



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 128/PUU-XXIII/2025**

**Concerning  
Prohibition on Holding Concurrent Positions by Deputy Ministers**

- Petitioners** : **Viktor Santoso Tandiasa and Didi Supandi**
- Type of Case** : Judicial review of Law Number 39 of 2008 concerning State Ministries (Law 39/2008) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 23 of Law 39/2008 is contrary to Article 1 paragraph (3), Article 17 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : 1. To grant the petition of Petitioner I in part  
2. To declare that Article 23 of Law Number 39 of 2008 concerning State Ministries (State Gazette of the Republic of Indonesia of 2008 Number 166, Supplement to the State Gazette of the Republic of Indonesia Number 4916) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "Ministers and Deputy Ministers are prohibited from holding concurrent positions as:  
a. Other state officials in accordance with the laws and regulations;  
b. Commissioners or directors of state-owned or private companies; or  
c. Leaders of organizations funded by the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget."  
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate  
4. To declare that the petition of Petitioner II is inadmissible  
5. To dismiss the remainder of the petition
- Date of Decision** : Thursday, August 28, 2025

**Overview of Decision** :

Petitioner I is an individual Indonesian citizen working as an advocate, who has concerns about the enforcement of constitutional values and frequently litigates or practices at the Constitutional Court and the Supreme Court and serves as Chairperson of

the Perhimpunan Pengacara Konstitusi (PPK or Constitutional Lawyers Association), a legal entity authorized by Decree of the Minister of Law and Human Rights Number AHU-0008675.AH.01.07.2023, while Petitioner II is an Indonesian citizen, working as a partner driver of ShopeeFood, and in carrying out his work, Petitioner II has concerns about the safety of his life because all work partners of digital platform companies, such as Gojek, Grab, ShopeeFood, do not receive any work protection due to poor governance and unprofessional management of the State-Owned Enterprises (*Badan Usaha Milik Negara* or BUMN). Moreover, the corruption cases of BUMN is increased due to the weak supervisory function which should have been the main duties of the commissioners.

With respect to the Court's authority, since the petition *a quo* is submitted for a review of the constitutionality of statutory norms, *in casu* Law 39/2008 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

With respect to the legal standing of the Petitioners, Petitioner II is unable to describe his assumed loss of constitutional rights arising due to the enactment of the norm of Article 23 of Law 39/2008 being petitioned for review. This is because the Petitioner II has concerns about his safety while working since all work partners of digital platform companies, such as Gojek, Grab, ShopeeFood, do not receive any work protection. The assumption of loss of constitutional rights as described by Petitioner II cannot be considered an assumption of actual or potential loss, because a potential loss refers to a loss that, based on reasonable reasoning, is expected to occur and is not merely a matter of concern. Therefore, the Petitioner II does not have the legal standing to act as a Petitioner in the petition *a quo*.

Meanwhile, Petitioner I is able to describe his constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia, which he believes are violated by the enactment of the statutory norms for which this judicial review is being petitioned. The assumed loss of constitutional rights of Petitioner I is due to Petitioner I's efforts to advocate for the provisions of the article *a quo* ensure that good governance is subject to, complies with, and aligns with the principles of good governance and in accordance with the legal considerations of the Constitutional Court Decision Number 80/PUU-XVII/2019. Therefore, Petitioner I has been able to describe the causal relationship (*causal verband*) between such assumed constitutional loss and the enactment of the norm of Article 23 of Law 39/2008 for which this judicial review is being petitioned. Pursuant to the legal considerations above, regardless of whether or not the arguments of Petitioner I are proven, the Court is of the opinion that Petitioner I has the legal standing to act as a Petitioner in the judicial review of the Article 23 of Law 39/2008 *a quo*.

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

Whereas after reviewing and carefully studying the Petitioner's argument on the substance of his petition, which questions the prohibition on deputy ministers holding concurrent positions, the Court is of the opinion that the legal considerations of the Constitutional Court Decision Number 80/PUU-XVII/2019 have already clearly and firmly addressed that all prohibitions on concurrent positions applicable to ministers as regulated in Article 23 of Law 39/2008 also apply to deputy ministers. From a legal perspective, such legal considerations have binding legal force because they are part of the decision of the Constitutional Court, which is constitutionally final. The Court's decision is not limited to the verdict, but also includes the identity of the decision, the subject matter, the legal considerations, the verdict itself, and even the minutes of the hearing, all of which form an inseparable part of the Constitutional Court's decision. This includes the Constitutional Court Decision Number 80/PUU-XVII/2019 which states that "the Petitioners' petition is inadmissible," but in the legal considerations section, which is *ratio decidendi*, has contained a judicial order which places the position of deputy ministers as state officials the

same as that of ministers. In this regard, such legal considerations should have been followed up since the pronouncement of Constitutional Court Decision Number 80/PUU-XVII/2019. With respect to this matter, the prohibition on holding concurrent positions for deputy ministers is based on the consideration that as state officials, deputy ministers must focus on workloads that require special handling within the ministry. This legal consideration also underlies the need to appoint deputy ministers in certain ministries, and therefore their positions may not be held concurrently with any other positions as referred to in the norm of Article 23 of Law 39/2008. This does not mean that, despite having the same status as state officials, ministers and deputy ministers need not be concerned about creating dual leadership within the ministry. Therefore, as has been considered in the Constitutional Court Decision Number 80/PUU-XVII/2019, as a consequence of the deputy minister's status as a state official, the facilities provided to the deputy minister must be proportionally aligned with that position.

Whereas regarding the prohibition on holding concurrent positions for deputy ministers, *in casu* the position as commissioners in state-owned enterprises as argued by the Petitioner, such argument has been proven to be in line with the norm of Article 33 letter b of Law Number 19 of 2003 concerning State-Owned Enterprises (Law 19/2003). Even though the norm of Article 33 of Law 19/2003 has been repealed by Law Number 1 of 2025 concerning the Third Amendment to Law Number 19 of 2003 concerning State-Owned Enterprises (Law 1/2025), without the Court intending to assess the constitutionality (formal and material) of Law 1/2025, it has been found that the intended substance remains to be accommodated or maintained, namely the members of the commissioners are prohibited from holding concurrent positions as, "b. other positions in accordance with the provisions of laws and regulations" [*vide* Article 33 letter b of Law 19/2003 and Article 27B letter b of Law 1/2025]. Within the limits of reasonable reasoning, one of the said laws and regulations is Law 39/2008. Therefore, it is important for the Court to emphasize in the decision *a quo* that the deputy ministers and ministers are prohibited from holding concurrent positions, including as commissioners, and they must focus on handling the ministerial affairs. Meanwhile, serving as a commissioner also requires concentrated time and attention. In this regard, and without the Court intending to assess its legality, the Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-3/MBU/03/2023 concerning the Organs and Human Resources of State-Owned Enterprises, which sets out the requirements for appointment as a member of the Board of Commissioners/Supervisory Board of a State-Owned Enterprise or a commissioner of a subsidiary sets out the requirement of 'being able to provide sufficient time to carry out his/her duties [*vide* Article 15 PER-3/MBU/03/2023]. Moreover, the regulation prohibiting concurrent positions is also related to the principle of clean state administration, free from conflicts of interest, and the implementation of good governance.

Whereas pursuant to the above matters, to avoid a legal vacuum or uncertainty in the implementation of the norm of Article 23 of Law 39/2008 which has been interpreted by the Court, *in casu* with respect to the phrase "deputy minister," the Court considers it necessary to provide a grace period for the government to make adjustments to the provisions prohibiting concurrent positions of deputy ministers. Therefore, with respect to deputy ministers holding concurrent positions, the Court considers that an adjustment period of no more than 2 (two) years from the date of the decision *a quo* is required. Thus, there is sufficient and adequate time for the government to replace the concurrent positions with people who have the expertise and professionalism to manage state-owned enterprises in accordance with the provisions of laws and regulations. Pursuant to these legal considerations, the Court is of the opinion that the Petitioner's argument is legally justifiable.

Pursuant to the legal considerations above, the Petitioners' argument regarding the unconstitutionality of norm of Article 23 of Law 39/2008 is legally justifiable in part.

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

1. To grant the petition of Petitioner I in part.
2. To declare that Article 23 of Law Number 39 of 2008 concerning State Ministries (State Gazette of the Republic of Indonesia of 2008 Number 166, Supplement to the State Gazette of the Republic of Indonesia Number 4916) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as “Ministers and Deputy Ministers are prohibited from holding concurrent positions as:
  - d. Other state officials in accordance with the laws and regulations;
  - e. Commissioners or directors of state-owned or private companies; or
  - f. Leaders of organizations funded by the State Revenue and Expenditure Budget and/or Regional Revenue and Expenditure Budget.”
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To declare that the petition of Petitioner II is inadmissible.

### **Dissenting Opinions**

With respect to the Decision *a quo* of the Court, 2 (two) Constitutional Justices, Constitutional Justice Daniel Yusmic P. Foekh and Constitutional Justice Arsul Sani, expressed dissenting opinions, as follows:

#### **Constitutional Justice Daniel Yusmic P. Foekh**

Whereas in the context of the case *a quo*, the Court’s stance in the Constitutional Court Decision Number 80/PUU-XVII/2019 needs to be maintained as a guideline or guidance in the appointment and dismissal of deputy ministers. Such guidance does not need to be set out in the verdict, but is sufficiently addressed in the Court’s legal considerations, otherwise, if formulated without a thorough study, it would give this norm a new meaning and could blur the boundaries of roles and responsibilities between ministers and deputy ministers. As explained above, the two positions are of different qualitative levels, even though both are appointed based on the President’s prerogative. This prerogative may be interpreted as the President’s exclusive right, exercised independently and granted by the Constitution within the scope of governmental powers. Because the President has the authority to determine the right individuals to serve as ministers or deputy ministers, it is natural that a person appointed as a minister, who bears full responsibility for the ministry, should not hold other positions concurrently as stipulated in Article 23 of Law 39/2008. Meanwhile, a person appointed as a deputy minister is understood to have been selected by the President as an auxiliary element to assist the minister (the second-in-command) in leading the ministry, therefore, within the limits of reasonable reasoning, the application of these norms is comparatively more flexible for the position of deputy minister.

With respect to the petition *a quo*, the Court should have simply included this guideline (guidance) in the legal considerations of the Decision *a quo*, as was done in Constitutional Court Decision Number 80/PUU-XVII/2019, without formulating it in the verdict. Therefore, the Court should have dismissed the petition *a quo*.

#### **Constitutional Justice Arsul Sani**

Whereas although the Court has provided legal considerations in Constitutional Court Decision Number 80/PUU-XVII/2019 regarding the prohibition on deputy ministers holding

concurrent positions, and those considerations have been reiterated in subsequent decisions, in my view it would be more appropriate for the Court to issue a judicial order to the lawmakers to incorporate the Court's opinion or stance into amendments to the law within a specified period. This would require the lawmakers to revise the formulation of Article 23 of Law 39/2008 by adding the addressee norms as determined by the Court. In doing so, the Court avoids positioning itself as a positive legislature in a petition for judicial review, particularly in circumstances where the statement of the actual positive legislature has not been heard. This approach is also reflected in several of the Court's previous decisions.

Whereas based on the foregoing, in my view, the Court should not have decided the Petitioners' petition with the verdict stated in the Decision *a quo*.