



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

**THE SUMMARY OF THE DECISION  
OF CASE NUMBER 103/PUU-XVIII/2020**

**Concerning**

**Formal Review and Material Review of  
Law Number 11 of 2020 concerning Job Creation**

- Petitioner** : **The Confederation of All Indonesian Trade Unions (Konfederasi Serikat Buruh Seluruh Indonesia or KSBSI) represented by Elly Rosita Silaban as President of the National Executive Council of the Confederation of All Indonesian Trade Unions (DEN KSBSI) for the 2019-2023 period and Dedi Hardianto as Secretary General of the National Executive Council of the Confederation of All Indonesian Trade Unions (DEN KSBSI) 2019-2023 Period**
- Type of Case** : **Formal Review and Material 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** : **Formal Review and Material Review of Law 11/2020 against the 1945 Constitution**
- Verdict** : **To declare that the Petitioners' petition is inadmissible**
- Date of Decision** : **Thursday, November 25, 2021**
- Overview of Decision** :

The petitioner is an individual Indonesian citizen and private legal entity who feels harmed by the existence of Law Number 11 of 2020 concerning Job Creation (UU 11/2020) because the legal system in Indonesia does not recognize the concept of *omnibus law* and from the planning process to the ratification, it is in contrary to the formal requirements for the establishment of laws.

Whereas in relation to the authority of the Constitutional Court (Mahkamah), because a formal review of the law *in casu* Law 11/2020 is petitioned, the Court has the authority to hear the *a quo* petition.

Whereas in relation to the deadline for submitting the petition, based on the Decision of the Constitutional Court Number 27/PUU-VII/2009 dated June 16, 2010, in the graph [3.34] it basically states that the Court considers the deadline is 45 (forty five) days after the Law is published in the State Gazette as sufficient time to submit a formal review of the Law. Because Law 11/2020 was promulgated on November 2, 2020, therefore the deadline for submitting a petition shall be December 17, 2020. The Petitioner's petition was received by the Court on November 19, 2020 based on the Deed of Receipt of the Petition File Number 240/PAN.MK/2020, which was later corrected by the Petitioner with a revised

petition dated December 21, 2020 and received at the Registrar's Office of the Court on December 21, 2020. Thus, the Petitioner's petition is still within the time limit for submitting a request for a formal review of a law.

Whereas in relation to the deadline for the completion of the formal examination, the Court has also given special considerations as the Court's consideration in case 79/PUU-XVII/2019 dated May 4, 2021, in the graph [3.16] it basically states that the Court needs to emphasize that the maximum period of 60 (sixty) business days since the case is recorded in the Constitutional Case Registration Book (*Buku Registrasi Perkara Konstitusi* or BRPK) is considered sufficient to complete the formal review of a law. In this regard, according to the Court, the *a quo* case was in trial when the Constitutional Court Decision Number 79/PUU-XVII/2019 was declared. Therefore, against the *a quo* case, The Court has indeed not been bound by a time limit of 60 (sixty) business days since the *a quo* case recorded in BRPK. Moreover, when the *a quo* petition is submitted, the Court is faced with a national agenda, namely the settlement of the 2020 Regional Head Election Results Dispute which has been accepted by the Court since December 2020 and has a time limit of 45 (forty five) business days since the receipt of the petition, so that at that time the Court temporarily suspended all case reviews, including the Petitioner's *a quo* case [vide Article 82 of the Regulation of the Constitutional Court Number 2 of 2021 concerning Proceedings in Cases of Judicial Review, hereinafter referred to as PMK 2/2021]. In addition, along with the process of reviewing the *a quo* case, most countries around the world, including in Indonesia are facing the threat of the Covid-19 pandemic which has been declared by the President as a non-natural national disaster [vide Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning Determination of Non-Natural Disasters the Spread of *Corona Virus Disease 2019 (Covid-19)* as a National Disaster]. Furthermore, to prevent the relatively rapid spread of the virus with a high fatality rate, the government has set the Enforcement of Community Activity Restrictions (*Pemberlakuan Pembatasan Kegiatan Masyarakat* or PPKM) since January 2021. Therefore, preventing the spread of the virus is important for all parties, including the Constitutional Court, so the trial at the Court was suspended for some time, including the trial for the *a quo* case. However, without reducing the spirit of accelerating the completion of the formal review as referred to in the Constitutional Court Decision Number 79/PUU-XVII/2019, the Court in reviewing the case for the formal review of Law 11/2020 has conducted a separate review (*splitsing*) with a request for a material review of Law 11/2020.

Whereas with respect to the legal position in the formal review, other than based on Article 51 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (UU MK) and Constitutional Court Decision Number 006/PUU-III/2005 and Number 11/PUU-V/2007, also based on the Decision of the Constitutional Court Number 27/PUU-VII/2009 which basically states that in the concrete case submitted by the Petitioner it is necessary to assess whether there is a direct link between the Petitioner and the Law petitioned for a formal review. The petitioner is a labour organization in the form of a confederation which is one of the representatives of the confederation of trade/labour unions who are members of a tripartite team in the discussion of the Job Creation Bill. However, the Petitioner explained that the process of forming Law 11/2020 did not fulfil the principles of law establishment as referred to in Article 5 and Article 6 of Law Number 12 of 2011 concerning the Establishment of Legislation.

Whereas based on the description of the legal considerations above, according to the Court, the Petitioner has been able to describe his position and activities which are closely related to Law 11/2020 so that there is a relationship link between the Petitioner and the law petitioned for a formal review. Therefore, regardless of whether or not the arguments regarding the unconstitutionality of the establishment of Law 11/2020 which do not meet the provisions under the 1945 Constitution are proven, the Petitioner has the legal position to file a formal *a quo* petition;

Whereas with respect to the legal position in the judicial review, the Petitioner, which is a confederation of trade/labour unions, feels that his constitutional rights have been impaired by the enactment of Article 42 paragraph (3) letter c, Article 56 paragraph (3), Article 57 paragraph (2), Article 59 paragraph (1) letter b, Article 61 paragraph (3), Article 61A paragraph (1), Article 66 paragraph (1) and paragraph (2), Article 89, Article 90B, Article 154A, Article 156, Article 161, Article 162, Article 163, Article 164, Article 165, Article 166, Article 167, Article 168, Article 169, Article 170, Article 171 and Article 172 Second Part and Article 51, Article 53, Article 57, Article 89A Fifth Part Chapter IV of Law 11/2020. Therefore, the implementation of these articles has the potential to reduce the wages, abolish the length of the contract or employment relationship in a certain time work agreement (*perjanjian kerja waktu tertentu* or PKWT), expansion of outsourcing, and reduction of severance pay, so that it is in contrary to Article 27 paragraph (1), paragraph (2), Article 28D paragraph (1), paragraph (2), Article 28E paragraph (3), Article 28F, Article 28G paragraph (1), Article 28H, and Article 28I paragraph (2) of the 1945 Constitution;

Whereas Based on the description described by the Petitioner in explaining his legal position above, according to the Court, the Petitioner has been able to explain the loss of his constitutional rights, especially constitutional rights as regulated in Article 27 paragraph (1), paragraph (2), Article 28D paragraph (1), paragraph (2), Article 28E paragraph (3), Article 28F, Article 28G paragraph (1), Article 28H, and Article 28I paragraph (2) of the 1945 Constitution, which according to his opinion is harmed by the enactment of the norms of the law that are petitioned for a review, namely Article 42 paragraph (3) letter c, Article 56 paragraph (3), Article 57 paragraph (2), Article 59 paragraph (1) letter b, Article 61 paragraph (3), Article 61A paragraph (1), Article 66 paragraph (1) and paragraph (2), Article 89, Article 90B, Article 154A, Article 156, Article 161, Article 162, Article 163, Article 164, Article 165, Article 166, Article 167, Article 168, Article 169, Article 170, Article 171 and Article 172 Second Part and Article 51, Article 53, Article 57, Article 89A Fifth Part Chapter IV Law 11/2020. The Petitioner has been able to explain the assumption that the constitutional loss has a causal relationship (*causal verband*) by applying the norms of the law for which the review is petitioned. Therefore, if the *a quo* petition is granted, the presumption of constitutional loss as described will not or will no longer occur. Accordingly, according to the Court, the Petitioner has the legal position to act as the Petitioner in the petition for a material review;

Whereas because the Court has the authority to hear the *a quo* petition, the Petitioner's petition is still within the time limit for the submission of a formal review, and the Petitioner has legal standing to act as the Petitioner in the *a quo* petition, and after carefully reading the Petitioner's petition, the DPR's statement, the President's statement, the Petitioner's expert testimony, the DPR's expert testimony, the President's expert testimony and witnesses, the written evidence submitted by the Petitioner and the President, the Petitioner's written conclusion, and the President's written conclusion, The Court then considers the following:

### **In Formal Review**

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 corrections have been made within 2 (two) years since this decision was 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 such decision, 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 M.P. Sitompul related to the formal review of Law 11/2020, however, because Law 11/2020 has been declared as conditionally unconstitutional and the decision has binding legal force since the decision was declared, so that the object of the petition submitted by the *a quo* Petitioner is no longer in accordance with the substance of the law for which the review is petitioned. Thus, the Petitioner's *a quo* petition has become a lost object.

Whereas although the subject matter of the Petitioner's petition was not fully considered by the Court in the decision of the Constitutional Court Number 91/PUU-XVIII/2020, dated November 25, 2021, however, because the petition for a formal review is not required to fulfil all conditions cumulatively, thus according to the Court it is no longer relevant to consider the conditions other than and the rest as argued by the *a quo* Petitioner.

### **In Material Review**

whereas before considering further the petition for a material review, because the Court made a separate review (*spilitsing*) between formal review and material review, the decision on the *a quo* petition cannot be separated from the decision of the Constitutional Court Number 91/PUU-XVIII/2020 regarding the formal review of Law 11/2020.

In 2020, it has been stated that Law 11/2020 has been declared conditionally unconstitutional and the decision in question has binding legal force since it was declared. Therefore, the *a quo* petition for material review is no longer relevant to continue, because the object of the petition submitted by the Petitioner no longer have the substance of the law for which the review is being petitioned. Moreover, by considering the principle of fast, simple, and low-cost justice [vide Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power], the *a quo* petition for material review must be declared as lost object.

Based on all the considerations above, the Court subsequently issued a decision which declared that the Petitioner's petition is inadmissible.

## **DISSENTING OPINIONS**

Against the *a quo* decision of the Constitutional Court, **the Constitutional Justice Arief Hidayat and Constitutional Justice Anwar Usman have dissenting opinions** as follows:

With the dismissal of the petition for a formal review, the judge's opinion on the constitutionality of the material review on this petition can be continued. In this dissenting opinion, we will not respond to all the arguments of the Petitioner's petition in detail. We will only respond to a few arguments, which are related to the arguments that in our opinion are important and must be accepted, especially regarding some issues of labour law. Because, this is closely related to respect, to protect, and to fulfil the workers' constitutional rights, which are related to the **Period of the Certain Time Work Agreement (hereinafter abbreviated as PKWT); Relationship Between Outsourcing Companies, Employer Company with Workers; Regarding Wages; and Severance Pay in Termination of Employment.**

### **Period of Certain Time Work Agreement (PKWT)**

The period of time for this PKWT must be regulated in law and not in government regulations because it is closely related to the regulation of workers' constitutional rights, so it cannot only be determined by the Government through the legal instrument of Government Regulation (PP), but also determined by the DPR and the Government through law as legal instruments. Because Article 56 paragraph (3) of Job Creation Law is related to Article 59 paragraph (1) letter b of Job Creation Law, the legal considerations of Article 56 paragraph (3) of Job Creation Law, shall also apply to Article 59 paragraph 1 letter b of Job Creation Law. **Based on the description of the legal considerations above, the Petitioners' argument is grounded according to law as long as the legal issues are related.**

### **Relationship Between Outsourcing Companies, Employer Company with Workers**

Therefore, in our opinion, Article 66 of Job Creation Law does not provide adequate protection and respect for the workers who have improved their skills and expertise in work relations so that the *a quo* article is in contrary to the 1945 Constitution. **Therefore, the Petitioner's petition is grounded according to law as long as the legal issues are related.**

### **Employer Company with Workers**

Within the company, the determination of the Minimum Wage based on the province/regency/city and the Minimum Wage based on the sector in the province or district/city area requires an agreement between the employers and the trade union. This is done so that workers get a decent wage and employers can also provide wages with a proportional and appropriate system and may not give wages lower than the wage provisions that have been determined in the legislation. In the event that the wage arrangements

stipulated in the agreement between the employers and the worker are found to be lower, then the agreement shall be null and void by law. **Therefore, the Petitioners' argument is grounded according to law as long as the legal issues are related.**

### **Severance pay in the termination of employment**

Therefore, there are several things that make Article 165 of Job Creation Law is in contrary with the 1945 Constitution, namely, **first**, Article 165 of Job Creation Law does not contain the amended content of Article 165 of the Manpower Law, so that the relevant content material is contained in Article 47 of PP 35 of 2021. **Second**, the content of Article 47 PP 35 of 2021 is in contrary with Article 27 paragraph (2) of the 1945 Constitution and Article 28D paragraph (2) of the 1945 Constitution because it regulates the amount of severance pay with a lower nominal value compared to the previous provision. **Third**, The constitutionality of Job Creation Law can depend on a Government Regulation (PP) as the implementer of such provisions, so that if the content of the PP is in contrary with the 1945 Constitution, then the content of Job Creation Law automatically is in contrary with the 1945 Constitution. Therefore, the regulation of the amount of severance pay which is lower than the amount of severance pay in the previous regulation is in contrary with the 1945 Constitution. This applies to all severance pay as a result of layoffs for any reasons regulated in the laws and regulations. Therefore the argument of the petition is grounded according to law and must be granted.

Based on the description of the legal considerations above, the petition related to the above legal considerations must be granted.