



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 96/PUU-XXII/2024**

Concerning

Participation in the Public Housing Savings Program

- Petitioner** : **Konfederasi Serikat Buruh Seluruh Indonesia (KSBSI) represented by Elly Rosita Silaban, President of the National Executive Board of the KSBSI and Dedi Hardianto, Secretary General of the National Executive Board of the KSBSI**
- Type of Case** : Judicial Review of Law Number 4 of 2016 concerning Public Housing Savings (Law 4/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 7 paragraph (1), Article 9 paragraph (1), Article 9 paragraph (2), Article 16, Article 17 paragraph (1), Article 54 paragraph (1) and Article 72 paragraph (1) of Law 4/2016 are contrary to the 1945 Constitution of the Republic of Indonesia
- Verdict** : 1. To grant the entire Petitioner's petition
2. To declare that Law Number 4 of 2016 concerning Public Housing Savings (State Gazette of the Republic of Indonesia of 2016 Number 55, Supplement to the State Gazette of the Republic of Indonesia Number 5863) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that no restructuring is carried out as mandated by Article 124 of Law Number 1 of 2011 concerning Housing and Residential Areas (State Gazette of the Republic of Indonesia of 2011 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5188)
3. To declare that Law Number 4 of 2016 concerning Public Housing Savings (State Gazette of the Republic of Indonesia 2016 Number 55, Supplement to the State Gazette of the Republic of Indonesia Number 5863) remains valid and must be restructured no later than 2 (two) years from the pronouncement of the decision *a quo*
4. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate

Date of Decision : Monday, September 29, 2025

Overview of Decision :

The Petitioner is a legal entity in the form of a confederation of 11 labor union federations which have constitutional rights as guaranteed in Article 28D paragraph (2), Article 28I paragraph (2), and Article 34 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In this case, the Petitioner believes that its constitutional rights have been violated due to the lack of clarity regarding the implementation time of the Public Housing Savings program and the discriminatory treatment arising from limiting participation in the program to employees and employers.

With respect to the Court's authority, since the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* material examination of Law 4/2016 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

With respect to the legal standing of the Petitioner, in describing its legal standing above, the Court is of the opinion that the Petitioner has been able to describe its qualifications as a private legal entity which is assumed to have suffered a loss of constitutional rights due to the enactment of the statutory norms being reviewed. The Petitioner in the case *a quo* is KSBSI, which is a private legal entity in the form of a confederation of 11 (eleven) labor union federations, which hierarchically organizes members from company-level (unitary) labor unions, both in the formal and informal sectors. Furthermore, upon careful examination by the Court of the KSBSI's Articles of Association for the 2023–2027 Period, the Petitioner's organization is legally represented by the President and Secretary General of the National Executive Board, for any matters both inside and outside the court. Therefore, the Petitioner meets the qualifications as a private legal entity that has the capacity to perform legal acts by submitting a petition for judicial review of the law to the Constitutional Court.

Furthermore, with respect to the petition for judicial review of Law 4/2016, the Court considers that the constitutionality issue questioned in the petition *a quo* has a broader scope that also covers the constitutionality issue questioned in Petition Number 86/PUU-XXII/2024 and Petition Number 134/PUU-XXII/2024, so that the Court will first examine and decide on the constitutionality of the norms in the Petition Number 96/PUUXXII/2024 *a quo*.

Meanwhile, with respect to the subject matter of the Petitioner's petition, the Court first considered that the Public Housing Savings policy within the broad framework of Indonesia's vision as a welfare state as stipulated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which, among others, affirms the state's objectives to protect all Indonesian people and advance general welfare. The Court emphasized that it is the state's responsibility to regulate the right to housing, because adequate housing is a human right and a constitutional right, which is also a basic human need that plays an important role in the formation of the character and personality of the nation which needs to be fostered and developed for the sake of the continuity and improvement of life. In this context, the state plays a more active role in providing housing facilities and assistance through a region-based approach and community self-reliance.

Furthermore, with respect to the obligation to participate in the Public Housing Savings program, the Court considers that, by referring to the definition of savings as regulated in Law 10/1998, there is a legal relationship between the community and the financial institutions which is built on the basis of trust and mutual agreement. Deposits are positioned as funds entrusted

by the public to banks under deposit agreements, while savings are a form of deposit and the withdrawal of which is subject to certain conditions as agreed upon between the two parties. Therefore, the elements of voluntariness and consent serve as important foundations in both the formation of laws and the management of funds. The use of the term “savings” in the Public Housing Savings program creates problems for the affected parties, in this case, the employees, because it involves an element of coercion through the inclusion of the word ‘mandatory’ for the participants of the Public Housing Savings, so that conceptually, it does not reflect the true nature of savings, as it lacks the element of free will. Moreover, the Public Housing Savings is not included either in the category of other compulsory levies as intended in Article 23A of the 1945 Constitution of the Republic of Indonesia or in the category of “other official levies”. Therefore, the Court considers that the Public Housing Savings has distorted the true meaning of savings, shifting it from a voluntary act to a compulsory levy, as argued by the Petitioner.

Furthermore, the Court considers that the existence of the Public Housing Savings as an obligation, especially one accompanied by sanctions, not only overlaps but also has the potential to create a double burden, especially for groups of employees who already contribute to other existing social security schemes. The implementation of the provisions of Article 7 paragraph (1) of Law 4/2016 requiring employees to set aside their income for purposes that are relatively the same as the pension plan scheme, ultimately results in program duplication and overlapping regulations. The employees are burdened with double contributions, for example the pension plan contributions are collected from wage deductions, 2% of which are borne by the employees and 3.7% are borne by the employers [vide Article 16 of Government Regulation 46/2015]. On the other hand, with respect to the Public Housing Savings, the savings are funded through contributions amounting to 0.5% by employers and 2.5% by employees [vide Article 15 of Government Regulation 21/2024]. The Petitioner argues that this imposes a burden on the fulfillment of a decent standard of living as guaranteed by Article 27 paragraph (2) of the 1945 Republic of Indonesia Constitution. The obligation to contribute to the Public Housing Savings clearly reduces the portion of wages that would otherwise be used to meet employees’ daily living expenses.

Furthermore, the Court also considers that the substance of the norm in Article 7 paragraph (1) of Law 4/2016 embodies the spirit that underlies all the provisions of Law 4/2016, since its core purpose is to mobilize funds by collecting contributions from participants, in this case, the employees [vide Article 6 paragraph (1) of Law 4/2016], interpreting the word ‘mandatory’ as ‘may’ would have substantive implications for Law 4/2016, starting from the obligation of employers to register their employees and the obligation of independent employees to register themselves [vide Article 9 of Law 4/2016], the payment of Public Housing Savings contribution by the employers and employees [vide Article 17 paragraph (1) of Law 4/2016], to the imposition of sanctions [vide Article 72 of Law 4/2016], where all of these regulations remain to be relevant if the participation is mandatory. If the word “mandatory” is amended to “may,” the entire mechanism of the Public Housing Savings loses its normative logic. The sanctions shall have no legal basis, the mandatory nature of deposit become meaningless, and the institutional operations of the Public Housing Savings become impossible to carry out as intended by Law 4/2016. Therefore, mere editorial changes shall only create internal disharmony, inconsistency between articles, and legal uncertainty which actually contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This is because Article 7 paragraph (1) of Law 4/2016 is actually the “core norm” of the entire system of Public Housing Savings in Law 4/2016 which is based on the principle that participation is mandatory.

In addition, the Court is of the opinion that the fundamental issue of Law 4/2016 does not only lie in one particular article, but rather in the overall design of the law. The Public Housing Savings program was formed under the concept of “savings,” but the outcome is limited to the return of savings at the end of participation or upon retirement [vide Article 14 of Law 4/2016]. Such a scheme is inherently incapable of fulfilling its primary objective, namely providing access

to the people to meet their need for decent and affordable housing for participants [vide Article 3 of Law 4/2016]. Therefore, the lawmakers need to restructure the approach to realizing the right to housing by promoting housing concepts, one of which is the centralized public housing, to overcome the challenge of limited urban land and provide housing for low-income people as part of a national system for providing massive, affordable, and sustainable public housing. Therefore, pursuant to the above legal considerations, the Court is of the opinion that Article 7 paragraph (1) of Law 4/2016 must be declared contrary to the 1945 Constitution of the Republic of Indonesia.

Furthermore, with regard to the other articles that the Petitioner also seeks to have reviewed for constitutionality, the Court considers that because Article 7 paragraph (1) of Law 4/2016, which is the “core norm,” has been declared contrary to the 1945 Constitution of the Republic of Indonesia, Article 9 paragraph (1) and paragraph (2), Article 16, Article 17 paragraph (1), and Article 72 paragraph (1) of Law 4/2016, which are derived from Article 7 paragraph (1) of Law 4/2016, must also be declared contrary to the 1945 Constitution of the Republic of Indonesia. Furthermore, pursuant to these considerations, the Court states that the entire Law 4/2016 must be declared contrary to the 1945 Constitution of the Republic of Indonesia.

The Court also considers that the immediate repeal of Law 4/2016 without a transition period could create legal uncertainty and administrative disruption in the management of participant contributions and assets, including potential legal risks for implementing entities such as BP Tapera and the related financial institutions. Therefore, to avoid a legal vacuum (*rechtsvacuum*), the Court gives a grace period of no more than 2 (two) years to the lawmakers to restructure the law in accordance with the mandate of Law 1/2011.

Accordingly, the Court subsequently passes down a decision which verdict states, as follows:

1. To grant the entire Petitioner’s petition.
2. To declare that Law Number 4 of 2016 concerning Public Housing Savings (State Gazette of the Republic of Indonesia of 2016 Number 55, Supplement to the State Gazette of the Republic of Indonesia Number 5863) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that no restructuring is carried out as mandated by Article 124 of Law Number 1 of 2011 concerning Housing and Residential Areas (State Gazette of the Republic of Indonesia of 2011 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5188).
3. To declare that Law Number 4 of 2016 concerning Public Housing Savings (State Gazette of the Republic of Indonesia 2016 Number 55, Supplement to the State Gazette of the Republic of Indonesia Number 5863) remains valid and must be restructured no later than 2 (two) years from the pronouncement of the decision *a quo*.
4. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.