



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 33/PUU-XXI/2023**

**Concerning**

**The Need for Expansion of the meaning  
of “Termination of Investigation”**

<b>Petitioners</b>	<b>:</b>	<b>Asep Muhidin and Rahadian Pratama Mahpudin</b>
<b>Type of Case</b>	<b>:</b>	Judicial Review of Law Number 8 of 1981 concerning Criminal Procedural Code (Law 8/1981) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
<b>Subject Matter</b>	<b>:</b>	The phrase “termination of investigation” in Article 80 of Law 8/1981 is contrary to the principles of rule of law in Article 1 paragraph (3), the guarantee of equality before the law in Article 27 paragraph (1), and the guarantee of fair legal certainty in Article 28 paragraph (1) of the 1945 Constitution;
<b>Verdict</b>	<b>:</b>	To dismiss the petition of the Petitioner entirely
<b>Date of Decision</b>	<b>:</b>	Thursday, 25 May 2023.
<b>Overview of Decision</b>	<b>:</b>	

The Petitioners are individual Indonesian citizens who have concerns in carrying out the supervision, social control and monitor the performance of government administrators, public policy and participate in the prevention and eradication of criminal acts of corruption. They believe that their constitutional rights are harmed due to the enactment of the norms of the article being petitioned for review because of the *a quo* norms do not provide guarantees of legal certainty as mandated by Article 1 paragraph (3), Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution;

Regarding the authority of the Court, since this is a petition to review the constitutionality of the norms of the law, *in casu* Law 8/1981, against the 1945 Constitution, the Court has the authority to hear the Petitioner's petition;

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners are able to specifically explain their constitutional rights which, according to their opinion, are actually or at least potentially harmed by the enactment of the norms being petitioned for review, namely the right to guarantee of fair legal certainty as guaranteed in the 1945 Constitution. As informants of several community reports to the Prosecutor's Office (*vide* evidence P-15) which has not been followed up for more than one year, they then took legal action by submitting a pre-trial petition (*vide* evidence P-11, evidence P-12 and evidence P-13) but the petition was dismissed. The Court is of the opinion that the Petitioners are able to describe the presumed actual constitutional loss. In addition to that, the constitutional rights of Petitioner I, who is an advocate, are also potentially harmed because he has the potential to submit a pre-trial petition in carrying it out his duties as an advocate. The Court is of the opinion that there is a logical connection and a causal relationship between the presumed loss of the constitutional rights of the Petitioners and the

validity of the norms of the articles being petitioned for review. Therefore, if the petition of the Petitioners is granted, then the presumption of such loss will no longer occur or will not occur. Therefore, the Court is of the opinion that the Petitioners have the legal standing to submit the *a quo* petition.

Before examining the subject matter of the petition, the Court first examines whether the review of the norms of the articles could be re-submitted as stipulated in Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021. Since the *a quo* norms have previously been submitted for review in Case Number 76/PUU-X/2012 and Case Number 98/PUU-X/2012. The basis for examining the petition of the Petitioners is Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, all of which have been used as the basis for review in Petition Number 76/PUU-X/2012 and Petition Number 98/PUU-X/2012. However, the three petitions turned out to have different reasons. Petition Number 76/PUU-X/2012 petitions for the Court to narrow the meaning of the phrase "interested third party" in Article 80 of Law 8/1981, meanwhile petition Number 98/PUU-X/2012 petitions for the Court to expand the meaning of the phrase "interested third party" in Article 80 of Law 8/1981. While the *a quo* petition of the Petitioners in its *posita* outlines the reasons for the Court to expand the meaning of the phrase "termination of investigation" by interpreting it to mean that the termination of investigation includes in the event of the law enforcement officers do not carry out a series of investigative actions since the report on alleged corruption is submitted for up to a period of 1 year. Thus, even though the norms of Article 80 of Law 8/1981 have been reviewed on the same basis of review, due to the different reasons for the petition, pursuant to the provisions of Article 78 paragraph (2) of PMK 2/2021, the petition for review of the norms of Article 80 of Law 8/1981 may be re-submitted.

Regarding the Subject Matter, the Court is of the opinion that the norms of Article 80 of Law 8/1981 are part of the arrangements regarding the court's authority to adjudicate any pre-trial cases. While the scope of such pre-trial cases has been regulated in Article 1 point 10 of Law 8/1981, namely whether or not an arrest and or detention is valid; whether or not the termination of investigation or prosecution is valid; petition for compensation or rehabilitation; and it is expanded by the Decision of the Constitutional Court Number 21/PUU-XII/2014 to also include the examination of whether or not the determination of the suspect, search and confiscation is valid.

Article 109 paragraph (2) of Law 8/1981 stipulates that there are three limitations for investigators to be able to terminate an investigation, namely 1) if there is not enough evidence, 2) the event that is the object of investigation is not criminal act, and 3) the investigation is terminated by law. Meanwhile, in their petition, the Petitioners petition for the Court to expand the limits on termination of investigation, namely the termination of investigation to include in the event of the law enforcement officers do not carry out a series of investigative actions since the report on alleged corruption is submitted for up to a period of 1 (one) year.

The relationship between the pre-trial petition submitted by the Petitioners and the *petitum* of the Petitioners which petitions for an expansion of the meaning of termination of investigation, it can be understood that the review of Article 80 of Law 8/1981 is a further legal action of the Petitioners so that their report can be followed up. However, the report of the Petitioners which is the root of the issue in the *a quo* petition, has not yet reached the stage of investigation, so that if the petition of the Petitioners is granted by the Court, it will not have any effect on the report that the Petitioners submitted. Even if the report has reached the stage of investigation, *quod non*, then if the Court granted the *a quo* petition and the report which has not been followed up was determined to have been terminated because the investigation has not been followed up for more than one year, then the efforts of the Petitioners to obtain justice by submitting a report on corruption would not materialize because the investigation would be terminated. In addition that, Article 80 of Law 8/1981 does not regulate the substance of the termination of investigation which the Petitioners wish to expand the meaning of, such regulation is contained in Article 109 paragraph (2) of Law

8/1981.

The Court is of the opinion that the expansion of the meaning of “termination of investigation” as proposed by the Petitioners will not provide legal certainty, instead it is counterproductive to law enforcement efforts, especially for the efforts to eradicate corruption. Uncovering the cases of corruption is not easy, especially if it is not a case of being caught red-handed, it is difficult to find sufficient initial evidence. That is why the Corruption Law mandates that the public should play a role and assist the law enforcement officers in disclosing the cases of corruption [*vide* Article 41 of the Corruption Law]. If the process of investigating the initial evidence has taken more than one year, then the investigation is terminated, then the effort against corruption will be in vain.

In order to obtain fair legal certainty, the public, in this case the Petitioners, may push for the increase of disclosure of information on any reports submitted. If a member of the public makes a report and is not followed up for a long period of time, the informant shall have the right to receive information to what extent his/her report has been followed up. If there are any insufficiencies in the report, the informant shall have the right to know and complete it so that the case can move on to the next stage. Likewise, the law enforcement officers must also periodically communicate to the public/informant regarding the follow-up to any report submitted by the public.

Therefore, the Court is of the opinion that the legal issues that the Petitioners argue are not the issues of the constitutionality of the norms of Article 80 of Law 8/1981. The norms in Article 80 of Law 8/1981, which regulates who shall have the right to submit a pre-trial petition to examine whether the termination of investigation is valid, has been examined by the Court and decided in the Decision of the Constitutional Court Number 98/PUU-X/2012. In accordance with these legal considerations, the Court is of the opinion that the phrase “termination of investigation” in Article 80 of Law 8/1981 evidently has not caused the issue of legal uncertainty as guaranteed in the 1945 Constitution.

Subsequently, the Court passes down a decision in which the verdict states to dismiss the petition of the Petitioners entirely.