanation, the Court finds it difficult to accept the proposed new interpretation of the word “may” as “the sale of surplus electricity may only be carried out in areas where electricity is not yet available and where there is no electricity surplus.” Moreover, the substance set out in the grounds of the application (*posita*) does not correspond to the *petitums*. For these reasons, the Petitioners’ petition in so far as it concerns the word “may” in Article 23 paragraph (2) in Article 42 point 15 of Law 6/2023 must be regarded as obscure (*obscuur*).

- Regarding the constitutional issue of “electricity network rental” in Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law 6/2023, the Court finds that, when viewed in the overall context of Article 33 in that provision, the emphasis is actually that electricity business license holders are prohibited from setting electricity sale prices and network rental charges without the approval of the Government or Regional Government. This approval is intended to ensure that electricity tariffs and network rental charges, although determined on the basis of sound business principles, are not set by the market alone—namely the license holders—but must be based on governmental and regional approval, meaning that the State decides what constitutes sound business principles and, on that basis, the applicable electricity prices and network rental fees. Reading Article 33 of Law 30/2009 together with its amendment in Article 42 point 23 of Law 6/2023 shows that there is no substantive change regarding the requirement of government and regional government approval, so that, in the Court’s view, State control over electricity tariffs and network rental remains in place and abuse of network rental by independent power producers can at least be significantly minimized. On this reasoning, the Court views that the Petitioners’ objection to the phrase “electricity network rental” in Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law 6/2023 as being contrary to the 1945 Constitution is unfounded, and thus their claim in this respect is not legally well-grounded.

- On the basis of the foregoing legal considerations, the Court concludes that Article 7 paragraph (1) in Article 42 point 5 of Law 6/2023 does not guarantee the right to recognition, guarantees, protection, and legal certainty, nor the right to advance oneself in the collective pursuit of rights, as alleged by the Petitioners. Therefore, their arguments are partly well-founded in law. Likewise, the word “may” in Article 10 paragraph (2) in Article 42 point 6 of Law 6/2023 not only fails to safeguard those rights but also fails to ensure the protection of vital branches of production that are important to the State and

affect the livelihood of the people at large being controlled by the State, as claimed by the Petitioners. Their arguments on this point are therefore well-founded.

By contrast, the Petitioners' petition concerning Article 11 paragraph (1) in Article 42 point 7 and Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law 6/2023 have in fact guaranteed recognition, protection, and legal certainty, the right to advance oneself collectively, and the protection of branches of production that are vital to the State and affect the livelihood of the people at large being controlled by the State, contrary to what the Petitioners allege. Consequently, the Petitioners' arguments in relation to Article 11 paragraph (1) in Article 42 point 7 and Article 33 paragraphs (1) and (2) in Article 42 point 23 of Law 6/2023 are not legally well-founded. Meanwhile, their request to have the word "may" in Article 23 paragraph (2) in Article 42 point 15 of Law 6/2023 declared unconstitutional is vague or unclear (*obscuur*).

Accordingly, the Court renders the following decision:

1. To grant the Petitioners' petition in part;
2. To declare that Article 7 paragraph (1) in Article 42 point 5 of the Appendix to Law 6/2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law (State Gazette of the Republic of Indonesia Year 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 insofar as it is not interpreted to mean: "The National Electricity General Plan is formulated on the basis of national energy policy and determined by the Central Government after obtaining consideration from the House of Representatives of the Republic of Indonesia;"
3. To declare that the word "may" in Article 10 paragraph (2) in Article 42 point 6 of the Appendix to Law 6/2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law (State Gazette of the Republic of Indonesia Year 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;
4. To order that this decision be published in the State Gazette of the Republic of Indonesia.
5. To declare that the Petitioners' petition, insofar as it concerns the alleged unconstitutionality of the word "may" in Article 23 paragraph (2) in Article 42 point 15 of the Appendix to Law 6/2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law (State Gazette of the Republic of Indonesia Year 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856), is inadmissible.
6. To reject the remainder of the Petitioners' petition for all other and further claims.

Dissenting Opinion

With respect to the decision *a quo* of the Court, there is a dissenting opinion from one Constitutional Justice, namely Justice M. Guntur Hamzah, limited to the norm of Article 7 paragraph (1) in Article 42 point 5 of Law 6/2023, who states as follows:

> In my view, the review of Article 42 point 5 in Article 7 paragraph (1) of Law 6/2023, which provides that "The National Electricity General Plan shall be formulated on the basis of national energy policy and determined by the Central Government" should result in a finding that the provision is not contrary to the 1945 Constitution of the Republic of Indonesia, or in other words, that the norm in question is constitutional. Therefore, the Court ought to have rejected the *petitums* in this case.