



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 61/PUU-XX/2022

Concerning  
Legal Assistance for Witnesses

- Petitioner** : Octolin H. Hutagalung, et al  
**Type of Case** : Judicial review of Law Number 8 of 1981 concerning Criminal Procedure Code (*Hukum Acara Pidana* or KUHAP) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)  
**Subject Matter** : Judicial review of Article 54 of the Criminal Procedure Code against Article 28D paragraph (1) of the 1945 Constitution  
**Verdict** : To dismiss the Petitioners' petition entirely  
**Date of Decision** : Wednesday, November 30, 2022

**Overview of Decision** :

The Petitioners are individual Indonesian citizens who work as advocates for the Indonesian Advocates Association (*Organisasi Perhimpunan Advokat Indonesia* or Peradi). Whereas Article 54 of the Criminal Procedure Code impairs the constitutional rights of the Petitioners because witnesses or examinees are not regulated as people who are entitled to legal assistance as suspects or defendants.

Whereas in relation to the authority of the Court, because the petition of the Petitioners is a review of the constitutionality of the statutory norms, material review of the norms of Article 54 of the Criminal Procedure Code against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition of the Petitioner.

Whereas with regard to the legal standing of the Petitioners, the Court is of the opinion that the Petitioners who work as advocates have been able to describe the existence of a direct relationship with the law, in particular the implementation of the norms of Article 54 of the Criminal Procedure Code with the presumed constitutional losses of the Petitioners as regulated in 28D paragraph (1) of the 1945 Constitution, namely the Petitioners are hindered and even prohibited from providing legal assistance to accompany witnesses or examinees in the examination process and such constitutional loss shall no longer occur if the *a quo* petition of the Petitioners is granted. Therefore, the Petitioners have the legal standing to act as the Petitioners in the *a quo* petition.

Whereas the legal protection for suspects or defendants as stipulated in Article 54 of the Criminal Procedure Code is given with respect to the position of the suspect or defendant which is subject to the law and threatened with a crime/legal effect that may limit his human rights so that the suspect or defendant needs to defend his/her rights and in this case, including to make a defence to be released from the actions that are suspected or charged against him/her.

Whereas after the Court has examined the existence of Article 54 of the Criminal Procedure Code which strictly regulates the defence of suspects or defendants systematically, Article 54 of the Criminal Procedure Code is contained in Chapter VI which regulates suspects and defendants, both regarding the examination of suspects and defendants as well as regarding the rights of suspects and defendants as a whole. Therefore, by including the

arrangements regarding the rights of witnesses in a special chapter related to the suspects and defendants, *in casu* Chapter VI of the Criminal Procedure Code, in fact, will make the substance, format and systematics of the Criminal Procedure Code unclear and shall have the potential to create legal uncertainty regarding the content of Chapter VI of the Criminal Procedure Code. This is because the definition of a suspect or defendant has a significant difference from the understanding of a witness, both in terms of nature and juridical consequences regarding the type and procedure of examination as well as whether legal protection rights will be granted. Therefore, the arrangement of witnesses being combined with the suspects or defendants, in addition to this being in contrary to Article 28D paragraph (1) of the 1945 Constitution, it is also not in line with the principle of forming good legislations as stipulated in the provisions of Article 5 of Law Number 12 of 2011 concerning Formation of Legislation.

Whereas the Criminal Procedure Code is one of the implementations of the enforcement and protection of human rights as a constitutional provision in the 1945 Constitution, therefore both the suspects or defendants and the witnesses should have the same legal protection rights according to their respective nature and position. The protection of witnesses in the realm of human rights protection is actually not only carried out by legal advisers (advocates) but also by other law enforcers as a representation of the public interest in criminal law enforcement, *in casu* law enforcers who carry out examinations both at the investigative and prosecution stages.

Whereas the legal protection of witnesses, particularly in relation to legal assistance or help, provided by legal advisers (advocates) cannot be equated with legal assistance or help provided by legal advisers (advocates) for suspects or defendants, because the witnesses have not yet become legal subjects that may be subject to coercion (*pro justicia*) which may result in legal deprivation of liberty or goods as is the case with suspects or defendants. Therefore, legal assistance/help by an advocate for the suspects or defendants is a necessity, moreover the suspects or defendants are threatened with certain criminal threats [*vide* Article 56 of the Criminal Procedure Code].

Whereas under these differences, in providing information at the stage of witness examination, the legal advisers (advocates) may provide legal assistance to witnesses, limited to assisting the witnesses only. This is because the witnesses are actually obliged to provide information in accordance with the actual facts happened, which he/she saw, felt and experienced in a free state without pressure. Therefore, the presence of legal advisers (advocates) is necessary to ensure that the witnesses examination is carried out in accordance with procedures and to ensure that there are no intimidations and arbitrary actions by the law enforcers that could result in violations of the rights of the witnesses so that the witnesses may provide information in a free and calm condition in order to clear a criminal case. On the other hand, the legal advisers (advocates) who accompany the witnesses in the examination process must not influence the witnesses in giving any statements and must be within the framework of upholding justice objectively while upholding the integrity and code of ethics of advocates as an element of law enforcement.

Whereas in order to avoid the possibility of intimidation and arbitrary actions that could violate the human rights of witnesses and therefore may lead to the failure to achieve the objective of criminal justice, namely obtaining material truth, the provisions regarding witnesses and witness assistance must be regulated in a separate chapter or a sub-chapter in the Criminal Procedure Code. In this regard, the DPR (House of Representatives) in its statement delivered at the session stated that the revised KUHAP (Criminal Procedure Code) had been included in the list of the 2020-2024 National Legislation Program (*Program Legislasi Nasional* or Prolegnas), under the Serial Number 294, therefore in order to provide guarantees of legal protection and certainty for witnesses, it is important for the legislators to revise the Criminal Procedure Code to include the material regarding the procedures for examining witnesses and legal assistance or help for the witnesses in a separate chapter or a sub-chapter.

Whereas based on the entire aforementioned description of the legal considerations, the Court is of the opinion that the assistance of witnesses by the legal advisers (advocates) in examining any criminal cases is something that is important to regulate, but the material

referred to is not properly contained in Article 54 of the Criminal Procedure Code. Therefore, the provisions of the norms of Article 54 of the Criminal Procedure Code do not create legal uncertainty and are not in contrary to Article 28D paragraph (1) of the 1945 Constitution as argued by the Petitioners. Therefore, the petition of the Petitioners is entirely legally unreasonable.

Furthermore, the Court passed a decision which verdict is to dismiss the Petitioners' petition entirely.