



**THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA**

**SUMMARY OF THE DECISION  
CASE NUMBER 33/PUU-XIX/2021**

**Concerning**

**Criminal Provisions in the Exercise of the Authorities of the Financial  
Services Authority**

<b>Petitioners</b>	:	<b>Hj. Nurhasanah and H. Khoerul Huda</b>
<b>Type of Case</b>	:	Review over Law Number 21 of 2011 regarding the Financial Services Authority (Law 21/2011) against the Constitution of the Republic of Indonesia of 1945 (1945 Constitution).
<b>Subject Matter</b>	:	Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 are contradictory with Article 28D paragraph (1) of the 1945 Constitution.
<b>Verdict</b>	:	To dismiss the petition of the Petitioners in its entirety.
<b>Date of Decision</b>	:	September 29th, 2021.
<b>Overview of Decision:</b>		

The Petitioners are Indonesian citizens and customers of the Bumiputera 1912 Joint Life Insurance (AJB) as well as members of the Member Representative Body (BPA) from the Electoral District of Southern Sumatra (Petitioner I) and Kalimantan (Petitioner II). Petitioner I believes that her constitutional rights have been impaired as she has been named a suspect and even detained and Petitioner II had also been summoned as a witness for alleged criminal acts in the financial services industry by ignoring or not complying with or obstructing the exercise of OJK's authorities and/or failing to carry out written orders as stipulated in the provisions the constitutionality of which has been requested to be reviewed. According to the Petitioners, the above-mentioned provisions are extensive in nature and give rise to doubt (multiple interpretations) and are illogical so that they cause a conflict of norms and are subjective because the Financial Services Authority (OJK) may immediately abuse its power if a person or legal entity has violated such provisions without a clear scope of the definition of the words ignoring, not fulfilling and/or not carrying out OJK's orders. Whereas the Petitioners as members of BPA have the legal obligations to encourage other members of BPA and the directors to remain persistent in maintaining and managing AJB Bumiputera 1912 in accordance with the Articles of Association and applicable laws in order to protect the interests of its members.

In their Arguments, the Petitioners demanded the Court to essentially declare that the applicability of Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 is exempted for any person who duly carries out their legal obligations.

Whereas in relation to the jurisdiction of the Court, since the petition of the Petitioners is a review over the constitutionality of norms of a law, in this case Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 against the 1945 Constitution, the Court has the jurisdiction to hear the petition in this case.

In relation to the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have explained their constitutional rights as guaranteed by the provisions of Article 28D paragraph (1) of the 1945 Constitution which according to the Petitioners have been impaired by the enactment of the norms of the law for which the review has been requested. The alleged constitutional damage is specific and actual in nature or at least could potentially occur and has a causal relationship (*causal verband*) with the enactment of the norms of the law for which the review has been requested. Therefore, if the petition of the Petitioners is granted, the alleged constitutional damage as described above would not or would cease to exist. Therefore, according to the Court, the Petitioners have the legal standing to act as Petitioner under the petition in this case.

Whereas given the clarity of the request in this case, the Court is of the opinion that it is not urgent and relevant to request for information from the parties as referred to in Article 54 of the Constitutional Court Law.

In relation to the subject matter of the petition, the Petitioners claim that the phrase "*by deliberately ignoring, not complying, or obstructing the exercise of authorities*" in Article 53 paragraph (1) of Law 21/2011 and the phrase "*by deliberately ignoring and/or not carrying out written orders*" in Article 54 paragraph (1) of Law 21/2011 is a sort of legal uncertainty and is contradictory with Article 28D paragraph (1) of the 1945 Constitution. According to the Petitioners, both phrases have caused OJK's subjectivity as it may immediately abuse its powers given that the phrases do not set a clear measure and purpose regarding the definition of ignoring, not fulfilling and/or not carrying out. In relation to the arguments of the Petitioners, the Court is of the opinion that in formulating every act in criminal law, it must comply with the principles of legality, namely that it must be written (*lex scripta*), be interpreted as it reads (*lex stricta*), not cause multiple interpretations (*lex certa*), and be non-retroactive. The formulation of both norms for which the review has been requested falls within the category of formal offence that emphasizes the prohibited act so that an offence is considered to have been committed even though the perpetrator has not completed the prohibited act or has not caused any consequences. In this matter, it appears that the intent of the legislators is to ensure that the authorities of OJK may be exercised and to prevent interference or non-enforceability of the authorities as a result of a prohibited act. Therefore, unlike material offenses, the formulation of the prohibited act does not necessarily emphasize the consequences of the act.

In this regard, the Petitioners claim that the type of action as governed by Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 as mentioned above exclude actions in the form of verbal speech. In relation to the arguments of the Petitioners, the Court is of the opinion that the extent or scope of actions that may be categorized as punishable acts pursuant to Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 are not within the jurisdiction of the Court because the Petitioners' claim above relates to the implementation of norms. For example, the act of obstructing may be realized through various actions such as hiding or eliminating a document or information, obstructing, delaying, and giving a statement which influences, provokes or directs other people to do a certain act to obstruct the exercise of OJK's authorities.

Furthermore, the Petitioners in their claims demand the Court to essentially declare that the applicability of Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 is exempted for any person who duly carries out their legal obligations. In relation to such claims, the Court is of the opinion that the Petitioners' claims are closely related to the elements of violation of law as part of the conditions to punishment which include an assessment of actions and intention of the perpetrators, in particular any justification for duly complying with laws as provided in Article 50 of the Indonesian Criminal Code. Based on the doctrine of criminal laws, justification is a reason that eliminates the unlawful nature of an act so that the action done by the perpetrator becomes a proper and correct act. Furthermore, from the theoretical aspect of procedural law and evidence, if the violation of laws is an

unwritten element in the formulation of the offence then the burden of proof lies on the accused. This means that if the accused succeeds in proving that the 'violation of law' element in an act that he is accused of is not satisfied, the accused must be dismissed from all legal charges. Therefore, according to the Court, the formulation of the offence in Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 has catered the intention in the Petitioners' petition.

For the foregoing reason, the Court considers that there is no issue about the constitutionality of norms regarding the right to fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution vis-a-vis Article 53 paragraph (1) and Article 54 paragraph (1) of Law 21/2011 and hence the Court believes that the Petitioners' argument is not legally justifiable.

Upon all of the foregoing legal considerations, the Court subsequently issued a decision which in its verdict dismissed the petition of the Petitioners in its entirety.