



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 50/PUU-XXII/2024**

Concerning

The Existence of Circumcision Experts in the Health Law

- Petitioner** : Iwan Hari Rusawan
- Type of Case** : Judicial review of Law Number 17 of 2023 concerning Health (Law 17/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 1 point 6 and point 7, as well as Article 210 of Law 17/2023, are contrary to Article 28E paragraph (1), Article 28H paragraph (2), as well as Article 28I paragraph (2) of the 1945 Constitution
- Verdict** : **On the Preliminary Injunction:**
To dismiss the Petitioner's preliminary injunction entirely
- On the Merits:**
To dismiss the Petitioner's petition entirely
- Date of Decision** : Friday, January 3, 2025
- Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen who has had experience in providing circumcision services for more than 15 years, both male and female circumcisions. The Petitioner feels prejudiced by the enactment of the provisions of the norms of Article 1 point 6, Article 1 point 7, and Article 210 of Law 17/2023 because the Petitioner, given his circumcision knowledge and skills are not from formal education, is not free to carry out circumcision, which is a practice of belief derived from a religious teaching, unable to choose the format of education, unable to select the form of work, and hindered from same opportunities and benefits other than what has been stipulated in Article 1 point 6, Article 1 point 7, and Article 210 of Law 17/2023.

Whereas, regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of statutory norms, *in casu* Article 1 point 6, Article 1 point 7, and Article 210 of Law Number 17 of 2023 concerning Health against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Whereas, regarding legal standing, the Court is of the opinion that the Petitioner has clearly explained his constitutional rights alleged to be violated by the enactment of the norms of Article 1 point 6, Article 1 point 7, and Article 210 of Law 17/2023, which are being petitioned for

review. The Petitioner's alleged constitutional loss is specific, has the potential to occur, and has a causal relationship (*causal verband*) with the enactment of the norms being petitioned for review, particularly the Petitioner's constitutional rights to carry out his work as a circumcision expert in the health sector that is not specifically regulated in Law 17/2023. Therefore, if the Court grants the petition *a quo*, the alleged constitutional loss in question will no longer occur. Thus, regardless of whether the issue of the norms' unconstitutionality argued by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the petition *a quo*.

Whereas, regarding the preliminary injunction, after the Court examines the Petitioner's preliminary injunction, it is evident that what the Petitioner petitions in the preliminary injunction is directly related to the subject matter of the petition. Thus, the Petitioner's preliminary injunction cannot be justified and must therefore be declared legally unjustifiable.

Whereas, in the Court's opinion, the constitutionality issue that needs to be considered is whether the qualifications of professional education for medical personnel and of higher education for health workers under Law 17/2023, which provides no alternative educational pathways for individuals who devote themselves to the health sector and possess invasive health-related knowledge and skills, are contrary to the 1945 Constitution. The main issue raised by the Petitioner is, in essence, that the Petitioner petitions the Court to confirm the existence and continuation of circumcision performed by circumcision experts, so that this matter may be regulated by Law 17/2023.

Whereas, in carrying out medical practice, medical personnel address patients'/clients' complaints or problems, then trace the patient's medical history, perform a physical examination, and support examinations. In carrying out these activities, medical personnel must consider patients' condition holistically and comprehensively, and also uphold professionalism and professional ethics above personal interests/gains. The duties of medical personnel are not only to treat but also to act as "advocates" in the health sector, accompanying patients, providing education, explaining in detail how doctors will treat them, providing support and empowering patients, and taking a good approach to patients and their families. So, a medical professional must be able to treat patients comprehensively, namely, through promotive, preventive, curative, rehabilitative, and palliative care for incurable patients. All the abilities medical personnel possess in carrying out their duties are acquired through formal education, both higher education and professional education. Higher education for medical personnel differs from other types of higher education because graduates must be able to integrate the knowledge and skills they have acquired during medical education with the special medical ethics, morals, laws, and culture to comply with these standards.

Whereas under Indonesian doctor competency standards, circumcision is included in the 4A skill level that graduates of medical professional education must master. Circumcision is a procedure involving the removal of part or all of the penile foreskin. Since the penis is a sensitive vital organ, the procedure must ensure safety and protection during its implementation and minimize the risk of bleeding, damage to the vital organ, or post-procedural infection following the invasive procedure. Circumcision is a surgical procedure that carries risks, so it should be carried out under medical professional standards, which include the completeness of equipment and materials, sterility, and performance by a general practitioner or specialist who holds a registration certificate/practice license with competencies regulated by the Indonesian Medical Council, to uphold the standards and quality of health services in the community.

Pursuant to the legal considerations above, in the Court's opinion, it is not appropriate to equate circumcision experts' knowledge and skills in carrying out health-related invasive procedures that are obtained naturally or inherited, with the knowledge, skills, professionalism,

ethics, morals, law, and culture possessed by medical personnel obtained through formal medical professional education. Moreover, the knowledge and skills used in invasive procedures carried out by circumcision experts in their work only fulfill one element, namely the ability and skills that must be possessed by medical personnel. Therefore, categorizing health-related invasive practitioners, which are circumcision experts, into the category of medical personnel in Article 1 point 6 of Law 17/2023 only on the basis of equating health-related invasive procedures carried out prior to the existence of medical education with the skills possessed by medical personnel in carrying out invasive procedures, particularly circumcision, is inappropriate and can endanger patients. Thus, in light of the above legal considerations, the Petitioner's argument *a quo* is legally unjustifiable.

Whereas, regarding the Petitioner's argument petitioning the interpretation that the phrase "higher education" in Article 1 point 7 of Law 17/2023 is contrary to the 1945 Constitution to the extent that it is not interpreted to include culture, local wisdom, or religion-related non-formal and informal education, as well as the interpretation of Article 210 paragraph (1) and paragraph (2) of Law 17/2023, namely "except for culture, local wisdom, and religion-related Medical Personnel and Health Workers who have obtained recognition from Indonesian society prior to the existence of higher education institutions in Indonesia". Through higher education, health workers will learn not only scientific theories but also the skills needed to carry out their work later, thereby acquiring skills that are usually acquired through non-formal and informal education. Given that health workers will provide health services in carrying out their work, all actions they take must be based on measurable, scientific, and accountable knowledge and skills. Thus, in the Court's opinion, the Petitioner's arguments regarding the petition to interpret the phrase "higher education" in Article 1 point 7 and the interpretation of Article 210 of Law 17/2023 by including culture, local wisdom, or religion-related non-formal and informal education as part of the educational qualifications to be possessed by health workers are legally unjustifiable.

Whereas, regarding the issue of the unconstitutionality of Article 1 point 6 and Article 1 point 7 of Law 17/2023, the Court is of the view that the provisions challenged by the Petitioner constitute general provisions of Law 17/2023 on the limitation of meaning or definition of a word, as well as matters of a general nature. Norms in the general provisions section will be the legal basis of the subsequent norms, so that the formulation and the description of the meaning of norms in the general provisions must be carried out carefully because, as basic provisions, they must be general in nature. When correlated to the Petitioner's petition to add the phrase "invasive health practitioners who have already been practiced in Indonesia prior to the existence of medical education in Indonesia" in Article 1 point 6 of Law 17/2023 and to interpret Article 1 point 7 of Law 17/2023 regarding the phrase "higher education" to include culture, local wisdom, or religion-related non-formal and informal education, in the Court's opinion, this will affect the body structure of Law 17/2023, particularly the articles related to the definition of the words medical personnel and health workers. When considered the impact on subsequent articles associated with the meaning of the two words, the addition of phrase to Article 1 point 6 and the interpretation of the phrase "higher education" in Article 1 point 7 of Law 17/2023 will actually confuse the meaning of the norms of the subsequent articles, and this is what the Court is worried about in its previous legal considerations, namely the potential to create new legal uncertainty. Thus, the Petitioner's argument *a quo* is legally unjustifiable.

Whereas, according to the Court, Article 28D paragraph (1) of the 1945 Constitution states that every person has the right to recognition, assurance, protection, fair legal certainty, as well as equal treatment and certainty before the law, including guarantees to obtain work and a decent living for humanity as regulated in Article 27 paragraph (2) of the 1945 Constitution. Therefore, regarding the traditions/customs carried out by circumcision experts, which are obtained naturally or passed down across generations and have become a profession, they must

at least receive recognition and guarantee, even though what they do is not yet included in positive law. This guarantee and recognition are a form of respect and legal protection for the good intentions carried out by circumcision experts who have long been helping people to maintain their health. The work of circumcision experts has actually eased the state's obligation to provide health services for all Indonesian people for a long time, as these services have not been accessible/provided by medical personnel or health workers available in Indonesia. Abolishing the work of circumcision experts on the basis that the work carries medical risks and therefore can only be carried out by medical personnel and/or health workers, in the Court's opinion, is not the right solution, because it provides no solution to circumcision experts in question. In this regard, the Court has taken a stance in a case related to another work with a character not much different, namely dentists, as stated in Constitutional Court Decision Number 40/PUU-X/2012 pronounced in a plenary session open to the public on January 15, 2013.

In relation to this condition, the thing that the government must consider is the safety of patients using the services of circumcision experts, not focusing on the removal or prohibition of the work of circumcision experts. Therefore, the Court, through the decision *a quo*, emphasizes that the government, *in casu*, the Ministry of Health, may formulate policies through a plan to empower circumcision experts to attain standardized competencies while complying with safety principles. This empowerment can be realized through coaching, special training before being granted a practice permit, and regular supervision. Coaching for circumcision experts can be implemented by organizing formal vocational education for circumcision experts at several higher education institutions, hospitals, or other institutions that aim to provide a brief, practical basic medical knowledge, particularly related to invasive and circumcision procedures, as well as other skills, offered free of charge to the circumcision experts, followed by a competency test as a requirement to obtain a certificate, registration, and permit to carry out their work as an circumcision expert in accordance with the standards set by the government. Meanwhile, the government's supervision is intended to control invasive and circumcision procedures carried out by circumcision experts to ensure compliance with the competency standards of circumcision experts, and sanctions apply to circumcision experts who commit violations. In addition, another option is through a traditional vocational education system for health workers, which can serve as a reference, given that formal education and administrative matters related to registration by the traditional health college are required to be categorized as formal health workers and be issued a traditional health workers registration certificate.

Accordingly, the Court subsequently passes down a decision in which the verdicts are as follows:

On the Preliminary Injunction:

To dismiss the Petitioner's preliminary injunction entirely.

On the Merits:

To dismiss the Petitioner's petition entirely.