



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 28/PUU-XXI/2023**

Concerning

Decision of Pre-trial Petition

- Petitioner** : **M. Yasin Djamaludin**
- Type of Case** : Judicial Review of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Law Number 31 of 1999 concerning Eradication of Corruption Crimes and Law Number 30 of 2002 concerning Corruption Eradication Commission against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law against Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety.
- Date of Decision** : Monday, January 16, 2023
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen as proven by an Indonesian Identity Card. The Petitioner currently works as an advocate at the Perhimpunan Advokat Indonesia (Indonesian Advocates Association).

Regarding the Court's authority, since the Petitioner petitions for a review of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law against Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioner's petition;

Regarding the Petitioner's legal standing, the Court is of the opinion that the Petitioner as an individual Indonesian citizen who currently works as an Advocate at Perhimpunan Advokat Indonesia (Indonesian Advocates Association) has been able to describe the presumed injury of his constitutional rights due to the enactment of the provisions of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of

the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or the Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law which are being petitioned for review. The Petitioner's presumed loss of constitutional rights are specific and actual, at least potential and there is a causal relationship (*causal verband*) between the presumed injury of the Petitioner's constitutional rights and the enactment of the provisions of the legal norms being petitioned for review, in particular the Petitioner does not have fair legal certainty in carrying out his profession. Therefore, if the *a quo* petition is granted by the Court, the presumed injury of constitutional rights as described will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Whereas the Petitioner in this case believes that the *a quo* norms are contrary to Article 28D paragraph (1) of the 1945 Constitution, for reasons which are substantially as follows:

1. Whereas according to the Petitioner, the prosecutor's authority as an investigator in specific criminal acts as intended in Article 30 paragraph (1) letter d of the Prosecutor's Office Law has been reviewed and has been decided in accordance with the Decision of the Constitutional Court Number 28/PUU-V/2007 and it has provided guarantees of legal certainty and justice for the justice seekers. The legislators should have followed up on the Decision of the Constitutional Court, but until today they fail to do this, resulting in the overlapping authority of prosecutors as investigators;
2. Whereas according to the Petitioner, the failure to follow up on the decision of the Court regarding the authority of prosecutors as investigators has resulted in a legal uncertainty and injustice for the justice seekers, in this case the suspects/defendants in cases of criminal acts of corruption;
3. According to the Petitioner, the prosecutor's authority as an investigator has eliminated the checks and balances procedure in the investigation process and given rise to arbitrariness;
4. Whereas pursuant to the description of the aforementioned arguments, the Petitioner petitions for the Court substantially as follows:
 - (1) To declare that Article 30 paragraph (1) letter d of the Prosecutor's Office Law is contrary to the 1945 Constitution and it has no binding legal force;
 - (2) To declare that Article 39 of the Corruption Law is contrary to the 1945 Constitution and it has no binding legal force;
 - (3) To declare that Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law are contrary to the 1945 Constitution and they have no binding legal force;

Whereas the norms being petitioned for review by the Petitioner are the provisions of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or the Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law in relation to the authority of the Prosecutor's Office to investigate criminal acts of corruption which according to the Petitioner are contrary to Article 28D paragraph (1) of the 1945 Constitution. The Petitioner believes that the *a quo* norms have

created legal uncertainty for the justice seekers, in this case the suspects/defendants in the cases of criminal acts of corruption. The authority of prosecutors as investigators has also eliminated the checks and balances procedure in the investigation process and given rise to arbitrariness. Regarding the Petitioners' arguments, the Court in principle considers the following:

1. Whereas the legal norms being petitioned for review by the Petitioner are norms relating to investigative authority which are included in the scope of formal law (criminal procedural law), this cannot be separated from the existence of law enforcement agencies, especially the National Police, Prosecutor's Office, and the Corruption Eradication Commission as factually they are given the authority to investigate special and/or certain criminal acts. Therefore, whether the granting of investigative authority to the law enforcement agencies has created legal uncertainty for the justice seekers, in this case the suspects/defendants in the cases of criminal acts of corruption, has eliminated the checks and balances procedure in the investigation process and given rise to arbitrariness, such matter cannot be separated from the Court's stance as described in the legal consideration of Decision Number 28/PUU-V/2007, Sub-paragraph **[3.13.1]** to Sub-paragraph **[3.13.6]**, page 96 to page 98. Pursuant to the Court's stance in the legal considerations of the Decision of the Constitutional Court Number 28/PUU-V/2007, it is possible to grant investigative authority to other law enforcement agencies, apart from the National Police. Provided that the granting of authority is regulated clearly and firmly, this includes being carried out in a coordinated manner between the law enforcement agencies so that there would be no overlap in the exercise of such authority. Furthermore, regarding the granting of investigative authority to law enforcement agencies other than the National Police, this is not explicitly mandated by the 1945 Constitution. This means that the investigative authority is not limited or determined to be the sole authority of the National Police. Therefore, to the extent that other agencies whose functions are related to judicial power and are regulated in law as mandated by Article 24 paragraph (3) of the 1945 Constitution, including in this case the Prosecutor's Office as one of the agencies with relations to judicial power, it may be given investigative authority for specific criminal acts and/or certain criminal acts in accordance with the law [*vide* Article 30 paragraph (1) letter d of the Prosecutor's Office Law];
2. Whereas in addition to the aforementioned legal considerations, the Court is also of the opinion that the granting of the authority to the Prosecutor's Office to investigate specific and/or certain criminal acts in accordance with the law constitutes the legal policy of the legislators, likewise when the legislators grant the authority to any law enforcement agencies other than the National Police. In this regard, the legislators have measurable freedom and discretion in determining the norms that suit their needs, also since the criminal modes is developed greatly due to advances in information technology and other things which greatly influence the need for investigative developments, the process of handling the cases cannot be solely tackled by the National Police.
3. Whereas the legal considerations in the Decision of the Constitutional Court Number 28/PUU-V/2007, Paragraph **[3.15]**, page 99, which substantially states that Article 30 paragraph (1) letter d of the Prosecutor's Office Law, the legislators only give the prosecutors opportunity in the form of the authority to investigate special and/or certain criminal acts, this is intended because the criminal acts are increasingly developing and there are carried out in various types/modes. This legal fact, in fact, from a broader perspective is also intended to anticipate the increasing development and diversity of the types/modes of special and/or certain criminal acts. Therefore, regarding the argument of the Petitioner which states that the authority of the Prosecutor's Office in conducting investigations as referred to in Article 30 paragraph (1) letter d of the Prosecutor's Office Law is contrary to the 1945 Constitution because it has the potential to overlap with the investigative authority of the National Police, even though the investigative authority of the Prosecutor's Office is only for specific

criminal acts, the Court is of the opinion that such argument is unjustifiable. Because, as long as the investigative authority by the Prosecutor's Office is carried out with good coordination and regulated by clear and firm provisions as have been considered in the legal considerations above and pursuant to the considerations that other law enforcement agencies are needed apart from the National Police due to the increasing development and diversity of the types/modes of special and/or certain criminal acts, then the investigative authority by the Prosecutor's Office is justifiable.

4. Whereas upon observation of the practices of granting investigative authority to the Prosecutor's Office for specific and/or specific criminal acts in South Korea, the Netherlands and Germany, the authority of the Prosecutor's Office in conducting investigations is a common practice, especially when it relates to special and/or certain criminal acts which are considered as extraordinary crimes, universally several law enforcement agencies are required to handle them, especially in terms of investigative authority.
5. Whereas regarding the Petitioner's argument which questions the provisions of the norms of Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law, the Court is of the opinion that these are actually articles or norms that regulate matters relating to the obligation to collaborate between the law enforcement agencies, namely the National Police, Prosecutor's Office and Corruption Eradication Commission in handling criminal acts of corruption. Therefore, the legislators considered that criminal acts of corruption are extraordinary crimes which has crucial problem dimensions and therefore cannot be investigate solely by one law enforcement agency. This means that investigations into criminal acts of corruption, apart from being carried out by the National Police, also need to be carried out by other law enforcement agencies such as the Prosecutor's Office and the Corruption Eradication Commission, provided that the three law enforcement agencies coordinate with each other so that there is a unified manner in the efforts to eradicate criminal acts of corruption, therefore they are expected to be more effective in preventing and eradicating criminal acts of corruption.
6. Whereas in order to optimize the eradication of criminal acts of corruption, the three agencies then made a joint agreement as outlined in the Joint Agreement between the Prosecutor's Office of the Republic of Indonesia, the National Police of the Republic of Indonesia, the Corruption Eradication Commission of the Republic of Indonesia Number: KEP- 049 /A/JA/03/2012; Number: B/23/III/2012; Number: Spj-39/01/03/2012 concerning Optimizing the Eradication of Corruption Crimes which was most recently updated with a Memorandum of Understanding between the Corruption Eradication Commission of the Republic of Indonesia, the Prosecutor's Office of the Republic of Indonesia, the National Police of the Republic of Indonesia, Number: 107 of 2021; Number: 6 of 2021; Number: NK/17/V/2021 concerning Cooperation in Eradicating Corruption Crimes, one form the of cooperation is (a) synergy in handling corruption cases including in activities regarding reporting and/or public complaints, and coordination and/or supervision ; (b) implementation of coordination and/or supervision of activities in handling corruption cases, in accordance with data support by implementing the electronic notification of the commencement of investigations (Online Notification of the Commencement of Investigation). Without intending to review the legality of such a memorandum of understanding, it certainly makes the handling of criminal acts of corruption to be more effective and efficient. In addition, the existence of an agreement in coordination and supervision means that the supervision aspect is not lost in the handling of criminal acts of corruption between the National Police, Prosecutor's Office and Corruption Eradication Commission.
7. Whereas without intending to assess the concrete case as experienced by the

Petitioner, the Court is of the opinion that the events occurred to the Petitioner's client does not necessarily make the articles being petitioned for review not provide legal certainty, because as described above, Article 30 paragraph (1) letter d of the Prosecutor's Office Law is only an entry point for the legislators to grant the authority to the Prosecutor's Office to carry out investigations into special and/or certain criminal acts. Meanwhile, for any general crimes, investigative authority remains with the National Police. Therefore, the Court is of the opinion that the authority of the Prosecutor's Office to carry out investigations is still necessary to handle special and/or certain criminal acts which factually the types and the modes are increasingly diverse. In addition, in reality the granting of investigative authority to the prosecutor's office will speed up the resolution of handling special and/or certain criminal acts which is able to provide more legal certainty for the perpetrators of special and/or certain criminal acts, and is able to fulfill a sense of justice for the public.

Pursuant to the description above, the Court has provided its stance in the Decision of the Constitutional Court Number 28/PUU-V/2007 which stated that Article 30 paragraph (1) letter d of the Prosecutor's Office Law is not contrary to the 1945 Constitution. Therefore, in accordance with all the aforementioned considerations, the Court remains in its stance that the authority of the Prosecutor's Office to carry out investigations into special and/or certain criminal acts is a constitutional authority and it is not contrary to the 1945 Constitution. Therefore, the Court is of the opinion that regarding Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or the Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or Prosecutor's Office" of the Corruption Eradication Commission Law, their legal force is closely related and cannot be separated from the provisions of the norms of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, therefore they have constitutional basis. Accordingly, the Petitioner's argument which states that the *a quo* articles have created legal uncertainty for the justice seekers, in this case the suspect/defendant in a criminal corruption case, is legally unjustifiable;

Whereas regarding the Petitioner's concerns which argue that the provisions of the norms of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically for the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law which grant authority to the Prosecutor's Office to carry out investigations have eliminated the checks and balances procedure in the process of handling criminal acts of corruption and given rise to arbitrariness. Regarding this matter the Court considers the following:

1. Whereas as has been described and explained in the legal considerations of the Decision of the Constitutional Court Number 28/PUU-V/2007 as quoted in Sub-paragraph **[3.18.1]**, integrated criminal justice system established by the Criminal Procedure Code is characterized by the principle of functional differentiation between the law enforcement agencies, one of the objectives of which is to create a mechanism for mutual supervision (checks and balances). Therefore, even though it is universally applicable in handling general criminal acts, the legislators chose to give the authority to carry out investigations in handling corruption crimes, which are part of special and/or certain types of criminal acts, to the National Police, Prosecutor's Office and Corruption Eradication Commission. This was done because according to the legislators the criminal acts of corruption are extraordinary crime, the handling of which cannot be carried out solely by one institution/agency, therefore in this case the principle of functional differentiation which is factually adopted by the Criminal Procedure Code and the reality that the principle of functional differentiation has not yet fully implemented.

2. Whereas even though the principle of functional differentiation cannot yet be fully implemented, it does not mean that the checks and balances procedure cannot be applied. By reading the provisions of the norms of Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5), Article 50 paragraph (1), paragraph (2), paragraph (3) and Article 50 paragraph (4) of the Corruption Eradication Commission Law carefully, their norms require coordination between the National Police, Prosecutor's Office and Corruption Eradication Commission in handling the criminal acts of corruption. Therefore, it shows that the granting of authority to the Prosecutor's Office for special and/or certain criminal acts, not only it provides guarantees of fair legal certainty, but it also provides protection of fundamental rights, even for the suspects. In this connection, if it turns out that upon the investigation on the suspect, there is no evidence and no facts of committing the special and/or certain criminal act, then the Prosecutor's Office must immediately issue a Warrant to Terminate the Investigation (*Surat Perintah Penghentian Penyidikan* or SP3). Likewise, if it turns out that there is sufficient evidence, the Prosecutor's Office will transfer the case to the court. This means that the argument of the Petitioner, which states that there is a potential to eliminate the checks and balances procedure, is irrelevant and legally unjustifiable. Moreover, if the Petitioner is concerned that the principle of functional differentiation may eliminate the checks and balances procedure and has the potential to give rise to arbitrariness, this concern is actually excessive and unjustifiable, considering that if it is true that this principle has an impact on violating the rights of suspects/defendants as experienced by the Petitioner, then there is a control mechanism that may be used as a remedy, for example by submitting a pre-trial petition. Therefore, the Court is of the opinion that the *a quo* argument of the Petitioner is legally unjustifiable;

Therefore, pursuant to the entire description of the legal considerations above, it has become clear that the provisions of the norms of Article 30 paragraph (1) letter d of the Prosecutor's Office Law, Article 39 of the Corruption Law, Article 44 paragraph (4) and paragraph (5) specifically for the phrase "or Prosecutor's Office", Article 50 paragraph (1), paragraph (2) and paragraph (3) specifically for the phrase "or the Prosecutor's Office" and Article 50 paragraph (4) specifically the phrase "and/or the Prosecutor's Office" of the Corruption Eradication Commission Law have provided legal certainty and they do not give rise to arbitrariness, and they have no potential in eliminating the checks and balances procedure and therefore they are not contrary to Article 28D paragraph (1) of the 1945 Constitution. Therefore, the Petitioner's argument is entirely legally unjustifiable.

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