



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 115/PUU-XXII/2024**

Concerning

Criticism and Freedom of Expression in Electronic Media

- Petitioner** : **Jovi Andrea Bachtiar**
- Type of Case** : Judicial review of the Criminal Code (KUHP) and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (Law 1/2024) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of the Phrase “carried out in the public interest” in Article 310 paragraph (3) of the Criminal Code and the phrase “violating decency” in Article 27 paragraph (1), Article 28 paragraph (3), the phrase “violating decency” in Article 45 paragraph (1), the phrase “carried out for the public interest” in Article 45 paragraph (2) letter a, the phrase “the act as referred to in paragraph (4) shall not be punishable if” in Article 45 paragraph (7), the phrase “carried out for the public interest” in Article 45 paragraph (7) letter a, and Article 45A paragraph (3) of Law 1/2024 against Article 1 paragraph (3), Article 28D paragraph (1), Article 28E paragraph (3), and Article 28F of the 1945 Constitution
- Verdict** : 1. To grant the Petitioner’s petition in part
2. To declare that the word “disorder” in Article 28 paragraph (3) and Article 45A paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted that “disorder” refers to a condition that disrupts public order in the physical space, not a condition in the digital/cyberspace”

3. To declare that the Petitioner's petition, with respect to the phrase "carried out in the public interest" in Article 45 paragraph (2) letter a of Law 1/2024 and the phrase "violating decency" in Article 27 paragraph (1) and Article 45 paragraph (1) of Law 1/2024, is inadmissible
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate
5. To dismiss the remaining petition of the Petitioner

Date of Decision : Tuesday, April 29, 2025

Overview of Decision :

The Petitioner is an Indonesian citizen who works as a Prosecutor and is an activist and observer of constitutional law, with concerns about law enforcement in Indonesia.

Whereas regarding the Constitutional Court's (the Court) authority, since what is being petitioned for review is a law, *in casu* the Criminal Code and Law 1/2024 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 the alleged constitutional loss that is specific and, in the Petitioner's opinion, he is actually prejudiced by the enactment of the phrase "carried out in the public interest" in Article 310 paragraph (3) of the Criminal Code and Article 45 paragraph (2) letter a, the phrase "violating decency" in Article 27 paragraph (1) and Article 45 paragraph (1), the phrase "carried out for the public interest" in Article 45 paragraph (7) letter a, the phrase "the act as referred to in paragraph (4) shall not be punishable if" in Article 45 paragraph (7), Article 28 paragraph (3), and Article 45A paragraph (3) of Law 1/2024, because the phrases in question are unclear (ambiguous) so that the Petitioner considers them to have criminalized the Petitioner in expressing his opinion in public. In addition, the Petitioner has clearly explained the causal relationship (*causal verband*) between the alleged constitutional loss and the enactment of the norm of the Article being petitioned for review. Therefore, if the petition is granted, the alleged actual constitutional loss as argued by the Petitioner will no longer occur. Thus, regardless of whether the unconstitutionality issue of the norm being argued is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

Whereas the Petitioner argues that, in essence, the phrase "carried out in the public interest" in Article 310 paragraph (3) of the Criminal Code and Article 45 paragraph (2) letter a of Law 1/2024 and the phrase "carried out for the public interest" in Article 45 paragraph (7) letter a of Law 1/2024 are ambiguous in their meaning, resulting in unclear or disparate law enforcement, so that Indonesian citizens who criticize government policies and/or government/state officials may experience criminalization attempts. Regarding the Petitioner's argument *a quo*, without intending to examine the Petitioner's actual case, in the Court's opinion, freedom of opinion is essential in a democratic country and part of the human rights guaranteed by Article 28 and Article 28E paragraph (3) of the 1945 Constitution as well as statutory regulations. Guarantees and protection of freedom of expression are emphasized in Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights (Law 39/1999) and Article 25 of Law 39/1999. Freedom of opinion, particularly when expressed in public, is specifically regulated in Law Number 9 of 1998 concerning Freedom of Expression in Public. Referring to these two laws, freedom of expression is every citizen's right that can be exercised orally, in writing, and in other such ways in a free and responsible manner in accordance with applicable provisions, so as not to interfere with others'

rights, and no party is prejudiced. In addition, freedom of expression has also received universal recognition, as stated in Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR). As a universal principle of human rights, freedom of opinion and expression must be respected, protected, and fulfilled by the state. However, this right is not absolute and unlimited. The right to freedom of opinion and expression may be limited (derogable right) under a careful, cautious formulation. The principle of responsible freedom of expression is a freedom that takes into account applicable legal rules, so that the expression of this freedom must be aware of the limitations imposed by others' rights and freedom because it is not granted without limits. The limitations on exercising this freedom are set out in Article 28J paragraph (2) of the 1945 Constitution and in Article 19 paragraph (3) of the ICCPR. In line with the provisions above, the Court is of the view that the phrase "carried out in the public interest" and the phrase "carried out for the public interest" must be upheld in exercising freedom of expression. The same thing is also explained in the Elucidation of Article 45 paragraph (7) letter a of Law 1/2024, which states, "what is meant by 'carried out for the public interest' is protecting the interests of society expressed through the right to expression and the right to democracy, for example, through demonstrations or criticism. In a democratic country, criticism is important as part of freedom of expression and should be as constructive as possible, even when it contains disagreement with others' actions or deeds. Basically, in this article, criticism is a form of supervision, correction, and suggestions regarding matters relating to the interests of society." As per the Court's legal considerations in Constitutional Court Decision Number 29/PUU-XIV/2016 and the Elucidation of Article 45 paragraph (7) letter a of Law 1/2024, public interest means the interests of the majority of society, including the interests of the nation and state. In this regard, the state does not prevent its citizens from expressing opinions or criticism in public, but this must be done responsibly, taking into account morals, religious values, culture, security, and public order. Considering the entire description above, the *petitum* as petitioned by the Petitioner actually narrows the meaning of the norms of the articles *a quo*, thereby creating legal uncertainty. On the other hand, freedom of expression must also be exercised in accordance with the provisions of Article 28J of the 1945 Constitution, as well as moral values, decency, public interest, and national integrity. The actions of anyone, including the Petitioner, to convey or express their opinions through social media must be in accordance with constitutional provisions as well as these values so that the criticism conveyed is not considered and allows law enforcement to interpret it as incitement, false accusation (*fitnah*), or defamation. Pursuant to the legal considerations above, the Court is of the opinion that the Petitioner's argument regarding the phrase "carried out in the public interest" in Article 310 paragraph (3) of the Criminal Code and the phrase "carried out for the public interest" in Article 45 paragraph (7) letter a of Law 1/2024 is legally unjustifiable.

Regarding the review of the phrase "carried out in the public interest" in Article 45 paragraph (2) letter a of Law 1/2024, after examining the revised petition on page 23 point 6, the Court finds the fact that, in the *posita* section of the petition, the Petitioner petitions that the Court provides a constitutional interpretation (conditionally constitutional) to the extent that it is interpreted that criticism of state administrators, state civil servants, and other public officials in the public interest shall be punishable. Meanwhile, in the *posita* section on page 23 point 7 and *petitum* point 5, the Petitioner petitions that the Court declares the phrase "carried out for the public interest" in Article 45 paragraph (2) letter a of Law 1/2024 contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted, "including but not limited to criticism of government policies, criticism directed at State Officials to prevent abuse of authority or arbitrary actions against the public, and criticism to ensure that State Officials do not use state facilities carelessly, let alone without right". In this regard, after carefully examining it, the Court finds an inconsistency between the *posita* of the petition petitioning that the phrase *a quo* be declared conditionally constitutional and the *petitum* petitioning that the phrase *a quo* be declared

conditionally unconstitutional. This makes the Petitioner's argument with respect to the review of the phrase "carried out in the public interest" in Article 45 paragraph (2) of Law 1/2024 unclear or obscure (*obscuur*).

Whereas the Petitioner further argues that the phrase "violating decency" in Article 27 paragraph (1) and Article 45 paragraph (1) of Law 1/2024 shows that the scope of the criminal act formulation is too broad and has unclear indicators, thereby it is contrary to the principle of *lex certa* and may potentially be exploited by law enforcement officials to criminalize people who criticize or express opinions on social media without considering the intention and purpose of the criticism. Regarding the Petitioner's argument petitioning that the phrase "violating decency" be declared contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as "committing an act of displaying nudity, genitals, and sexual activities that are contrary to the values prevailing in society at the place and time the act is committed," in the Court's opinion, the Petitioner needs to read the article entirely and as a single unity with the Elucidation of Article 27 paragraph (1) of Law 1/2024. In this regard, the Elucidation of Article 27 paragraph (1) of Law 1/2024 states that "violating decency" means committing an act of displaying nudity, genitals, and sexual activities that are contrary to the values prevailing in society at the place and time the act is committed. Therefore, the meaning of the phrase "violating decency" is stated in the Elucidation of Article 27 paragraph (1) of Law 1/2024. However, after examining the Petitioner's argument, the Petitioner, in the revised petition on page 27 point 3, petitions the Court to provide a constitutional interpretation in accordance with the Elucidation of Article 27 paragraph (1) of Law 1/2024. Meanwhile, in the *posita* section on page 27-28 point 5, the Petitioner, in addition to petitioning that the phrase *a quo* be declared contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as "committing an act of displaying nudity, genitals, and sexual activities that are contrary to the values prevailing in society at the place and time the act is committed," also petitions that the Court provides a constitutional interpretation in accordance with the Elucidation of Article 27 paragraph (1) of Law 1/2024. Meanwhile, in the *petitum* section point 6, the Petitioner petitions that the phrase *a quo* be declared contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as "committing an act of displaying nudity, genitals, and sexual activities that are contrary to the values prevailing in society at the place and time the act is committed". Regarding these matters, if Petitioner petitions that, as stated in the same arguments in the *posita* section, the phrase *a quo* be given a constitutional interpretation in accordance with the Elucidation of Article 27 paragraph (1) of Law 1/2024, then, since the meaning of the phrase "violating decency" in the Elucidation of Article 27 paragraph (1) of Law 1/2024 corresponds to that in the *petitum* petitioned by the Petitioner, it is no longer relevant for the Court to reinterpret it. However, regardless of whether there is a constitutional issue regarding this norm, after the Court examines the *posita* of the petition petitioning that the phrase *a quo* also be declared conditionally constitutional, in contrast with the *petitum* section where the petition only petitions that the phrase *a quo* be declared contrary to the 1945 Constitution and has no binding legal force to the extent that no interpretation is given (conditionally unconstitutional), the Court is of the view that, given the inconsistency between the *posita* and the *petitum*, the Petitioner's argument in the petition *a quo* is unclear or obscure (*obscuur*).

Whereas the Petitioner also argues that the formulation of Article 45 paragraph (7) of Law 1/2024, which does not include paragraph (6) as an act that shall not be punishable, opens up a legal loophole on imposing criminal sanctions on citizens who express aspirations, criticism and suggestions through media of electronic information and transactions, particularly social media, since the accusation cannot be proven true, so that it may potentially be used by government officials who object to being criticized to report it to the police. Whereas there is a correlation between Article 27A of Law 1/2024, which outlines the types of criminal acts, and

Article 45 paragraph (4) of Law 1/2024, which provides sanctions for perpetrators who commit the criminal acts set out in Article 27A of Law 1/2024. In his petition, the Petitioner petitions that the wording of the phrase “The act as referred to in paragraph (4) shall not be punishable if” in Article 45 paragraph (7) of Law 1/2024 be changed, namely by inserting an additional phrase “paragraph (6)” to the article *a quo*, so that the article *a quo* will read, “The act as referred to in paragraph (4) and paragraph (6) shall not be punishable if”. Under the provisions of Article 45 paragraph (6) of Law 1/2024, it is clear that any person who has committed an act as provided in Article 27A of Law 1/2024 shall be punished for false accusation if the act cannot be proven true or contradicts what is known as a fact, and the opportunity to prove it has been given to the person. In relation to this matter, in Constitutional Court Decision Number 013-022/PUU-IV/2006 pronounced in a Plenary Session open to the public on December 6, 2006, it was stated that, in a false accusation offense, it is required that the perpetrator knows that what is said about the victim is not true. False accusation (*fitnah*) is a form of defamation, and both acts of disseminating false information. However, both have different meanings, namely that false accusation has an element of accusation that is not proven true, while defamation falls into the category of insulting, degrading, or disseminating information whose substance may or may not be true, but is committed in a way that degrades the dignity and honor of the subject concerned. Therefore, a distinction must be made between criticism, defamation, false accusation, and insult. Given this definition, it is not appropriate to equate the act of attacking another person’s honor or good name with a false accusation. Even from the beginning, the Criminal Code has differentiated between the two in its regulations, where defamation is provided in Article 310 paragraph (1), as interpreted by Constitutional Court Decision Number 78/PUU-XXI/2023 and Article 310 paragraph (2), as well as Article 315, while false accusation offence is provided in Article 311 paragraph (1) and Article 317 of the Criminal Code. In line with the formulation of norms in the Criminal Code mentioned above, the legislators also differentiate between the act of attacking another person’s honor or good name and a false accusation. Article 27A of Law 1/2024 clearly states that the act of attacking the honor or good name of another person shall be punished as stipulated in Article 45 paragraph (4) of Law 1/2024. Meanwhile, the criminal threat for false accusation is provided in Article 45 paragraph (6) as the act of attacking the honor or good name of another person, but cannot be proven true and contradicts what is known, even though the opportunity to prove it has been given. Normatively, the provisions of Article 45 paragraph (7) of Law 1/2024 have been formulated appropriately according to their intended use, only referring to the provisions of Article 45 paragraph (4) of Law 1/2024. The formulation of the norm in the provisions of Article 45 paragraph (6) of Law 1/2024 will be enforced if the act referred to in Article 45 paragraph (4) of Law 1/2024 cannot be proven. The phrase “cannot be proven true and contradicts what is known, even though the opportunity to prove it has been given” makes it different from defamation. Thus, it is not appropriate if the Petitioner desires that the act under the category of being “punished for false accusation” may not be subject to criminal sanctions. This means that the information conveyed is true or can be proven true, and does not constitute a false accusation offense. Pursuant to the legal considerations above, the Court is of the opinion that the Petitioner’s argument, with respect to the phrase “The act as referred to in paragraph (4) shall not be punishable if” in Article 45 paragraph (7) of Law 1/2024, is legally unjustifiable.

Whereas the Petitioner further argues that Article 28 paragraph (3) and Article 45A paragraph (3) of Law 1/2024 do not provide clear limitations regarding the meaning of the phrase “false news that cause public disorder,” so that it can be used to suppress criticism, which ultimately reduces freedom of opinion or actions that should be legally valid since it may be criminalized on the basis of subjective interpretations from law enforcement officials or authorized officials. Law 1/1946 emphasizes the act of broadcasting false news or notifications that can cause unrest among the people, regardless of whether social unrest caused by false news occurs in physical spaces or not, so that unrest that occurs not in a physical space may also be subject

to Law 1/1946. This differs from what is regulated in Law 1/2024, which only covers the consequences of false notifications in the form of disorder that disrupts public order in physical spaces. However, when the regulations regarding the act of disseminate false news/notifications using information technology which causes disorder in society, as regulated in the norm of Article 28 paragraph (3) of Law 1/2024, are examined closely, it is clear that legal uncertainty exists when this is correlated to the Elucidation of Article 28 paragraph (3) of Law 1/2024, which states that “disorder” refers to a condition that disrupts public order in the physical space, not a condition in the digital/cyberspace. This means that the Elucidation of Article 28 paragraph (3) of Law 1/2024 has provided a clear limitation, namely that the dissemination of false information causing physical disorder in society, not including disturbances/disorder in digital/cyber spaces. Such a limitation is in line with Constitutional Court Decision Number 78/PUU-XXI/2023, which allows law enforcement officials to take legal action only against the dissemination of false news that causes physical disturbances/disorder in the community. This is intended to fulfill the principles of *lex scripta*, *lex certa*, and *lex stricta* in the application of Article 28 paragraph (3) of Law 1/2024, which is a material offense that emphasizes the consequences of actions or disorder committed by perpetrators. Meanwhile, regarding the constitutionality of Article 45A paragraph (3) of Law 1/2024, that the Petitioner also petitions for review, given the norm of Article 28 paragraph (3) of Law 1/2024 has been interpreted as a primary norm, the legal consequence is that Article 45A paragraph (3) of Law 1/2024 must be adjusted to the interpretation of the norm of Article 28 paragraph (3) of Law 1/2024 as has been considered above. Pursuant to the legal considerations above, the word “disorder” in the norms of Article 28 paragraph (3) and Article 45A paragraph (3) of Law 1/2024 must be declared contrary to the 1945 Constitution and conditionally has no binding legal force to the extent that it is not interpreted that “disorder” refers to a condition that disrupts public order in the physical space, not a condition in the digital/cyberspace. Therefore, Petitioner’s argument is legally justifiable in part.

Pursuant to the aforementioned considerations, the Court passes down a decision in which the verdicts were:

1. To grant the Petitioner’s petition in part.
2. To declare that the word “disorder” in Article 28 paragraph (3) and Article 45A paragraph (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2024 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6905) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted that “disorder refers to a condition that disrupts public order in the physical space, not a condition in the digital/cyberspace.”
3. To declare that the Petitioner’s petition, with respect to the phrase “carried out in the public interest” in Article 45 paragraph (2) letter a of Law 1/2024 and the phrase “violating decency” in Article 27 paragraph (1) and Article 45 paragraph (1) of Law 1/2024, is inadmissible.
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
5. To dismiss the remaining petition of the Petitioner.