



**THE SUMMARY OF THE DECISION
OF CASE NUMBER 101/PUU-XVIII/2020**

Concerning

Job Training Institutions, Job Placements, Foreign Workers, Certain Time Work Agreements (*Perjanjian Kerja Waktu Tertentu* or PKWT), Outsourced Workers, Working Time, Leave, Wages and Minimum Wages, Termination of Employment (*Pemutusan Hubungan Kerja* or PHK), Severance Pay (*Uang Pesangon* or UP), Entitlement Replacement Money (*Uang Penggantian Hak* or UPH), and Service Period Award (*Uang Penghargaan Masa Kerja* or UPMK)

- Petitioner** : The Indonesian Trade Union Confederation (*Konfederasi Serikat Pekerja Indonesian* or KSPI) represented by H. Said Iqbal as President and Ramidi as Secretary General, et al.
- Type of Case** : Review of Law Number 11 of 2020 concerning Job Creation (UU 11/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Article 81 number 1 regarding Article 13 paragraph (1) letter b and letter c, and paragraph (4); Article 81 number 3 regarding Article 37 paragraph (1) letter b; Article 81 number 4 regarding Article 42 paragraph (1), paragraph (3) letter a and letter c, paragraph (4), paragraph (5); Article 81 number 12 regarding Article 56 paragraph (3) and paragraph (4); Article 81 number 13 regarding Article 57; Article 81 number 15 regarding Article 59; Article 81 number 16 regarding Article 61 paragraph (1) letter c; Article 81 number 17 regarding Article 61A; Article 81 number 18 regarding the repeal of Article 64; Article 81 number 19 concerning the repeal of Article 65; Article 81 number 20 regarding Article 66; Chapter 81 number 21 regarding Article 77 paragraph (3) and paragraph (4); Article 81 numbers 22 regarding Article 78 paragraph (1) letter b; Article 81 number 23 concerning Article 79; Article 81 number 24 regarding Article 88; Article 81 number 25 regarding Article 88B, Article 88C, Article 88D, and Article 88E; Article 81 number 26 regarding the repeal of Article 89; Article 81 number 27 regarding the repeal of Article 90; Article 81 number 28 regarding Article 90A and Article 90B; Article 81 number 29 regarding the repeal of Article 91; Article 81 number 30 regarding Article 92 paragraph (1); Article 81 number 32 regarding Article 94; Article 81 number 33 regarding Article 95; Article 81 number 35 regarding the repeal of Article 97; Article 81 number 36 regarding Article 98; Article 81 number 37 regarding Article 151; Article 81 number 38 regarding Article 151A letter a; Article 81 number 42 regarding Article 154A; Article 81 number 44 regarding Article 156 paragraph (2); Article 81 number 45 regarding Article 157; Article 81 number 46 regarding Article 157A paragraph (1), paragraph (2), and paragraph (3); Article 81 number 50 regarding the repeal of Article 161; Article 81 number 51 regarding the repeal of Article 162; Article 81 number 52 regarding the repeal of Article 163; Chapter 81 number 53 regarding the repeal of Article 164; Article 81 number 54 regarding the repeal of Article 165; Article 81 number 55 regarding the repeal of Article 166; Article 81 number 56 regarding the repeal of Article 167, Article 81 number 58

regarding the repeal of Article 169; Chapter 81 number 61 regarding the repeal of Article 172; Article 81 number 62 regarding the repeal of Article 184; Article 81 number 63 regarding the repeal of Article 185; Article 81 number 65 regarding Article 187; Article 81 number 66 regarding Article 188; Article 82 number 1 regarding Article 18 letter f; Article 82 number 2 regarding Article 46A, Article 46B, Article 46C, Article 46D, and Article 46E; Article 83 number 1 regarding Article 6 paragraph (2) letter e; and Article 83 number 2 regarding the phrase "... and job loss guarantee program" in Article 9 paragraph (2) of Law 11/2020 is in contrary to Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2), as well as Article 28I of 1945 Constitution;

Verdict : To declare that the Petitioners' petition is inadmissible

Date of Decision : Thursday, November 25, 2021

Overview of Decision :

Whereas Petitioners I to Petitioners VI are trade union organizations/labour unions and Petitioners VII to IX are individual Indonesian citizens.

Whereas in relation to the authority of the Court, the petition of the Petitioners is a petition to review the constitutionality of legal norms, *in casu* Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the legal standing of the Petitioners, according to the Court, the Petitioners have explained their constitutional rights which, according to the Petitioners' opinion, are potentially being harmed by the enactment of norms in, among others, Article 81, Article 82, and Article 83 of Law 11/2020 which is petitioned for review (the full norm is as described by the Petitioners in their legal position description). The assumption that the intended constitutional loss is specific and potential. Therefore, without the intention of assessing the concrete cases experienced by the Petitioners, the presumption of the loss of constitutional rights described by the Petitioners has a causal relationship (*causal verband*) with the enactment of the legal norms for which the review is petitioned. If the petition of the Petitioners is granted, the potential for such constitutional loss as described will not occur. Therefore, regardless of whether or not there is a question of the constitutionality of the norms argued by the Petitioners, according to the Court, the Petitioners have legal standing to act as Petitioners in the *a quo* Petition.

Whereas with regard to the formal review of Law 11/2020, the Court has decided in the Decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021, which has been stated before in the verdict of such subject matter which has declared:

1. To declare that the petition of Petitioner I and Petitioner II is inadmissible;
2. To grant the petition of Petitioner III, Petitioner IV, Petitioner V, and Petitioner VI in part;
3. To declare that the establishment of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as "no correction is made within 2 (two) years since this decision is declared";
4. To declare that Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) is still in effect until corrections are made to the establishment in accordance with the time limit as determined in this decision;

5. To order the legislators to make corrections within a maximum period of 2 (two) years since this decision is declared and if within that time limit no corrections are made then Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall become permanently unconstitutional;
6. To state that if within a period of 2 (two) years the legislators cannot complete the corrections of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) then the law or articles or material contained in the law which have been revoked or amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) shall be declared as valid again;
7. To suspend all strategic and broad-impact actions/policies, and it is also not permissible to issue new implementing regulations relating to Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573);
8. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
9. To dismiss the Petitioners' petition for the rest/remainder.

In the decision regarding the formal review of Law 11/2020, there were 4 (four) Constitutional Justices who submitted dissenting opinions, namely Constitutional Justice Arief Hidayat, Constitutional Justice Anwar Usman, Constitutional Justice Daniel Yusmic P. Foekh, and Constitutional Justice Manahan MP Sitompul.

Whereas based on the decision of the Constitutional Court Number 91/PUU-XVIII/2020, it has been stated that Law 11/2020 has been declared conditionally unconstitutional and the decision has binding legal force since it was declared. Whereas, for the *a quo* petition of material review, it is no longer relevant to continue the review, because the object of the petition submitted by the Petitioner is no longer the substance of the law for which the review is being petitioned. Moreover, by taking into account the principle of fast, simple, and low-cost justice [vide Article 2 paragraph (4) of Law Number 48 Year 2009 concerning Judicial Power], then the *a quo* petition for material review must be declared as lost object.

Accordingly, the Court subsequently rendered a decision with the verdict declaring that the petition of the Petitioners is inadmissible.