



CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION FOR CASE NUMBER 123/PUU-XXI/2023

Concerning

Period of Determination and Deadline of Pretrial

Petitioner	: M. Samosir Pakpahan
Type of Case	: Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Review of Article 77 letter a of the Criminal Procedure Code against Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution
Verdict	: To declare that the petition of the Petitioner is inadmissible
Date of Decision	: Tuesday, 31 October 2023
Overview of Decision	:

Whereas the Petitioner is an Indonesian citizen, a retired National Police Officer, currently working as an advocate.

Whereas regarding the authority of the Court, since the *a quo* petition is a review of the constitutionality of legal norms, *in casu* material review of the norms of Article 77 letter a as has been interpreted previously in the Constitutional Court Decision Number 21/PUU-XII/2014, Law Number 8 of 1981 concerning Criminal Procedure Law, hereinafter referred to as KUHAP, against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

Whereas regarding the petition of the Petitioner, the Court has conducted a Preliminary Examination Session with the agenda of examining the subject matter of the petition on Tuesday, 10 October 2023 which was attended by the Principal Petitioner and his legal attorney. In the trial, in principal, the Panel of Judges provided advice to the Petitioner regarding the *a quo* petition which states, among others, as follows:

1. the Petitioner should prepare the petition in accordance with the systematics as regulated in Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases [PMK 2/2021];
2. the Petitioner should revise the object of the petition, namely reviewing Article 77 paragraph (1) of the KUHAP because after the Court looked closely, this article was not contained in the KUHAP. What is contained in the KUHAP is Article 77 letter a which regulates, among other things, whether arrest and detention are legal or not, while letter b regulates compensation and rehabilitation. In relation to this matter, if the Petitioner wishes to submit a review of Article 77 letter a of the KUHAP, regarding that matter the Petitioner must connect Article 77 letter a of the KUHAP with the Constitutional Court Decision Number 21/PUU-XII/2014 whose verdict, among other things, expands pretrial objects, including identifying suspects, confiscation and searches. Therefore, the interpretation of Article 77 letter a of the KUHAP has been amended under the Constitutional Court Decision Number 21/PUU-XII/2014. Accordingly, the subject matter section in the Petitioner's petition must be adjusted, and likewise, when the Petitioner elaborates on Article 77 letter a of the KUHAP, it must always be attached to the relevant Constitutional Court Decision Number 21/PUU-XII/2014;

3. the Petitioner should revise the *petitum* to better reflect the wishes of the Petitioner, whether the article being petitioned for reviewed is contrary to the 1945 Constitution (unconstitutional) or conditionally contrary to the 1945 Constitution (conditionally unconstitutional) [*vide* Minutes of Hearings of Case Number 123/PUU-XXI/2023, dated 10 October 2023];

Whereas the Court has carried out a Preliminary Examination session with an agenda of examining the revision of the petition and ratifying the evidence, on Monday, 23 October 2023. During the hearing, the Petitioner submitted the revised subject matters of the petition in accordance with the advice of the Panel of Judges at the previous trial, including, among other things, related to the subject matter section, additions to the legal basis of the Court's authority, revisions to the description of the Petitioner's legal standing and reasons for the petition (*posita*), and the matters being petitioned for review (*petitum*). Regarding the revision of the petition, after close examination, the Court found that the Petitioner had indeed changed the object of the petition to Article 77 letter a of the KUHAP. However, the Petitioner did not elaborate on Article 77 letter a of the KUHAP which has been interpreted in accordance with the Constitutional Court Decision Number 21/PUU-XII/2014, which was declared in a plenary session open to the public on 28 April 2015. Therefore, Article 77 letter a of the KUHAP being petitioned for review remains the Article 77 letter a of the original KUHAP or the norms before the Constitutional Court Decision Number 21/PUU-XII/2014, even though such decision has amended or expanded the meaning of the norms of Article 77 letter a of the KUHAP.

Furthermore, in the object section of the petition which describes the reasons for the petition (*posita*), the Petitioner also does not connect the norms of Article 77 letter a of the Criminal Procedure Code with the Constitutional Court Decision Number 21/PUU-XII/2014 (*vide* the Petitioner's petition page 7 and page 9). Likewise, in the *petitum* section, the Petitioner has also made amendments, the *petitum*, which initially consisted of 4 (four) points, is reduced to 3 (three) points. However, after the Court examined it, it turned out that in *petitum* number 2 (two), the Petitioner did not petition the Court to declare that Article 77 letter a of the KUHAP is contrary to the 1945 Constitution or conditionally contrary to the 1945 Constitution, instead the Petitioner petitions the Court to declare that Article 77 letter a of the KUHAP remains valid, also the Petitioner wishes to Court to set a period of 14 days to complete the process of the issuance of the arrest warrant, detention decree, termination of investigation and prosecution, and suspect determination, search warrant, confiscation decree and pre-trial legal action. In addition, the Petitioner also did not attach the Constitutional Court Decision Number 21/PUU-XII/2014 as the reference to the norms of Article 77 letter a of the KUHAP. Such preparation of the *petitum* and such procedure for mentioning the norms, not only deviate from the systematic preparation of the *petitum* of the petition as described in Article 10 PMK 2/2021, but also has created uncertainty regarding what the Petitioner actually wishes to be decided from his petition.

Pursuant to the description of these considerations, the Court is of the opinion that the Petitioner's petition is unclear or obscure (*obscur*).

Whereas regarding the case files and evidences submitted by the Petitioner after the Preliminary Examination Session with the agenda of revising the petition on 23 October 2023, since the Petitioner's petition is declared unclear or obscure (*obscur*), the relevant case files and evidences shall not be considered by the Court.

Whereas in accordance with the considerations above, even though the Court has the authority to hear the *a quo* petition, however because the Petitioner's petition is unclear or obscure (*obscur*), the Court shall not consider the legal standing and the subject matters of the Petitioner's petition any further.

Subsequently, the Court handed down a decision whose verdict states that the Petitioner's petition is inadmissible.