



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 181/PUU-XXII/2024**

Concerning

**Exceptions to the Prohibition on Plantation Activities in Forest Areas
for Communities That Have Lived for Generations within Forest Areas
and Whose Activities Are Not Intended for Commercial Purposes**

- Petitioner** : **Sawit Watch, represented by Nurhanudin Achmad as Coordinator of Sawit Watch’s Management Board**
- Type of Case** : Judicial review of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : the words “is excluded” and the phrase “and are registered in the forest area management policy” in the norm of Article 12A paragraph (2) in Article 37 point 4 of the Annex to Law 6/2023 are contrary to Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia; the words “is excluded” and the phrase “and are registered in the forest area management policy” in the norm of Article 17A paragraph (2) in Article 37 point 6 of the Annex to Law 6/2023 are contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; the phrase “other activities” in the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 is contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia; the phrase “at least five (5) consecutive years with a maximum land area of five (5) hectares” in the norm of Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023 is contrary to Article 28I paragraph (3) and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia
- Verdict** : 1. To grant the Petitioner’s petition in part
2. To declare that Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 as “excluded for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes”

3. To declare that Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law Number 6 of 2023 to the extent that it relates to the provisions of the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as, “excluded for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes”
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 : Thursday, October 16, 2025

Overview of Decision :

The Petitioner is a private legal entity in the form of an association, in this case Sawit Watch, which is committed to advocating for people’s sovereignty in the management of natural resources, particularly smallholder palm oil plantations and in the forestry sector.

Regarding the Court’s authority, because the Petitioner’s petition is a review of Law, *in casu* a material review of the Annex to Law 6/2023 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Regarding legal standing, the Petitioner has outlined the alleged constitutional loss which specifically has the potential to be violated by the enactment of the norms of the articles being petitioned for judicial review and has outlined the causal relationship (*causal verband*) between the alleged constitutional loss and the enactment of the norms of the articles being petitioned for judicial review, because they do not side with vulnerable groups in the palm oil sector and creates injustice for smallholder palm oil farmers, as well as hinders efforts to transform palm oil plantations toward sustainable, deforestation-free practices. The Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

Regarding the Petitioner’s argument challenging the constitutionality of the words “is excluded” and the phrase “and are registered in the forest area management policy” in the norm of Article 12A paragraph (2) in Article 37 point 4 of the Annex to Law 6/2023 which, according to the Petitioner, are contrary to Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia because they do not provide legal protection for individuals or community groups who have resided in and/or around forest areas for at least five (5) consecutive years but are not registered in the forest area management policy, as they may be subjected to administrative sanctions. Regarding the Petitioner’s argument *a quo*, the Court considers that the words “is excluded” in the norm of Article 12A paragraph (2) in Article 37 point 4 of the Annex to Law 6/2023 aim to accommodate legal subjects in the form of individuals or community groups who have long resided in and depended on forest areas to meet their daily needs, so that they are not subjected to administrative or criminal sanctions as

feared by the Petitioner. The exception also applies to indigenous peoples, local communities, or community groups that engage in traditional agriculture, plantation, or fishery activities in areas surrounding the forest. However, to be excluded from the imposition of administrative sanctions under the article norm *a quo*, these legal subjects must also meet the criterion of being “registered in the forest area management policy.” In this regard, the word “registered” in the norm of Article 12A paragraph (2) letter a in Article 37 point 4 of the Annex to Law 6/2023 is intended so that these communities are recorded or documented by the government within programs related to forest area management. Thus, the government will have data on forest area management, thereby ensuring legal certainty, providing legal protection for individuals and community groups that meet the specific criteria, and preventing these communities from being exploited by irresponsible parties, which could ultimately lead to forest and environmental degradation. Therefore, the word “registered” must be understood in accordance with Article 1 point 21 and point 6 in Article 37 point 1 of the Annex to Law 6/2023, which provides an exemption for community groups residing in or around forest areas who engage in traditional cultivation and/or fell timber for their own needs and not for commercial purposes. With the norm of Article *a quo*, communities are no longer subjected to administrative or criminal sanctions merely for utilizing forest products to meet their daily needs and not for commercial purposes, such as subsistence farming, collecting rattan, honey, and other non-timber forest products, to the extent that these activities meet the stipulated criteria. Thus, the Petitioner’s argument challenging the constitutionality of the words “is excluded” and the phrase “and are registered in the forest area management policy” in the norm of Article 12A paragraph (2) in Article 37 point 4 of the Annex to Law 6/2023 is contrary to Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, has no basis, so it must be declared legally unjustifiable.

Whereas the Petitioner also argues that the words “is excluded” and the phrase “and are registered in the forest area management policy” in the norm of Article 17A paragraph (2) in Article 37 point 6 of the Annex to Law 6/2023 are contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia because there exists a normative conflict or disharmony that results in legal uncertainty regarding violations of the prohibitions under Article 17 paragraph (2) letter b, letter c, and/or letter d of the Law *a quo* as regulated in Article 17A in Article 37 point 6 of the Annex to Law 6/2023 and violations of the prohibitions under Article 17 paragraph (2) letter b, letter c, and/or letter e of the Law *a quo* as regulated in Article 110B in Article 37 point 20 of the Annex to Law 6/2023. Regarding the Petitioner’s argument *a quo*, the Court considers that although the provisions of Article 17A paragraph (1) in Article 37 point 6 of the Annex to Law 6/2023 and Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 are norms related to the imposition of administrative sanctions and exceptions to the imposition of such sanctions, there are differences in the provisions in the two norms of Article *a quo*. One of such differences is that the norm of Article 17A paragraph (1) in Article 37 point 6 of the Annex to Law 6/2023 is a regulation relating to violations of the prohibition in Article 17 paragraph (2) letter b, letter c, and/or letter d in Article 37 point 5 of the Annex to Law 6/2023. Meanwhile, the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 is a regulation relating to violations of the prohibitions under Article 17 paragraph (1) letter b, letter c, and/or letter e, and/or Article 17 paragraph (2) letter b, letter c, and/or letter e, or other activities in forest areas in Article 37 point 5 of the Annex to Law 6/2023. In addition, there are no criteria for land area that is exempt from being subject to administrative sanctions in the provisions of Article 17A paragraph (2) in Article 37 point 6 of the Annex to Law 6/2023. Meanwhile, Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023 stipulates that the land area is a maximum of five (5) hectares. Another criterion that differentiates the two article norms *a quo* is related to the settlement pattern, where the provisions of Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023 are resolved through forest area management. Moreover, there are fundamental differences in the arrangements of the two norms *a quo*, where Article 17A paragraph (1) in Article 37 point 6 of the Annex to Law 6/2023 applies from the time Law 6/2023 is enacted. Meanwhile, Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 is part of the “Transitional Provisions”, the substance of which regulates special matters related to violations of prohibitions that have already been carried out as stipulated in the prohibition in Article 17 paragraph (1) letter b, letter c, and/or letter e, and/or Article 17 paragraph (2) letter b, letter c, and/or letter e, or other activities in forest areas

without having a business permit carried out before November 2, 2020. In this context, the time limit before November 2, 2020, if it is drawn back, cannot be separated from the enactment of Law 11/2020, which was enacted on November 2, 2020, because the same substance had previously been accommodated in Article 110B of Law 11/2020. With the annulment of Law 11/2020 by the Court through Constitutional Court Decision Number 91/PUU-XVIII/2020, pronounced in a plenary session open to the public on November 25, 2021, within the limits of reasonable reasoning, such circumstances may give rise to the imposition of administrative sanctions on communities that have lived for generations in the forest, as well as on communities whose activities occur in the forest but are not intended for commercial purposes. Therefore, to bridge the gap between the old law and the new law in Law 6/2023, the Transitional Provisions reformulate it, stipulating that the cutoff date is before November 2, 2020. This means that the norms in the Transitional Provisions section, *in casu* Article 110B paragraph (1) and paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023, are intended to contain adjustments to the regulations for legal actions or legal relationships that already exist in relation to new laws and regulations. When placed within the legislative framework, a transitional norm is intended to: 1) prevent a legal vacuum; 2) ensure legal certainty; 3) provide legal protection for parties affected by changes in laws and regulations; and 4) regulate matters of a transitional or temporary nature. This means that the application of the transitional provisions is intended to provide legal certainty for any person who violated the prohibitions under Article 17 paragraph (1) letter b, letter c, and/or letter e, and/or Article 17 paragraph (2) letter b, letter c, and/or letter e, or other activities in forest areas without having a business permit before the enactment of Law 11/2020. Accordingly, the Petitioner's arguments *a quo* do not give rise to a normative conflict and have provided legal certainty, and therefore, they are consistent with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and must be declared legally unjustifiable.

Furthermore, the Petitioner argues that the phrase "other activities" in the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 is contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia because it is subject to multiple interpretations, thus creating legal uncertainty, which has the potential to negatively impact anyone who resides in and/or around forest areas and does not aim to damage forest areas. Regarding the Petitioner's argument *a quo*, the Court considers that the formulation of the provisions of Article 110B and the phrase "other activities" are intended to support macro policies, namely the agrarian reform and social forestry, as well as resolving normative conflicts. Thus, the placement of further regulations regarding the phrase "other activities" is part of a flexible yet measured regulatory design, still subject to the principles of the rule of law and the principle of non-discrimination, and reflects the state's commitment to a non-repressive approach in addressing community and public agency activities that do not damage and are not contrary to the constitution. Therefore, the Petitioner's argument *a quo* is legally unjustifiable.

Furthermore, the Petitioner also argues that the phrase "at least five (5) consecutive years with a maximum land area of five (5) hectares" in the norm of Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023 is contrary to Article 28I paragraph (3) and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia because it has eliminated the rights of individuals residing in and/or around forest areas who have lived there for less than five (5) years or who have controlled the land objects in an area exceeding five (5) hectares. Regarding the Petitioner's argument *a quo*, the Court considers that the exceptions to criminal sanctions (because only administrative sanctions are imposed) for individuals who have resided in and/or around forest areas for at least five (5) consecutive years (Article 12A in Article 37 point 4 of the Annex to Law 6/2023 and Article 17A in Article 37 point 6 of the Annex to Law 6/2023), as well as the exceptions to administrative sanctions for individuals who have resided in and/or around forest areas for at least five (5) consecutive years with a maximum land area of five (5) hectares (Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023), without commercial purposes, constitute a form of support for the community who reside in and/or around forest areas.

Whereas furthermore, although it is not specifically challenged by the Petitioner, with respect to the constitutional issue of the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 which the Petitioner argues, this provision also regulates violations of the prohibitions under Article 17 paragraph (1) letter b, letter c, and/or letter e, and/or Article 17 paragraph (2) letter b, letter c, and/or letter e, or other activities in forest areas without having a business permit carried out before November 2, 2020 by any person as regulated in Article 17 in Article 37 point 5 of the Annex to Law 6/2023. Therefore, after the Court has carefully examined the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023 which constitutes the primary norm underlying the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 as the secondary norm, it has been evident that this provision contains the norm which, in substance, has been previously adjudicated by the Court in Constitutional Court Decision Number 95/PUU-XII/2014, pronounced in a plenary session open to the public on December 10, 2015, then the Court will consider further regarding the existence of the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, as part of the primary norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 in relation to the Court's decision in question. In accordance with the description of the legal considerations and the ruling in Constitutional Court Number 95/PUU-XII/2014, the Court has provided legal protection for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes. Thus, the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023 which states, "conducting plantation activities within Forest Areas without a Business Permit issued by the Central Government", and which is addressed as a prohibition applicable to any person, and such person may subject to administrative sanctions in the form of temporary suspension of business activities, payment of administrative fines, and/or government coercive measures as provided under Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023, in the Court's opinion contains an essential overlap with the Court's position in Constitutional Court Decision Number 95/PUU-XII/2014, namely that such provisions cannot be applied to communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes. In this regard, to prevent divergent interpretations that bring legal uncertainty, the Court, through the decision *a quo*, finds it necessary to align the underlying spirit of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, with the Court Decision, namely by applying the provision while maintaining the exclusion for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes. Therefore, the element of any person referred to in Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 as a legal consequence as a secondary norm must accordingly be harmonized with the primary norm to the extent that it concerns the exception under Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, namely the sanctions under Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 shall likewise not apply to communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes. Reinforcing the Court's position *a quo* is necessary because the provisions of the norm of Article 110B paragraph (2) in Article 37 point 20 of the Annex to Law 6/2023 do not provide an exception with respect to plantation activities within forest areas conducted for commercial purposes, and such omission may lead to legal uncertainty and the potential misuse of activities carried out within those forest areas for certain interests.

Furthermore, in the context of "commercial purposes", the exception intended by the Court refers to community plantation activities within forest areas that are carried out solely to meet daily subsistence needs and are not conducted for trade or for obtaining profit. In other words, communities that have lived for generations within forest areas and rely on those areas for their daily needs of food, clothing, and shelter cannot be subjected to the sanctions provided under Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023. This means that the provisions of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, as the primary norm, must be excluded from application to communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes. Therefore, to the extent that plantation activities carried out by communities that have lived for generations within forest areas are not aimed at commercial purposes, there is no need to obtain a business permit from the central government. This

is because a business permit constitutes the legal authorization granted to a business actor to initiate and conduct their business and/or activities. In this context, the authority of the (Central) government is delegated to the minister responsible for governmental affairs in the field of forestry. Thus, the provisions of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023 which regulates the prohibition on conducting plantation activities within Forest Areas without a Business Permit issued by the Central Government do not prohibit communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes as has been considered above. Similarly, regarding the provisions of the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023 which constitutes the secondary norm derived from provisions of the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, as a juridical consequence, the sanctions related to the provisions of the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023 must also be excluded to the extent that they are excluded or do not apply to communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes.

Pursuant to the description of the legal considerations above, the Petitioner's argument to the extent that it relates to the norm of Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law 6/2023, which according to the Court is intertwined with Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law 6/2023, is well-founded. However, because the Court's interpretation is not as petitioned by the Petitioner, the Petitioner's argument *a quo* is partially legally justifiable.

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

1. To grant the Petitioner's petition in part;
2. To declare that Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) 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 as "excluded for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes;"
3. To declare that Article 110B paragraph (1) in Article 37 point 20 of the Annex to Law Number 6 of 2023 to the extent that it relates to the provisions of the norm of Article 17 paragraph (2) letter b in Article 37 point 5 of the Annex to Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (State Gazette of the Republic of Indonesia of 2023 Number 41, Supplement to the State Gazette of the Republic of Indonesia Number 6856) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as, "excluded for communities that have lived for generations within forest areas and whose activities are not intended for commercial purposes;"
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.