CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 50/PUU-XXIII/2025

Concerning

Obligation to Listen to Victim-Witnesses in Investigations and Trials

Petitioner	**:**	**Kurniani**
Type of Case	**:**	Judicial Review of Law Number 8 of 1981 concerning Criminal Procedure Law (Law 8/1981) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	**:**	Article 160 paragraph (1) letter b of Law 8/1981 is contrary to Article 28D paragraph (1) of the 1945 Constitution if it is not interpreted as 'victims must be examined at the first level investigation and trial stages'
Verdict	**:**	To dismiss the Petitioner's petition in its entirety
Date of Decision	**:**	Thursday, June 26, 2025
Overview of Decision	**:**	

The Petitioner is an individual Indonesian citizen who is also the founder of PT Mitra Sarana Jayasejuk. The Petitioner was sentenced to 1 year and 8 months of imprisonment for alleged violations of Article 378 and/or Article 372 of the Indonesian Criminal Code arising from a dispute involving a civil employment relationship with PT Eramas Chemindo.

With respect to the authority of the Court, pursuant to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, 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, the Petitioner petition for a review of the statutory norm, *in casu,* material review of Article 160 paragraph (1) letter b of Law 8/1981, therefore the Court has the authority to hear the petition *a quo*.

With respect to the Petitioner's legal standing, the Court is of the opinion that the norms submitted by the Petitioner for review are closely related to the actual losses experienced by the Petitioner, namely the failure to hear the victim's statement during the investigation or during the trial, thereby causing uncertainty as to whether the Petitioner's actions constitute a civil matter in the form of underpayment or include the criminal act of embezzlement, while the Petitioner has been sentenced to 1 (one) year and 8 (eight) months of imprisonment. In this qualification, the Petitioner, as an individual Indonesian citizen, has been able to specifically describe the existence of an assumption that the Petitioner's constitutional rights were actually violated and that there is a causal relationship (*causal verband*) between the alleged loss of constitutional rights experienced by the Petitioner and the enactment of the norm of Article 160 paragraph (1) letter b of Law 8/1981 for which judicial review is petitioned. Therefore, regardless of whether the unconstitutionality of the norms 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 petition *a quo*.

Whereas since the petition *a quo* 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, based on the negative proof theory (*negatief wettelijk bewijstheorie*) adopted in Indonesia, as embodied in the provisions of Article 183 of Law 8/1981, in order to sentence a defendant, a judge must base the conviction on at least two valid pieces of evidence and the judge's belief that a criminal act has actually occurred and that the defendant is guilty of committing it. Although there are several types of evidence that are legally valid, the position of witness testimony in the criminal justice process has a key role. The importance of witness testimony arises from the investigation stage, continues through the prosecution stage, and extends to the trial. With regard to the definition of a witness in Law 8/1981, the Constitutional Court, through Constitutional Court Decision Number 65/PUU-VIII/2010, which was pronounced in a Plenary Session open to the public on August 8, 2011, provided an expansion of the meaning of a witness as stipulated in Article 1 number 26 and number 27, Article 65, Article 116 paragraph (3) and paragraph (4), and Article 184 paragraph (1) letter a of Law 8/1981. According to this interpretation, a witness is not limited to a person who hears for himself, sees for himself, and experiences for himself, but must also be interpreted to include a person who can provide information in the context of the investigation, prosecution, and trial of a criminal act, even though such person does not always hear for himself, see for himself, or experience for himself.

Whereas there are conditions that must be fulfilled for a witness statement to constitute valid evidence, namely: (1) the witness's statement as evidence is what the witness states before the court; (2) the witness must hear, see, and experience the event that is testified to; (3) the witness's opinions and imagination cannot be used as evidence; (4) the witness must take an oath, such that an unsworn witness's statement cannot be considered as evidence but may be treated as additional evidence that strengthens other evidence; and (5) the principle of *unus testis nullus testis* applies, meaning that at least two witnesses are required. The aim is to compare and determine the correspondence between the statements of two or more witnesses, because the statement of a single witness cannot be used as direct evidence but may be strengthened by the statement of another witness, even if it relates to a different event, provided that it remains connected to a series of criminal events; and (6) statements from witnesses as referred to in Constitutional Court Decision Number 65/PUU-VIII/2010.

In this context, a victim witness is defined as a person who has suffered a loss as a result of an act or a criminal offense. The position of a victim of a criminal offense who is used as a witness in a trial implies that the state has an obligation to represent the interests of the victim-witness by prosecuting the criminal offense, regardless of whether the victim wishes or does not wish for the prosecution to be carried out. Meanwhile, with respect to the right to act as a reporter, Article 108 paragraph (1) of Law 8/1981 stipulates the right of every person who experiences, sees, witnesses, and/or becomes a victim of a criminal offense to report the occurrence of the criminal offense. However, this constitutes an exception for criminal offenses that fall under the category of complaint offenses, as such criminal offenses may only be prosecuted if they are reported by the victim who has suffered harm or by the victim's representative.

Whereas, with regard to the examination of victim-witness at the investigation stage and the trial stage, such examination is essentially an effort to obtain comprehensive information, as it may explain the criminal event and thereby enable the discovery of material truth. However, the statement of a victim-witness alone is not sufficient to declare a defendant guilty of committing a criminal act. In this case, at least two valid pieces of evidence are required, along with the judge's belief that a criminal act has been committed by the defendant. Therefore, in order to obtain clear information regarding a criminal incident, investigators, public prosecutors, and panels of judges may summon defendants, victims, and witnesses who are considered to be related to the criminal incident to appear before investigators, public prosecutors, and panels of judges, respectively, in accordance with their respective levels of authority. Accordingly, if a

witness has been legally summoned, it is the obligation of the legally summoned witness, whether a victim-witness, a reporter, or another witness, to attend. In fact, a witness who has been legally summoned but fails to appear before investigators, public prosecutors, or the panel of judges without providing proper and reasonable reasons may be subject to criminal sanctions.

Whereas the norm of Article 160 paragraph (1) letter b of Law 8/1981, which according to the Petitioner gives rise to multiple interpretations, is in principle a norm that regulates the order of hearing witness statements in court, namely by hearing the victim-witness first. Doctrinally, it is important for the testimony of a victim of a criminal act to be heard first in court because the victim-witness directly experienced the criminal act, and not merely knew of or heard about it, such that the testimony of the victim-witness can provide a clear picture of the case under examination and can prove whether or not a criminal act has occurred, as well as provide certainty and confidence to the judge that a criminal act has occurred and that the defendant committed the criminal act. However, hearing the statement of a victim-witness is not an obligation that must be carried out in criminal procedural law if there are exceptional circumstances, including in cases of complaint offenses. This is because, in the examination of witnesses, a victim-witness cannot always be examined in court, particularly if the victim-witness has died or is ill as a result of the criminal act experienced, or for other valid reasons, for example where the victim-witness suffers trauma, intimidation, or fear due to the criminal act experienced, including where the victim-witness resides far away, as well as other legitimate reasons. In fact, in this regard, Article 162 paragraph (1) of Law 8/1981 provides exceptions under which a witness may be absent from trial, namely where the witness has given information during the investigation and subsequently dies, where there is a legitimate obstacle preventing the witness from attending the trial, where the witness is not summoned because the witness's residence or domicile is far away, or where there is a state interest, in which cases the information previously given by the witness may be read out in court. Moreover, for witnesses who have been examined before investigators and whose statements were given under oath, such statements may be read out in court and have the same evidentiary value as witness testimony given in court, provided that the statements are confirmed or acknowledged by the defendant. Likewise, in criminal cases that fall within the category of complaint offenses, the presence of the victim-witness is indeed necessary to seek material truth, however, for certain reasons, the absence of the victim-witness and the complainant does not necessarily result in the indictment being declared inadmissible, because in complaint offenses, investigators, public prosecutors, and panels of judges may hear other witnesses, including witnesses who represent the interests of the victim-witness, for example where the victim-witness is not yet of sufficient age. Furthermore, with regard to the urgency of the obligation for a victim-witness to be present in person at trial or whether he/she may be represented by his/her attorney, this matter falls entirely within the authority of the panel of judges examining the case concerned.

In addition, in examining victim-witnesses, it is also necessary to take into account one of the fundamental principles of the judiciary, namely the principle of fast, simple, and low-cost justice, which aims to guarantee access to justice for all citizens. This principle is implemented in various regulations governing the judiciary to ensure an efficient and affordable court process. Therefore, the judicial process must be completed promptly, without protraction and by avoiding unnecessary delays, it must be easy to understand, carried out without complicated procedures, and conducted at a cost that is affordable for all levels of society. In this case, making it mandatory for victim-witnesses to be examined at the first stage of the investigation and trial process, as argued by the Petitioner, is, in the Court's opinion, likely to obstruct the examination and resolution of the criminal case itself, because, for example, if the victim has died, is ill, or is located far from the court hearing the case, additional time and costs would be required to bring the victim before the court, or if the victim is traumatized and therefore unable to provide information, additional time would be required for the victim to recover before giving testimony. Accordingly, the Court is of the opinion that such a requirement would be contrary to the principles of fast, simple, and low-cost justice.

Whereas the norm of Article 160 paragraph (1) letter b of Law 8/1981, in principle, cannot be read separately from the preceding norms, but must be read and understood as an integrated set of norms that regulate the order and priority of hearing witness statements in court. Therefore, interpreting the norm of Article 160 paragraph (1) letter b of Law 8/1981 as requested by the Petitioner, in the Court's opinion, would in fact obscure the essence of the provision of the norm of Article 160 paragraph (1) letter b of Law 8/1981, because the interpretation sought by the Petitioner places greater emphasis on the obligation/necessity to examine the victim at the investigation and trial stages, whereas the norm *a quo* is actually related to the priority in implementing the order of witness examinations, which ideally should begin by hearing witness statements, namely the statements of victim-witnesses. Thus, interpreting the norm of Article 160 paragraph (1) letter b of Law 8/1981 as requested by the Petitioner, without allowing investigators, public prosecutors, and panels of judges to exercise their authority in a discretionary manner, would distance the criminal justice process from the resolution of criminal cases in a fast, simple, and low-cost manner, would detract from a sense of justice, and would in fact create legal uncertainty in the examination of witnesses in court, as well as hinder access to justice for victim-witnesses.

In this regard, without intending to assess the concrete case experienced by the Petitioner, after examining the evidence submitted by the Petitioner, the Court found the fact that the victim or the party who suffered losses as a result of the criminal act committed by the Petitioner, in this case PT Eramas Chemindo and PT Intimas Chemindo. Because the victim who suffered the loss is a company, pursuant to the provisions of Article 98 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (Law 40/2007), the party authorized to represent the company both in and outside the court is the Board of Directors. In accordance with Article 103 of Law 40/2007, the Board of Directors may grant a written power of attorney to one or more company employees, for and on behalf of the company, to carry out certain legal acts as specified in the power of attorney. In this regard, the Court found Evidence P-9a and Evidence P-9b, which constitute powers of attorney granted by the Director of PT Eramas Chemindo and PT Intimas Chemindo, named Noerjani Hudaya to Lieska who is a Sales Administration staff member authorized to represent the company in reporting the embezzlement case committed by the Petitioner, and Lieska's statement as a witness was heard in court [*vide* Evidence P-6]. Therefore, the Court is of the opinion that in the case charged against the Petitioner, the victim in this case is PT Eramas Chemindo and PT Intimas Chemindo, represented by Lieska as witness pursuant to a Special Power of Attorney dated July 7, 2022, has been examined and her statement has been heard in court, so that the Court did not find any discriminatory treatment before the law towards the Petitioner in the enactment of Article 160 paragraph (1) letter b of Law 8/1981, contrary to the arguments of the Petitioner.

Pursuant to the above legal consideration, the arguments *a quo* of the Petitioner are legally unjustifiable.

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