



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 115/PUU-XXI/2023**

Concerning

**Investigation of Mobile Phone or Similar Devices
is Not Part of Personal Identity**

Petitioner	: Leonardo Olefin's Hamonangan
Type of Case	: Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Code (Law 8/1981) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 5 paragraph (1) letter a number 3 of Law 8/1981 is contrary to Article 1 paragraph (3), Article 28G paragraph (1) and Article 30 paragraph (4) of the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety.
Date of Decision	: Wednesday, November 29, 2023
Overview of Decision	:

The Petitioner is an individual Indonesian citizen, working as a private employee who is fighting for his rights because he has the potential to be injured by the enactment of the *a quo* article.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the constitutionality of legal norms, *in casu* Article 5 paragraph (1) letter a number 3 of Law 8/1981 against the 1945 Constitution, therefore the Court has the authority to hear the petition of the Petitioner.

Regarding the Legal Standing, according to the Petitioner, the increasing number of police officer using the excuse of enforcing their rights and authority to investigate mobile phone of a driver or a suspect, however in accordance with the procedure, the officer must obtain a search warrant from the investigator or in the case of a person being caught red-handed or as ordered by the local court.

Pursuant to the description conveyed by the Petitioner in describing his legal standing, the Court is of the opinion that the Petitioner has been able to prove himself as an Indonesian citizen who works as a private employee, and has also been able to describe that the Petitioner has constitutional rights as guaranteed in Article 28G paragraph (1) and Article 30 paragraph (4) of the 1945 Constitution, which is potentially injured by the enactment of the legal norms being petitioned for review, namely Article 5 paragraph (1) letter a number 3 of Law 8/1981. In addition, the Petitioner has also been able to prove that the assumption of potential constitutional injury has a causal relationship (*causal verband*) and is specific in nature, therefore if the *a quo* petition of the Petitioner is granted, the said assumed constitutional injury

will not occur. Therefore, regardless of whether the unconstitutionality of Article 5 paragraph (1) letter a number 3 of Law 8/1981 is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas the Petitioner questions whether the norms of Article 5 paragraph (1) letter a number 3 of Law 8/1981 are contrary to Article 1 paragraph (3), Article 28G paragraph (1), and Article 30 paragraph (4) of the 1945 Constitution. The Petitioner is concerned that the enactment of Article 5 paragraph (1) letter a number 3 of Law 8/1981 will increase the number of police officers using the excuse of enforcing their rights and authority to investigate mobile phone of a driver or a suspect, however in accordance with the procedure, the officer must obtain a search warrant from the investigator or in the case of a person being caught red-handed or as ordered by the local court. The police officer may not arbitrarily investigate a mobile phone due to the reasons of suspecting someone. By using the excuse of protecting the interests of Investigators, the police officer proceeds to freely investigate mobile phone of a person. In the event that the police officer forcibly conducts a search without any court warrant or without anyone being caught red-handed, the police can be accused of carrying out an unlawful search. Therefore, the police may not arbitrarily conduct a search without obtaining any court warrant, investigation order, or without a person being caught red-handed. Article 5 paragraph (1) letter a number 3 Law 8/1981 does not have a binding legal force in ordering a suspect to stop and in asking for and checking personal identification, to the extent that it is interpreted as "in the case of an investigation of mobile phone or similar devices are not a part of personal identity and investigation of mobile phone or similar devices is lawful to the extent that an evidence of a crime is found."

Regarding the rights and authority of the police to conduct investigation freely on the grounds that they suspect someone and for the purposes of investigation, where the police forcibly conduct a search without court warrant or without anyone being caught red-handed, including *in casu* investigation of mobile phone. In this regard, the Petitioner added, the police could be charged with conducting an illegal search, because the police may not arbitrarily conduct a search without first obtaining a court warrant, an investigation order, or unless a person is caught red-handed. Regarding the said issue, it is actually not substantially different from the constitutionality issue which has been decided by the Court in the Decision of the Constitutional Court Number 60/PUU-XIX/2021, which was pronounced in a plenary session open to the public on 25 January 2022. Furthermore, it is also important to emphasize that the perceived absence of limits on the authority of the Police officers would lead to actions that degrade a person's honor and dignity as a result of being treated arbitrarily by the Police officers. This has also been considered by the Court in the Decision of the Constitutional Court Number 60/PUU-XIX/2021.

The Petitioner's concerns have been answered because the real issues lies at the level of implementation of the norms. However, in this legal considerations of the *a quo* decision, the Court needs to reaffirm that even though there is no constitutionality issue of the norms, it is important to remind the members of the National Police that in carrying out their duties they must always maintain a balance between elements of professionalism and integrity while still paying attention to the protection of human rights, especially in actualizing the provisions of the norm in Article 5 paragraph (1) letter a number 3 of Law 8/1981. Likewise, the public is expected to always support the implementation of the police officer's duties.

Furthermore, regarding the Petitioner's argument which questions the authority of police officer in investigating mobile phone of a driver or a suspect, however in accordance with the procedure, the officer must obtain a search warrant from the Investigator or in the case of a person being caught red-handed or as ordered by the local court. Regarding the said Petitioner's argument, the Court emphasizes that in addition to the constitutionality issue which

had been considered in the Decision of the Constitutional Court Number 60/PUU-XIX/2021 above, it is also important to emphasize that the action of the Police officers in conducting an investigation on a person who is suspected of having committed a criminal act is an action that needs to be conducted in a timely manner and does not allow for the issuance of warrants before the action is conducted as intended by the Petitioner. If such a warrant becomes a requirement, a suspect could potentially use the opportunity to escape and even to get rid of any evidence. In addition, the investigation conducted by Police officers on a person who is suspected of having committed a criminal act is actually still within the limits of a preliminary investigation which does not yet involve coercive action or effort (*pro justitia*). Therefore, there is no relevance in questioning the search warrant from the court or the investigation order unless a person is caught red-handed as argued by the Petitioner. Meanwhile, regarding the Petitioner's argument which requests that an investigation of mobile phone or similar devices is excluded from parts that may not be investigated. Regarding this, the Court is of the opinion that it is difficult to separate whether a mobile phone or similar device is part of the evidence used or is the result of a criminal act or not without first examined the said device. Therefore, without intending to assess the Petitioner's concerns, if these concerns are true and if the said police officers are proven to have violated legal procedures, the Petitioner may take the available legal remedies.

Pursuant to the aforementioned legal considerations, the provisions of the norms of Article 5 paragraph (1) letter a number 3 of Law 8/1981 have apparently provided legal certainty and do not violate the right to personal protection, family, honor, dignity and property, as well as the right to a sense of security and protection from the threat of fear of doing or not doing something as guaranteed in Article 28G paragraph (1) and Article 30 paragraph (4) of the 1945 Constitution. Therefore, the arguments of the Petitioner's petition are legally unjustifiable in their entirety and other matters in the *a quo* petition is not considered further because they are deemed to have no relevance.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.