



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

**SUMMARY OF DECISION
FOR CASE NUMBER 60/PUU-XIX/2021**

Concerning

**Constitutionality of the Unlimited Authority of the Police
to Stop a Suspected Person and to Conduct Identity Check**

- Petitioner** : **Leonardo Siahaan and Fransiscus Arian Sinaga**
- Type of Case** : Examination of Law Number 2 of 2002 concerning National Police of the Republic of Indonesia (Law 2/2002) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : There is no limitation regulated in Article 16 paragraph (1) letter c of Law 2/2002, this is in contrary to the guarantee of personal protection, honor, and dignity of a person as regulated in Article 28G paragraphs (1) and (2) of the 1945 Constitution, and the guarantee of human rights that shall not be reduced under any circumstances as guaranteed in Article 28I paragraph (1) of the 1945 Constitution;
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Tuesday, January 25, 2022.
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who always carry out daily activities outside the home feeling that their constitutional rights as regulated in Article 28G paragraphs (1) and (2), as well as Article 28I paragraph (1) of the 1945 Constitution, are potentially being prejudiced by the promulgation of Article 16 paragraph (1) letter d of Law 2/2002.

Regarding the authority of the Court, because this is a petition to review the constitutionality of legal norms, *in casu* Law 2/2002 against the 1945 Constitution, the Court has the authority to hear the petition of the Petitioners;

Regarding the legal standing of the Petitioners, the Court is of the opinion that in their qualifications as individual Indonesian citizens, the Petitioners have been able to explain specifically their loss of their constitutional rights which, according to the Petitioners' opinion, shall potentially occur if there are no limitation on the Police apparatus in exercising their authority to order a suspected person to stop. The Petitioners have been able to describe the existence of a causal relationship between the Petitioners' perceived constitutional loss/potential loss and the promulgation of the norms being petitioned for review. Therefore, if the petition is granted, such loss will not occur. Regardless of whether or not the arguments of the Petitioners' petition regarding the unconstitutionality of the legal norms being petitioned for review are proven, the Court is of the opinion that the Petitioners have the legal standing to act as the Petitioners in the *a quo* petition.

Whereas the Petitioners' petition is deemed by the Court to be sufficiently clear so that there is no urgency and relevance for the Court to request the statements and or minutes of

meetings in relation to the petitioners' petition to the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioners' petition, the Court is of the opinion that for the Police officers who conduct patrols, especially at night, examining a suspected person will actually provide a sense of security and protection to the community. The presence of police officers on the streets at night is expected to improve the regional security and order, as well as provide protection to the public from people with malicious intent or those who disturb the public order. For the Police, broadcasting the activities of the Police in various media is not only intended as a form of information disclosure to the public regarding the implementation of law enforcement duties from the Police, but also aims to educate the public so that the public can understand the existing rules and the crimes that often occur on the road, so that the public can have more care and awareness of their surrounding environment. The mass media and their broadcasts have limitations as regulated in Law Number 40 of 1999 concerning the Press, whereas the press is obliged to report the events and opinions while still upholding the religious norms and the sense of public decency as well as the principle of presumption of innocence.

Whereas in law, the principle of the presumption of innocence shall apply, and in the application of the principle of the presumption of innocence, a person must be placed in a position where he has the essence of dignity. A person must be presumed as innocent until the decision of the court declares his guilt and the permanent legal force is obtained. For this reason, people who are suspected and being stopped by the officers should be treated in accordance with the applicable laws and regulations by upholding the human rights.

Whereas the norms of Article 16 paragraph (1) letter d of Law 2/2002 which cannot be separated from the norms of Article 13 of Law 2/2002 regarding the main tasks of the Police to maintain public security and order, to enforce the law, to provide protection, shelter, and service to the community. The Court is of the opinion that as a norm, Article 16 paragraph (1) letter d of Law 2/2002 has a clear formulation, and it does not give rise to different interpretations. The Court is of the opinion that the norms governing such duties and authorities do not need to be explained further.

Whereas in the absence of limitations in the norms of Article 16 paragraph (1) letter d of Law 2/2002 as petitioned for in the *petitum* of the Petitioners, it does not mean that the *a quo* norms violate the right to the guarantee of the protection of dignity, let alone degrading the human dignity which has been guaranteed by Article 28G paragraphs (1) and (2) and Article 28I paragraph (1) of the 1945 Constitution. The *a quo* limitations of authority in technical implementation, shall be further regulated in the implementing regulations, which all of them could not be contained in the law. Moreover, Article 19 paragraph (1) of Law 2/2002 stipulates that in carrying out its duties and authorities, the Police will always act based on the legal norms and shall uphold the religious norms, decency, morality, and shall uphold the human rights. Article 34 of Law 2/2002 also confirms that the attitudes and behaviour of Police officers shall be bound by the Police Professional Code of Ethics. In addition, the Police also have their Standard Operating Procedures, disciplinary rules, and the National Police Chief's Regulations in carrying out their duties. Every Police officer is bound by all these regulations, and if the Police officer violates the regulations, the relevant officer must be held accountable. As a way of life, the Police also have the principle of *Tri Brata* and *Catur Prasatya*. The commitment to uphold the human rights in carrying out the duties of the Police is stated in the General Elucidation of Law 2/2002 which basically states that the protection and promotion of human rights is very important because it involves human dignity. Therefore, it is clear that there are limitations that apply in the implementation of the norms of Article 16 paragraph (1) letter d of Law 2/2002 even though they are not stated in the *a quo* norms. Therefore, in the event of any violation, then it is a matter of implementation of such norms, not a matter of the constitutionality of the norms.

Whereas in addition, the Court reminds the public to always support the implementation of the Police's duties by balancing the protection of their human rights in the

form of not hesitate in reminding the Police officers and to file any objections if the Police, in carrying out their duties, violate the human rights. Meanwhile, regarding the implementation of the norms of Article 16 paragraph (1) letter d of Law 2/2002, the Court affirms that it must be implemented by always upholding the principles of due process of law which shall be side by side with the principle of presumption of innocence as mandated by the Criminal Procedure Code.

Whereas based on the aforementioned legal considerations, the Court is of the opinion that the absence of limitations on the authority of the Police as regulated in Article 16 paragraph (1) letter d of Law 2/2002 shall not cause the Police officers to take any actions that demean the dignity and honour of others. The argument of the Petitioners is not a matter of the constitutionality of the norms, but the implementation of the norms of Article 16 paragraph (1) letter d of Law 2/2002. The Court is of the opinion that there are clear limitations as regulated in the laws and regulations, professional code of ethics, and other implementing regulations regarding the issues being disputed by the Petitioners. The Court requested that both the Police and the mass media to always exercise caution in carrying out their duties and functions, so that they remain in the corridor that upholds the human rights and to obey the applicable laws and regulations.

Accordingly, the Court subsequently issued a decision which verdict states that the Petitioners' petition is dismissed in its entirety.