



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 4/PUU-XX/2022**

Concerning

Added Authority of Investigators to Not Terminate Preliminary Investigation

- Petition** : Anita Natalia Manafe
- Type of Case** : Examination of Law Number 8 of 1981 concerning the Criminal Procedure Code (*Hukum Acara Pidana* or KUHAP) against the 1945 Constitution of the Republic of Indonesia (UUD 1945);
- Subject Matter** : Examination of Article 5 paragraph (1) letter a of the Criminal Procedure Code against Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution;
- Verdict** : To dismiss the Petitioner's petition in its entirety.
- Date of Decision** : Wednesday, April 20, 2022

Overview of Decision:

The Petitioner is an individual Indonesian citizen who works as an advocate. The Petitioner believes that his constitutional rights have been prejudiced by the promulgation of the *a quo* norms because they do not get legal certainty and protection as guaranteed in the 1945 Constitution.

Regarding the authority of the Court, since the Petitioner petition for the Review of Article 5 paragraph (1) letter a of the Criminal Procedure Code against Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioner's petition;

Regarding the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has constitutional rights as guaranteed in Article 28C paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution and such rights are prejudiced by the promulgation of Article 5 paragraph (1) letter a of the Criminal Procedure Code. The Petitioner's attorney is Djukri Halim as stated in the Power of Attorney Number 008/SKK-PID/LQI-CTR/IV/2021 dated April 6, 2021 and the Petitioner reports the alleged crime to the police, but based on the Notice of Termination of Preliminary Investigation Number B/2817/VIII /RES.1.11/2021/Ditreskrimum dated August 16, 2021 which stated that the Police Report Number LP/1860/IV/YAN2.5/2021/SPKT PMJ dated April 7, 2021 was terminated because based on the preliminary investigation, it was not a criminal act. Regarding the termination of the preliminary investigation of the report, the Petitioner feels that he is being prejudiced, even more so according to the Petitioner, that the termination of the preliminary investigation was carried out without completing the preliminary investigation. With this description, the Court is of the opinion that the Petitioner as an advocate who reports a criminal act based on a power of attorney from the principal also has the personal right to report any criminal act that is not within the criminal offense category. In this case, the Petitioner has been able to clearly describe his qualifications as an individual Indonesian citizen who has constitutional rights as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, such constitutional

rights are being prejudiced by the promulgation of the norms of Article 5 paragraph (1) letter a of the Criminal Procedure Code. Therefore the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Whereas because the Petitioners' petition is clear, based on Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas even though the object of the *a quo* petition filed by the Petitioner is the same as the object in Case Number 126/PUU-XIII/2015, however the *a quo* case has a different basis for review, namely Article 28C paragraph (2) of the 1945 Constitution and also has a different reason, namely that the termination of the preliminary investigation is added to the norm of Article 5 paragraph (1) letter a of the Criminal Procedure Code. Therefore, regardless of whether or not the substance of the *a quo* petition is legally justifiable, the *a quo* formal petition based on the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021 can be re-submitted.

Whereas after the Court has examined the Petitioner's petition, the constitutional issue that must be answered by the Court is the termination of the preliminary investigation by the investigator if it is not added to the authority of the investigators who "does not terminate the preliminary investigation" in the norms of Article 5 paragraph (1) letter a of the Criminal Procedure Code which is in contrary to the 1945 Constitution. Regarding such constitutional issue, the Court considers the following:

Whereas the Petitioners' argument cannot be separated from the issue of constitutionality as argued in the previous petitions, namely Petition Number 9/PUU-XVII/2019 and Number 53/PUU-XIX/2021, where the Court has reaffirmed its stance in the Decision of the Constitutional Court Number 9 /PUU-XVII/2019 which was later quoted or reaffirmed in the Decision of the Constitutional Court Number 53/PUU-XIX/2021, especially in Paragraph **[3.14]**. The Court's Considerations in Paragraph **[3.14]** further confirms the definition of a preliminary investigation as regulated in Article 1 point 5 of the Criminal Procedure Code and Article 1 point 9 of Law Number 2 of 2002 concerning Indonesian National Police. The preliminary investigation process is a series of investigators' actions to seek and find an event that is suspected of being a criminal act in order to be determined whether or not to follow up with an investigation. Therefore, although in the preliminary investigation process, it is not explicitly known that there is a termination of the preliminary investigation, but part of the preliminary investigation process is to give the investigators the authority to determine whether or not a series of actions conducted by the investigators can be followed up with the investigation process, this indicates that the investigators are given the authority to make a decision whether or not the preliminary investigation shall be increased to the investigation stage. Therefore, even though the termination of preliminary investigation is not stated in the norm of Article 5 paragraph (1) letter a of the Criminal Procedure Code, this does not mean that there is no authority for the investigators to terminate the preliminary investigation. Precisely for the preliminary investigation process that does not meet the normative requirements and the preliminary investigation is not terminated, this can lead to legal uncertainty.

Whereas Article 5 paragraph (1) letter a of the Criminal Procedure Code does not regulate the termination of a preliminary investigation, but if an action to terminate a preliminary investigation occurs later because an event that is suspected of being a criminal act does not fulfil the elements of a criminal event, then this are not necessarily in contrary to the 1945 Constitution, particularly in terms of fair legal certainty. Such matter has been considered by the Court in the Decision of the Constitutional Court Number 9/PUU- XVII/2019, especially the Sub-paragraph **[3.13.1]** page 22. With these considerations, the act of terminating the preliminary investigation by the investigators, even though it is not explicitly mandated in Article 5 paragraph (1) letter a of the Criminal Procedure Code, is not in contrary to the 1945 Constitution. Moreover, in every report of an alleged criminal act, after a preliminary investigation is carried out, it could be found that there is not enough evidence to be followed up in the investigation stage. Likewise, for

the preliminary investigation process that has been terminated, it is possible to conduct a preliminary re-investigation as long as new evidence is found in the report of the alleged criminal act.

Whereas even though the termination of the preliminary investigation is unknown or not regulated in the Criminal Procedure Code, it still provides discretion (principle of *freies ermerssen*) to the state administrative officials, in this case the Chief of Indonesian National Police (Kapolri), namely, to use his policies to regulate the matters that have not been regulated in the laws and regulations without contradicting with the applicable laws and regulations. Moreover, regarding the termination of the preliminary investigation, the Chief Indonesian National Police as a State Administrative Officer, for example, has issued a Circular Letter of the Chief of Police Number SE/7/VII/2018 concerning Termination of Preliminary Investigations which has regulated the procedures and stages in terminating a preliminary investigation.

Therefore, based on the legal considerations in the aforementioned decision, the Court is of the opinion that although the norm of Article 5 paragraph (1) letter a of the Criminal Procedure Code is not added with the phrase “does not terminate the preliminary investigation” as argued by the Petitioner, it turns out that the *a quo* norm has provided fair legal certainty so that it is not in contrary to the 1945 Constitution.

Subsequently, the Court issued a decision which verdict states that the Petitioner's petition is entirely dismissed.