CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 158/PUU-XXI/2023

Concerning

Investigation Termination Letter May Not Be Used as the Basis for a Report or Complaint

Petitioner	**:**	**Arwan Koty**
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 102 paragraph (1) and Article 108 paragraph (1) of Law 8/1981 are contrary to Article 28D paragraph (1), Article 28I paragraph (5) and Article 28J paragraph (2) of 1945 Constitution.
Verdict	**:**	To dismiss the Petitioner's petition in its entirety.
Date of Decision	**:**	Wednesday, January 31, 2024
Overview of Decision	**:**	

Whereas the Petitioner is an individual Indonesian citizen who has undergone a law enforcement process and was sentenced to 6 (six) months of prison for an act classified as a criminal act of defamation as referred to in Article 317 paragraph (1) of the Indonesian Criminal Code pursuant to the Decision of the South Jakarta District Court, Greater Jakarta High Court and the decision of the Supreme Court, even though an Investigation Termination Letter of the case filed against the Petitioner had been issued. The Petitioner states that he has constitutional rights as guaranteed in Article 28D paragraph (1), Article 28I paragraph (5) and Article 28J paragraph (2) of 1945 Constitution.

Whereas regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of norms of law, *in casu* Article 102 paragraph (1) and Article 108 paragraph (1) of Law 8/1981 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding his legal standing, the Petitioner has been able to describe his qualifications as an Indonesian citizen who has been sentenced to 6 (six) months for the criminal act of defamation, even though an investigation termination letter has been issued for the police report submitted against the Petitioner. Therefore, the Petitioner has been able to describe specifically the existence of a causal relationship (*causal verband)* between the presumed injury of constitutional rights he experienced and the enactment of the provisions of the norms of Article 102 paragraph (1) and Article 108 paragraph (1) of Law 8/1981. The presumed injury of the Petitioner's constitutional rights is actual and if the Petitioner's petition is granted by the Court then the said presumed injury of constitutional rights will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms as argued by the Petitioner 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 regarding the constitutionality issue of Article 102 paragraph (1) of Law 8/1981 which according to the Petitioner is contrary to the principles of law enforcement and the principles of human rights as guaranteed in Article 1 paragraph (3), Article 28D paragraph (1), Article 28I paragraph (5), and Article 28J paragraph (2) of the 1945 Constitution so that it is necessary to place restrictions on the investigator's authority. The Court is of the opinion that regarding this issue, the constitutional issue argued by the Petitioner in the *a quo* petition is clearly related to constitutional issues that have been argued in several previous Court decisions. Therefore, it is important for the Court to reaffirm the Court's stance in Paragraph **[3.14]** of the Decision of the Constitutional Court Number 9/PUU-XVII/2019 which was declared in a plenary session open to the public on 15 April 2019, which was also quoted in the Decision of the Constitutional Court Number 53/PUU-XIX/2021 and the Decision of the Constitutional Court Number 4/PUU-XX /2022 which is substantially as follows:

> "**[3.14]** ...at the investigation stage there is no certainty that a criminal event can be followed up with an investigation, because this really depends on finding sufficient evidence that an act is indeed a criminal incident or act. Because no criminal incident has been found, there is no follow-up process in the form of law enforcement (*pro justitia)* in which authority may be attached to investigators who follow up on the investigation, whether in the form of coercive measures that can have implications for the deprivation of liberty of people or objects/properties, so that the essence of supervising the law enforcement officials so that they do not carry out arbitrary actions is not unreasonable to implement, considering one of the legal instruments that can be used as a means of control or supervision is a pre-trial institution which is not yet able to be "conducted" because at the investigation stage there have been no coercive measures which could result in a form of deprivation of liberty of both people and objects/properties. "Meanwhile, at the investigation stage, law enforcement process has begun which has the effect of coercive efforts in the form of deprivation of liberty of people or objects/properties and it is from that stage that legal protection for human rights is actually relevant."

Whereas pursuant to the *a quo* considerations of the Court, it can be concluded that at the investigation stage the function carried out is the initial identification of incident that is suspected to be criminal incident. Whether the incident can be categorized as a criminal incident or not, and if based on the investigator's subjective assessment such incident can be declared a criminal event supported by the discovery of sufficient evidence, then it must then be continued to the next process, namely the investigative action. However, the Court is of the opinion that on the contrary, if during the investigation process, based on the evidence and facts obtained by the investigator from the investigation, it turns out that the facts and evidence are insufficient to determine that an incident is a criminal incident, then there is no need to follow up in the form of law enforcement (*pro justitia)* on the said incident where the progress of the investigation must be reported periodically. Therefore, for any incidents originating from reports or complaints which are suspected to be not criminal incidents, the investigations must be stopped in order to protect human honor and dignity in order to ensure legal certainty. This has also been emphasized by the Court in Sub Paragraph **[3.11.1]** of the Decision of the Constitutional Court Number 4/PUU-XX/2022 which was declared in the Plenary Session open to the public on 20 April 2022, which substantially stated the following:

> "**[3.11.1]** ... Therefore, even though in the investigation process it is not explicitly known that there is a termination of the investigation, the existence of a part of the investigation process which gives the authority to the investigator to determine whether or not a series of actions by the investigator can be followed up with the investigation process, this shows that the investigator is given the authority to make decisions whether or not the investigation can be escalated to the investigation stage. So, even though the termination of investigation is not included in the norms of Article 5 paragraph (1) letter a of the Indonesian Criminal Procedure Code, this does not mean there is no authority for the investigators to stop the investigation. "In fact, if the investigation process does not meet the normative requirements and the investigation is

not terminated, this can give rise to legal uncertainty."

Whereas even if a report or complaint is stated to be dismissed at the investigation stage because the alleged incident is not a criminal incident or because no initial evidence is found, however, upon termination of the investigation, if the complainant or investigator finds new facts and evidence then the investigation can be restarted . This matter has been considered by the Court in the legal considerations in Sub-Paragraph **[3.13.1]** of the Decision of the Constitutional Court Number 9/PUU-XVII/2019 which was declared in a plenary session open to the public on 15 April 2019 which stated,

> **"[3.13.1]** ... Even though formally investigation termination is not recognized in the Indonesian Criminal Procedure Code, this does not necessarily mean that reports or complaints that have been followed up by the investigation termination cannot be reopened. "This is because substantially in the course of further developments, if new evidence is found in the report or complaint then this could be a reason for the investigation to be re-submitted."

Whereas if the above legal considerations are linked to the Petitioner's petition requesting that the investigators who are aware of, receive reports or complaints about the occurrence of an incident which is reasonably suspected to constitute a criminal act are obliged to immediately carry out the necessary investigative actions except if there is an investigation termination letter. The Court is of the opinion that this is actually contrary to the principle of legal certainty because the investigators are forced to ignore the existence of new facts or evidence that can make it clear whether or not an incident is a criminal incident that can be followed up at the investigation stage. Furthermore, ignoring the existence of new facts and evidence will degrade human dignity and injure human rights as protected by the 1945 Constitution.

Whereas upon further examination by the Court, the Petitioner argued that an investigation termination letter has been issued for the criminal incident which resulted in the Petitioner being sentenced to 6 (six) months in prison, the Court is of the opinion that this is an unjustifiable assumption, because in order for a person to be sentenced under a criminal act of defamation is not based on whether or not there is an investigation termination letter, instead it is based on at least two valid and convincing pieces of evidence as regulated in Law 8/1981. Without assessing the concrete case experienced by the Petitioner who has been sentenced to a crime with a court decision that has permanent legal force, based on evidence and the justice's belief as regulated in Law 8/1981, the Court is of the opinion that the fact experienced by the Petitioner does not constitute a constitutionality issue of norms, but rather it is the implementation of norms.

Whereas the next constitutionality issue that must be considered is whether the norm of Article 108 paragraph (1) of Law 8/1981 is contrary to the 1945 Constitution if it is carried out to an incident for which an investigation termination letter has been issued. The norms of the provisions of Article 108 paragraph (1) of Law 8/1981 are provisions which give the right for anyone who experiences, sees, witnesses and/or becomes a victim of an incident which constitutes a criminal incident to report it to the investigators. Anyone in this case is every person and the phrase 'experiences, sees, witnesses and/or becomes a victim of an incident which constitutes a criminal incident' means that the reporter or complainant is the one who 'experiences, sees, witnesses and/or becomes a victim'. Meanwhile, the word 'give the right' in the *a quo* Article indicates that anyone who experiences, sees, witnesses or becomes a victim of an incident which constitutes a criminal incident has an interest protected by the law to report the said criminal incident.

Whereas regarding the meaning of 'give the right' to report criminal incidents is not a legal obligation, instead it is a choice for anyone who experiences, sees, witnesses, or becomes a victim of an incident which constitutes a criminal incident, that person may or may not use such right because there are no legal consequences that will be imposed on him/her if he/she does not report a criminal incident that he/she experiences, sees, witnesses, or in which he/she becomes a victim. The regulation related to rights that are clearly given by Law 8/1981 to

anyone who experiences, sees, witnesses, or becomes a victim of an incident that constitutes criminal incident is a form of recognition and protection of human rights as guaranteed in the 1945 Constitution, so that their implementation cannot be restricted except those which have been expressly regulated in the laws and regulations.

Whereas, if it is linked to the Petitioner's petition requesting restrictions on the exercise of the rights of anyone who experiences, sees, witnesses and/or becomes a victim of an incident which constitutes a criminal incident to provide a report or complaint to investigators either verbally or in writing, if an investigation termination letter is issued for the incident which was suspected to be a criminal incident, according to the Petitioner this matter could not be reported again. Without intending to assess the concrete case experienced by the Petitioner and the court decisions relating to the Petitioner, the Court is of the opinion that if what the Petitioner argues is true then this should be a matter of concern and caution for investigators not to easily suspect a complainant whose complaint has been terminated so that there would be no violation of human rights for anyone who experiences, sees, witnesses and/or becomes a victim of an incident that is suspected to constitute a criminal incident. If the investigators ignore this, it can cause someone to be afraid or reluctant to report a suspected criminal act.

Pursuant to the entire description of the legal considerations above, the Court is of the opinion that the provisions of the norms of Article 102 paragraph (1) and Article 108 paragraph (1) of Law 8/1981 have apparently provided recognition, guarantees, protection and fair legal certainty and protect the enforcement of human rights, as guaranteed in Article 28D paragraph (1), Article 28I paragraph (5), and Article 28J paragraph (2) of the 1945 Constitution, instead of as argued by the Petitioner. 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.