



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 59/PUU-XXI/2023**

Concerning

Sole Investigation by the Indonesia Financial Services Authority in Financial Services Sector Crimes and the Phrase "Certain Employees" in the Investigators from the Indonesia Financial Services Authority

- Petitioners** : **Serikat Pekerja Niaga Bank Jasa Asuransi (SP NIBA or Insurance Services Bank Commercial Workers Union) AJB Bumiputera 1912, I Made Widia, et al.**
- Type of Case** : Judicial Review of Law 4 of 2023 concerning Development and Strengthening of the Financial Sector (Law 4/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "certain employees" in Article 49 paragraph (1) letter c and the phrase "may only be carried out by the investigators from the Indonesia Financial Services Authority" in Article 49 paragraph (5) of Law Number 21 of 2011 concerning the Indonesia Financial Services Authority (Law 21/2011) is contrary to Article 1 paragraph (3), Article 28D paragraph (1), and Article 30 paragraph (4) of the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**
To dismiss the petition of preliminary injunction of the Petitioners.
- On the Merits:**
1. To grant the Petitioners' petition in part.
 2. To declare that the provisions of the norms of Article 8 number 21 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (State Gazette of the Republic of Indonesia of 2023 Number 4, Supplement to State Gazette of the Republic of Indonesia Number 6845) regarding the phrase "may only be carried out by the investigators from the Indonesia Financial Services Authority" in Article 49 paragraph (5) of Law Number 21 of 2011 concerning the Indonesia Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), is contrary to the 1945 Constitution of the Republic of Indonesia and it has conditionally binding legal force

provided that it is interpreted as, "may be carried out by the investigators from the Indonesia Financial Services Authority". Therefore the norm of Article 8 number 21 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector which includes the amendment to Article 49 paragraph (5) of Law Number 21 of 2011 concerning the Indonesia Financial Services Authority reads in full: "Investigations on criminal acts in the financial services sector may be carried out by the investigators from the Indonesia Financial Services Authority."

3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the remainder of the Petitioners' petition.

Date of Decision : Thursday, December 21, 2023

Overview of Decision :

The Petitioners are the Private Legal Entity in the form of *Serikat Pekerja Niaga Bank Jasa Asuransi* (SP NIBA or Insurance Services Bank Commercial Workers Union) *Asuransi Jiwa Bersama* (Joint Life Insurance) Bumiputera 1912 and individual Indonesian citizens as bank customers. According to the Petitioners, the enactment of Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "certain employees" in Article 49 paragraph (1) letter c and the phrase "may only be carried out by the investigators from the Indonesia Financial Services Authority" in Article 49 paragraph (5) of Law 21/2011 has hampered the Petitioners' access to justice in order to fulfill the guarantee of fair legal certainty because they are not able to take legal action through law enforcement facilities of the National Police regarding the occurrence of criminal acts in the financial services sector, especially banking crimes;

Regarding the authority of the Court, pursuant to Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, Article 29 paragraph (1) of the Judicial Power Law, and Article 51 paragraph (3) of the Constitutional Court Law, even though the *a quo* petition of the Petitioner states "Judicial Review of Article 8 number 21 Article 49 paragraph (5) and Article 8 number 21 Article 49 paragraph (1) letter c Law 4/2023", but the Court is able to understand that what is actually being petitioned for constitutionality review is Article 8 number 21 of Law 4 /2023 (State Gazette of the Republic of Indonesia 2023 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 6845) which contains amendment to the norms of the phrase "certain employees" in Article 49 paragraph (1) letter c and the phrase "may only be carried out by the investigators from the Indonesia Financial Services Authority" in Article 49 paragraph (5) of Law 21/2011 (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), therefore the Court has the authority to hear the *a quo* petition;

Whereas regarding the legal standing of the Petitioners, the Court considers that Petitioner I as a private legal entity has been able to prove that its interests are represented by the parties who have the right to represent them in accordance with the Articles of Association/Bylaws and the mandate requirements of the organization. Meanwhile, Petitioners II to VI have also been able to describe the presumed loss of constitutional rights, according to Petitioners II to VI, their constitutional rights have been harmed or potentially harmed by the enactment of the norms of the *a quo* Article. In addition, Petitioner II to Petitioner VI have also been able to describe the presumed or potential loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms of the law being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed constitutional loss as

described will not or will no longer occur. Therefore, Petitioner I to Petitioner VI (hereinafter referred to as the Petitioners) have the legal standing to submit the *a quo* Petition.

Whereas the petition for preliminary injunction which substantially requests the Constitutional Court to grant an interlocutory order to postpone the implementation of the provisions of Law 4/2023 and instead to implement Law 21/2011, in order to provide fair legal certainty in the process of investigating financial services crimes which is being handled by the Police and to prevent any losses to the Petitioners and the parties who are being handled and who will report the financial services crime to the Police, pursuant to the provisions of Article 58 of the Constitutional Court Law, the Court is of the opinion that it cannot be legally justified to delay the implementation of the norms of a law as petitioned for by the Petitioners. Moreover, in assessing the constitutionality of the norms of articles being petitioned for review, the Court requires comprehensive scrutiny and discussion through follow-up examination trials. Therefore, the Petitioners' petition for preliminary injunction must be declared legally justifiable.

Regarding the Petitioners' argument in relation to the investigative authority of the Indonesia Financial Services Authority on criminal acts in the financial services sector as regulated in Article 8 number 21 of Law 4/2023 which contains amendment to Article 49 paragraph (5) of Law 21/2011, the Court considers that pursuant to Article 6 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law (hereinafter referred to as the Criminal Procedure Code) and Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia, the roles and duties of the National Police in enforcing criminal law by conducting investigations of all criminal acts is emphasized as the main authority of the Police. Moreover, the Police's authority to carry out investigations is a fundamental part of the process of realizing the mandate of Article 30 paragraph (4) of the 1945 Constitution.

Furthermore, pursuant to the provisions of Article 1 number 1 of Law 21/2011, Indonesia Financial Services Authority is an independent institution and free from interference from other parties, which has the functions, duties and authority of regulation, supervision, inspection and investigation. Regarding the investigative authority of Indonesia Financial Services Authority, in the Decision of the Constitutional Court Number 102/PUU-XVI/2018 and the Decision of the Constitutional Court Number 33/PUU-XIX/2021, the Court has emphasized that the investigative authority of Indonesia Financial Services Authority can be justified and is constitutional to the extent that its implementation is coordinated with the investigators from the National Police. However, because the Indonesia Financial Services Authority is institutionally established under a law whose authority is not directly stated in the 1945 Constitution, the Indonesia Financial Services Authority is actually a state institution whose function is as a supporting institution (*auxiliary agencies*) for other state organs, especially those with similar authority or mutual relevance. Therefore, regarding the authority of the Indonesia Financial Services Authority in carrying out investigations into criminal acts, in this case investigations into criminal acts in financial services sector as a part of general criminal acts, the Indonesia Financial Services Authority is not the main investigator, but is a supporting system for the main investigator which is the National Police.

Whereas one of the objectives of establishing Law 4/2023 includes strengthening the mandate of granting absolute investigative authority in criminal acts in the financial services sector to the Indonesia Financial Services Authority as regulated in Article 8 number 21 of Law 4/2023 which contains amendment to Article 49 paragraph (5) of Law 21/2011. Law 4/2023 has been delegated through Government Regulation Number 5 of 2023 concerning Investigation of Criminal Acts in the Financial Services Sector (Government Regulation 5/2023) which *contrario* has different regulations regarding the provisions of regulations as regulated in Law 4/2023, namely providing a legal umbrella for investigations in the financial services sector to the investigators from the National Police. This creates legal uncertainty, because there is a difference in the authority to investigate criminal acts in the financial services sector between the provisions of Government Regulations 5/2023 and Law 4/2023.

Whereas pursuant to Article 5 letter c of Law Number 12 of 2011 concerning the Formation of Legislative Regulations as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 2011 concerning the Formation of Legislative Regulations, one of the principles of forming good legislative regulations is... "suitability between the type, hierarchy and material content", Therefore, if this is related to the President's statement at the Court hearing on 28 August 2023, which was delivered by the Deputy Minister of Law and Human Rights, which substantially stated that the *a quo* Government Regulation 5 /2023 is established as an "emergency door" for the cases in the Criminal Investigation Agency of the Indonesian National Police which are delayed due to the enactment of the article being petitioned for review [*vide* Minutes of Case Hearing Number 59/PUU-XXI/2023, Monday, 28 August 2023, p. 28 and Additional Presidential Statement dated 25 September 2023, p. 4]. The existence of the *a quo* legal facts increasingly emphasizes the conflict between the norms governing the investigative authority as regulated in Article 8 number 21 of Law 4/2023 which contains amendment to Article 49 paragraph (5) of Law 21/2011 and the norms of Government Regulation 5/2023. Therefore, due to the legal fact that there is a conflict between the aforementioned norms, it is appropriate for the Constitutional Court to provide its interpretation to the norms contained in Article 8 number 21 of Law 4/2023 which contains amendment to Article 49 paragraph (5) of Law 21/2011.

Pursuant to the entire description of the legal considerations above, the Court is of the opinion that the investigative authority of the Indonesia Financial Services Authority in the *a quo* article has placed restrictions on the existence of investigators from the National Police, so that this may lead to a denial of the authority of the Police as a law enforcement agency which functions as the main investigator and it is also inconsistent with the substance of the Decision of the Constitutional Court Number 102/PUU-XVI/2018. In addition, this even has the potential to result in eliminating the investigative authority of the National Police in general crimes and/or specific crimes, including crimes in the financial services sector. Therefore, the argument which states that the provisions of Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "may only be carried out by the investigators from the Financial Services Authority" in Article 49 paragraph (5) of Law 21/2011 are contrary to the principles of the rule of law and give rise to legal uncertainty as guaranteed in Article 1 paragraph (3), Article 28D paragraph (1), and Article 30 paragraph (4) of the 1945 Constitution, is conditionally unconstitutional to the extent that the provisions are not interpreted as "may be carried out by the investigators from the Financial Services Authority". Therefore, the Petitioners' petition is legally justifiable in part and for other articles relating to the authority to investigate criminal acts in the financial services sector as regulated in Law 4/2023, the implementation of which is in accordance with the *a quo* decision.

Regarding the Petitioners' argument in relation to the constitutionality issue in Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "certain employees" in Article 49 paragraph (1) letter c of Law 21/2011, the Court considers the investigative authority in Article 6 paragraph (1) of the Criminal Procedure Code as affirmed in Article 7 paragraph (2) of the Criminal Procedure Code and considered in the Decision of the Constitutional Court Number 109/PUU-XIII/2015, such authority does not only belong to the law enforcement agencies, but also may belong to other institutions to the extent that such arrangement does not conflict with the authority of law enforcement agencies.

Whereas in order to strengthen the authority and competence of the investigators from the Indonesia Financial Services Authority to resolve criminal acts in the financial services sector with their own complexities and characteristics, the Indonesia Financial Services Authority has several representative offices located in almost all regions in Indonesia. However, by looking at the factual condition of investigations at this time, investigations may only be carried out at the provincial level and the number of investigators are limited, the Indonesia Financial Services Authority still has to synergize with the National Police who has more sufficient number of investigators and infrastructures and therefore is able to reach all provinces, districts and villages throughout Indonesia.

Meanwhile, regarding the concerns of the Petitioners in relation to the addition of "certain employees" phrase who are considered to cause legal issues in the practice of criminal law enforcement, the Court is of the opinion that such concerns are excessive because to fulfil the aim of effective and optimal criminal law enforcement in the financial services sector in order to protect the public/consumers of the financial services sector as well as the to face the increasingly complex development of the financial services industry, the Indonesia Financial Services Authority may increase the professionalism of its employees by providing special capacities/competence to better understand investigation techniques specifically in the financial services sector. Therefore, granting the investigative authority to the investigators from other agencies, whose authority to carry out investigations is based on a specific law to the extent that they continue to coordinate with the investigators from the National Police in the implementation of their duties, is something that may be justified.

Pursuant to the entire description of the legal considerations above, the Court is of the opinion that the provisions of Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "certain employees" in Article 49 paragraph (1) letter c of Law 21/2011 are not contrary to the principles of the rule of law and do not give rise to legal uncertainty as guaranteed in Article 1 paragraph (3), Article 28D paragraph (1), and Article 30 paragraph (4) of the 1945 Constitution as argued by the Petitioners. Therefore, the *a quo* argument of the petition off the Petitioners is legally unjustifiable

Whereas pursuant to the entire description of the legal considerations above, the Court concludes that the Petitioners' petition for judicial review of the norms of Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "may only be carried out by the investigators from the Financial Services Authority" in Article 49 paragraph (5) of Law 21 /2011 is legally justifiable in part, while the Petitioners' petition in relation to the norms of Article 8 number 21 of Law 4/2023 which contains amendment to the phrase "certain employees" in Article 49 paragraph (1) letter c of Law 21/2011 is legally justifiable.

Accordingly, the Court subsequently passed down a decision which verdict states, as follows:

On Preliminary Injunction:

To dismiss the petition of preliminary injunction of the Petitioners.

On the Merits:

1. To grant the Petitioners' petition in part.
2. To declare that the provisions of the norms of Article 8 number 21 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector (State Gazette of the Republic of Indonesia of 2023 Number 4, Supplement to State Gazette of the Republic of Indonesia Number 6845) regarding the phrase "may only be carried out by the investigators from the Indonesia Financial Services Authority" in Article 49 paragraph (5) of Law Number 21 of 2011 concerning the Indonesia Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253), is contrary to the 1945 Constitution of the Republic of Indonesia and it has conditionally binding legal force provided that it is interpreted as, "may be carried out by the investigators from the Indonesia Financial Services Authority". Therefore the norm of Article 8 number 21 of Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector which includes the amendment to Article 49 paragraph (5) of Law Number 21 of 2011 concerning the Indonesia Financial Services Authority reads in full: "Investigations on criminal acts in the financial services sector may be carried out by the investigators from the Indonesia Financial Services Authority."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the remainder of the Petitioners' petition.