



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 25/PUU-XVII/2024**

Concerning

**Authority of the Prosecutor to Investigate Certain Crimes
in Indonesian Criminal Procedure Code**

Petitioner	: Jovi Andrea Bachtiar
Type of Case	: Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Code (Indonesian Criminal Procedure Code) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 1 number 1, Article 1 number 6 letter a, and Article 6 paragraph (1) of Indonesian Criminal Procedure Code are contrary to Article 1 paragraph (3), Article 27 paragraph (3), Article 28C paragraph (2) of 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Wednesday, March 20, 2024
Overview of Decision	:

Whereas the Petitioner is an individual Indonesian citizen who currently works as a Prosecutor. The Petitioner argues that the provisions of Article 1 number 1, Article 1 number 6 letter a, and Article 6 paragraph (1) of Indonesian Criminal Procedure Code are contrary to the Petitioner's constitutional rights as guaranteed in Article 27 paragraph (1) of the 1945 Constitution and also contrary to Article 1 paragraph (3), Article 27 paragraph (3), Article 28C paragraph (2) of the 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 1 number 1, Article 1 number 6 letter a and Article 6 paragraph (1) of Indonesian Criminal Code against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Court is of the opinion that the Petitioner has been able to describe the existence of his constitutional rights that are considered to be injured by the enactment of the provisions of the norms of Article 1 number 1, Article 1 number 6 letter a, and Article 6 paragraph (1) of Indonesian Criminal Procedure Code being petitioned for review. The Petitioner's constitutional injury is specific and has the potential to occur and has a causal relationship (*causal verband*) between the presumed injury of the Petitioner's constitutional rights and the enactment of the norms being petitioned for review, especially the Petitioner's constitutional rights and authority in carrying out his profession as a prosecutor. 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 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 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.

Whereas the principles established in the Indonesian Criminal Procedure Code are principles that apply in an integrated criminal justice system. One of the principle in the Criminal Procedure Code is functional differentiation, which means that each law enforcement officers in the criminal justice system has its own authority and function and is separate from one another in the series/process of law enforcement. In this regard, in implementing the principle of functional differentiation, the Indonesian Criminal Procedure Code lays down the functions and authority between different law enforcement officers with the aim of providing horizontal coordination and mutual supervision between one officer and another, namely the investigators, public prosecutors and court justices. Furthermore, the Indonesian Criminal Procedure Code also adheres to a system of mutual coordination so that the principle of functional differentiation emphasizes that there is a connection or relationship between these officers, because all the stages of criminal procedural law are connected to form an integrated criminal justice system. This has been affirmed by the Court in Sub-paragraph [3.13.1] to Sub-paragraph [3.13.4] of the Legal Considerations of the Decision of the Constitutional Court Number 28/PUU-V/2007 and the Decision of the Constitutional Court Number 28/PUU-XXI/2023 which substantially confirms the separation of duties given to each law enforcement agency as a reflection of the principle of functional differentiation, especially between investigation by the National Police and prosecution by the Prosecutor's Office. This differentiation is needed to ensure justice, legal certainty, and prevent overlap and abuse of power. However, the granting of authority to carry out investigations to other law enforcement agencies, apart from the National Police, is possible, to the extent that such granting of authority is clearly and firmly regulated and coordinated between the law enforcement officers so that there is no overlap in its implementation.

Whereas pursuant to the Decision of the Constitutional Court Number 28/PUU-V/2007, the Court has declared that the norms of Article 30 paragraph (1) letter d of the Prosecutor's Office Law is not contrary to the 1945 Constitution. The Court's stance was reaffirmed in Decision of the Constitutional Court Number 28/PUU-XXI/2023 which stated that the authority of the Prosecutor's Office to carry out investigations into special or certain criminal acts is a constitutional authority and is not contrary to the 1945 Constitution [*vide* paragraph [3.18.2] of the Decision of the Constitutional Court Number 28/PUU-XXI/2023]. Therefore, if it is linked to the Petitioner's petition, the authority of the Prosecutor to carry out investigations into certain/specific criminal acts, including criminal acts of corruption, as regulated in Article 30 paragraph (1) letter d of the Prosecutor's Office Law has been constitutionally guaranteed legal certainty, even though this authority does not have to be stated expressly in the norms of the Indonesian Criminal Procedure Code.

Whereas the Indonesian Criminal Procedure Code was born as an effort to establish the principles and fundamentals as the foundation and guideline in the area of general procedural law (formal law) to regulate the legal process in handling general criminal acts in Indonesia in the context of realizing legal codification. Therefore, in CHAPTER XXI, the Transitional Provisions of the Indonesian Criminal Procedure Code are emphasized in relation to the temporary implementation of special criminal procedural provisions that have been regulated in certain laws until there is an amendment or statement that such special regulations are no longer apply. However, in fact, until today there are several criminal acts, especially special or certain criminal acts, which are regulated in separate laws which vary according to the type of the criminal act. The Court is of the opinion that this may be interpreted as the application of the Indonesian Criminal Procedure Code has naturally shifted due to the need to give investigative authority to law enforcement agencies other than the National Police, which is partly due to the increasing development and complexity of criminal acts which cannot possibly be handled solely by the National Police. Meanwhile, the absence of further regulations regarding the

special provisions of criminal procedures, especially regarding the authority of prosecutors to carry out investigations, is closely related to the legal policies of the legislators. This is in accordance with the Court's stance in Sub-paragraph **[3.18.2]** of the Decision of the Constitutional Court Number 28/PUU-XXI/2023.

Whereas based on the principles of *lex specialis derogat legi generali* which states that special laws (*lex specialis*) supersede general laws (*lex generali*), therefore the general provisions in the Criminal Procedure Code can be superseded by special provisions. Therefore, the regulation on the authority of the Prosecutor to carry out investigations into certain criminal acts have been regulated in Article 30 paragraph (1) letter d of the Prosecutor's Office Law is *lex specialis* against the Indonesian Criminal Procedure Code. This has been affirmed by the Court in the legal considerations in Sub-paragraph **[3.16.2]** of the Decision of the Constitutional Court Number 28/PUU-V/2007 which substantially states that the authority of the Prosecutors to carry out investigations which is a special provision of the criminal procedures is constitutionally justifiable to the extent that it is limited to certain/special criminal acts under the law as has become the legal policy of the legislators. Therefore, it is irrelevant for the prosecutor's investigative authority to be confirmed in the Indonesian Criminal Procedure Code. the Petitioner argued that the Prosecutor's authority to carry out investigation into certain criminal acts should be explicitly stated *expressis verbis* in Indonesian the Criminal Procedure Code otherwise it may give rise to legal uncertainty. The Court is of the opinion that the Petitioner's concern is excessive.

Whereas regarding the issue of the unconstitutionality of Article 1 number 1 and Article 1 number 6 letter a of the Indonesian Criminal Procedure Code, which according to the Petitioner must also contain the authority of the Prosecutor in carrying out investigation into certain criminal acts, the Court is of the opinion that the norms questioned by the Petitioner are general provisions in the Indonesian Criminal Procedure Code relating to the limitation of meaning or definition of a word or a thing that is general in nature. The norms contained in the general provisions section will be the legal basis of the subsequent norms, so that the formulation and meaning of norms in the general provisions must be carried out carefully because they are related to the basic norm provisions of a law and must be general in nature. Therefore, if the norms in the general provisions are to be amended, their consistency with the subsequent articles that are related must be considered, so that such amendments do not cause confusion in the articles related to the norms in the general provisions.

Whereas, if it is linked to the Petitioner's petition requesting the interpretation of Article 1 number 1 of the Indonesian Criminal Procedure Code by adding the phrase "Prosecutors who are given special authority to investigate into certain cases under the law" and the interpretation of Article 1 number 6 letter a of the Indonesian Criminal Procedure Code by adding the phrase "and the investigators in certain criminal cases and other authority under the law," the Court is of the opinion that this will affect the structure of the body of the Indonesian Criminal Procedure Code, especially the articles relating to the definition of the words "Investigator" and the word "Prosecutor". Because by tracing it to the subsequent articles related to these two words, then the meaning of Article 1 number 1 and Article 1 number 6 letter a of the Indonesian Criminal Procedure Code will actually create confusion in the meaning of the norms of the subsequent articles. Moreover, if the Court grants the Petitioner's petition, then by carefully reading the subsequent articles in the Indonesian Criminal Procedure Code, there will appear confusion in the Indonesian Criminal Procedure Code as a whole, because the Court has misplaced the provisions governing the authority of the Prosecutor in carrying out investigations of certain criminal acts in the section of general provisions, meanwhile the provisions relating to the authority of the Prosecutor are not discussed/regulated in the substance of the subsequent articles in the Indonesian Criminal Procedure Code.

Accordingly, the Court subsequently passed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.