



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 16/PUU-XXIII/2025

Concerning

Open Violence

Petitioners	: R. Odjahan Silalahi, et al.
Type of Case	: Judicial Review of the Indonesian Criminal Code (Criminal Code) against the 1945 Constitution of the Republic of Indonesia (of 1945 UUD Constitution)
Subject Matter	: Judicial Review of Article 170 paragraph (1) of Indonesian Criminal Code against the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition in its entirety
Date of Decision	: Wednesday, May 14, 2025
Overview of Decision	:

The Petitioners argue that as Indonesian citizens they have constitutional rights granted by the 1945 Constitution of the Republic of Indonesia. The Petitioners are carrying out a court decision that has permanent legal force, even though according to the Petitioners, the said decision is very far from justice. The Petitioners believe that the constitutional loss in the form of criminal punishment as stipulated in Article 170 paragraph (1) of Indonesian Criminal Code is open to multiple interpretations.

With respect to the Court's authority, the Petitioners petition for a review of the constitutionality of the law, *in casu* Article 170 paragraph (1) of Indonesian Criminal Code against the 1945 Constitution of the Republic of Indonesia, therefore the Court has the authority to hear the Petitioners' petition.

With respect to the Petitioners' legal standing, regardless of whether or not the unconstitutionality of the norm being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in submitting the petition *a quo*.

Whereas since the petition *a quo* is clear, the Court is of the opinion that there is no urgency or need in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas the Petitioners argue that the phrase "open violence" in Article 170 paragraph (1) of the Indonesian Criminal Code is formulated incompletely or imperfectly and therefore fails to satisfy the principle of legality, which in its development has been articulated into principles governing the formulation of criminal offenses, namely *lex stricta*, *lex scripta*, and *lex certa*. In this formulation, the element of "disturbing public order" is not expressly stated. As a result, this creates room for multiple interpretations, allowing Article 170 paragraph (1) of the

Indonesian Criminal Code to be interpreted broadly and applied to acts that do not, in fact, disturb public order. With respect to the Petitioners' arguments, the Court is of the opinion that, doctrinally, "open violence" refers to violence committed by an individual or a group against another person or group in an open manner. The element of openness referred to herein means that the act of violence is carried out in an open place or, at the very least, in a public place where the public can easily become aware of the act without any obstruction, such that they may freely observe the actions of the perpetrator or perpetrators. In this context, when linked to the elements contained in Article 170 paragraph (1) of the Indonesian Criminal Code, the element of "open violence" as questioned by the Petitioners signifies that the act of violence is committed openly, that is, in a place where the public can see the event without hindrance, should they wish to observe the criminal act in question. Therefore, the core issue raised by the Petitioners concerns the absence of an explicit affirmation of the element of "open violence" in the provisions of Article 170 paragraph (1) of the Indonesian Criminal Code. However, this absence does not automatically result in legal uncertainty or give rise to multiple interpretations in its application by law enforcement officials, as the elements clearly contained in Article 170 paragraph (1) of the Criminal Code already reflect the meaning of "open violence" in line with the concern of the Petitioners. Therefore, the Court is of the opinion that supplementing Article 170 paragraph (1) of the Indonesian Criminal Code with an explicit element of "open violence," as requested by the Petitioners, would in fact lead to redundancy in the interpretation of an element that is already implicit in the provision, and could instead give rise to legal uncertainty.

Pursuant to the foregoing legal considerations, the Petitioners' arguments asserting that the element of "open violence" is imperfect or insufficiently formulated and therefore fails to satisfy the principle of legality, as well as the principles of *lex stricta*, *lex scripta*, and *lex certa*, are legally unjustifiable.

Whereas the Petitioners further argue that Article 170 paragraph (1) of the Indonesian Criminal Code does not explicitly formulate the element of "disturbing public order," thereby giving rise to multiple interpretations. With respect to the argument *a quo* of the Petitioners, the Court is of the opinion that the attachment of the element of "disturbing public order" to the norm of Article 170 paragraph (1) of the Indonesian Criminal Code, as proposed by the Petitioners, is excessive, considering that the provision *a quo* is regulated under Chapter V concerning Crimes Against Public Order. Therefore, doctrinally, the norms of the articles contained in this chapter cannot be separated from the principal subject matter of the types of criminal acts regulated therein, including, in this case, Chapter V as referred to above. Furthermore, with regard to the normative issue, Article 170 paragraph (1) of the Indonesian Criminal Code constitutes a norm that regulates criminal sanctions imposed on perpetrators of criminal acts "involving the element of openly using violence against persons or property with joint force". This formulation confirms that the criminal acts encompassed by the norm of Article 170 paragraph (1) of the Indonesian Criminal Code are closely related to acts carried out openly, wherein the term "openly" signifies that the act is committed in front of the public or, at the very least, in circumstances where the public can observe the criminal act without any obstruction, as previously considered. Therefore, pursuant to the foregoing legal considerations, it is clear and unequivocal that criminal acts committed in front of the public, as stipulated in the norm of Article 170 paragraph (1) of the Indonesian Criminal Code, within the bounds of reasonable reasoning, inherently cause disturbances to public order or society, and may even potentially result in harm to others, whether in the form of physical injury or loss of property, or at least a loss of the sense of security and tranquility within society. Therefore, the Petitioners' request that Article 170 paragraph (1) of the Indonesian Criminal Code include an affirmation of the element of "disturbing public order" is excessive and without legal ground and has the potential to give rise to legal uncertainty.

Furthermore, in relation to the Petitioners' argument questioning the absence of the elements of "intentionally" and "against the law" in the norm of Article 170 paragraph (1) of the Indonesian Criminal Code, the Court is of the opinion that these elements cannot be separated from the element of "using violence against persons or property with joint force" contained in the said provision. In carrying out acts using violence against persons or property with joint

force, within the limits of reasonable reasoning, it is impossible for the perpetrators to do so without an element of intent. The act of committing violence with joint force against a definite object, namely persons or property, is an act that has been consciously and deliberately considered beforehand by the perpetrators, including the consequences of the act carried out. Likewise, with regard to the element of “against the law,” the Court is of the opinion that the perpetrators should have been aware of this element when committing the crime, since the object of violence in Article 170 paragraph (1) of the Indonesian Criminal Code relates to other persons or the property of others. Therefore, even without explicit affirmation of the elements of “intentionally” and “against the law” in the provisions of Article 170 paragraph (1) of the Indonesian Criminal Code, the norm of this article does not give rise to multiple interpretations or result in legal uncertainty.

Accordingly, the Court subsequently passed down a decision, the verdict of which was to dismiss the Petitioners’ petition in its entirety.