



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 84/PUU-XXIII/2025

Concerning

Acting in Accordance with Their Own Judgment

- Petitioners** : Syamsul Jahidin, et al.
- Type of Case** : Judicial Review of Law Number 2 of 2002 concerning National Police of the Republic of Indonesia (Law 2/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 18 paragraph (1) and Elucidation of Article 18 paragraph (1) of Law 2/2002 against the 1945 Constitution of the Republic of Indonesia
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Thursday, July 3, 2025
- Overview of Decision** :

The Petitioners argue that as Indonesian citizens they have constitutional rights granted by the 1945 Constitution of the Republic of Indonesia. The enactment of Article 18 paragraph (1) and the Elucidation of Article 18 paragraph (1) of Law 2/2002 is contrary to the 1945 Constitution of the Republic of Indonesia because it deprives and/or violates the constitutional rights of the Petitioners. In addition, many people have suffered losses due to the enactment of Article 18 paragraph (1) of Law 2/2002, which states "For the public interest, officials of the Indonesian National Police, in carrying out their duties and authority, may act in accordance with their own judgment." The Petitioners believe that the constitutional loss in the form of criminal punishment as stipulated in Article 18 paragraph (1) and Elucidation of Article 18 paragraph (1) of Law 2/2002 is open to multiple interpretations.

With respect to the Court's authority, because the Petitioners petition for a review of the constitutionality of statutory norms, *in casu* Article 18 paragraph (1) and Elucidation of Article 18 paragraph (1) of Law 2/2002 against the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the petition of the Petitioners.

With respect to the Petitioners' legal standing, regardless of whether or not the unconstitutionality of the norm being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in submitting the petition *a quo*.

Whereas since the petition *a quo* is clear, the Court is of the opinion that there is no urgency or need in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas the Petitioners argue that the substance of Article 18 paragraph (1) of Law 2/2002 contains several problems, including its susceptibility to subjective assessment, multiple interpretations, and the absence of adequate control mechanisms, such that it has the potential to threaten legal certainty and fair treatment as guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, because according to the Petitioners, the phrase “public interest” contained in Article 18 paragraph (1) of Law 2/2002, namely, “For the public interest, officials of the Indonesian National Police, in carrying out their duties and authority, may act in accordance with their own judgment,” creates room for multiple interpretations and subjectivity, thereby giving rise to legal uncertainty that may result in unequal treatment of citizens in similar circumstances without objective and legally testable justifications.

In relation to the issues described above, the Court has adopted a position regarding the constitutionality of norms having the same substance, in which the Court considers that the choice of reasons based on “public interest” and the ability to act “in accordance with their own judgment” constitutes police discretion in the implementation of, and the provision of, protection, shelter, and services to the community in order to maintain security. Such police discretion underlies the exercise of police authority in carrying out the task of maintaining public order, particularly in preventing crimes that will or may occur. Furthermore, the phrase “their own judgment” in the norm of Article 18 paragraph (1) of Law 2/2002 has been explained in the Elucidation of Article 18 paragraph (1) of Law 2/2002, namely that “what is meant by ‘acting in accordance with their own judgment’ is an action that may be carried out by members of the Indonesian National Police, who, in acting, must take into account the benefits and risks of such actions and ensure that they are genuinely in the public interest.” In addition, with regard to the phrase “public interest,” the Court is of the view that this phrase has also been defined in General Provisions point 7 of Law 2/2002, namely that “public interest is the interest of society and/or the interest of the nation and the state in order to guarantee domestic security.” Therefore, the provisions of Article 18 paragraph (2) of Law 2/2002, which state that “the implementation of the provisions as referred to in paragraph (1) may only be carried out in circumstances that are absolutely necessary, by taking into account the prevailing laws and regulations, and the Professional Code of Ethics of the Indonesian National Police,” have provided guidance that the invocation of “public interest” and the exercise of actions based on “their own judgment” may only be undertaken in circumstances that are absolutely necessary and must comply with the laws and regulations and the professional code of ethics of the Indonesian National Police. Thus, the Court is of the opinion that the formulation of the norm in Article 18 paragraph (2) of Law 2/2002 has provided sufficient guidelines and limitations for the exercise of police discretion as referred to in Article 18 paragraph (1) of Law 2/2002. This means that discretionary actions carried out by police officers may not be exercised arbitrarily, as such actions must be conducted in accordance with the provisions of the applicable laws and regulations and the professional code of ethics of the Indonesian National Police, and may only be undertaken in circumstances that are absolutely necessary, from the perspective of implementing and providing protection, shelter, and services to the community in order to maintain security.

Whereas, furthermore, upon examining the provisions of Article 18 paragraph (1) of Law 2/2002, it is apparent that the norm also contains an element of “freedom” with respect to the discretionary authority of police officers to act or not to act in accordance with their own judgement, within the framework of their obligation to guard, maintain public order, and guarantee public security. The choice to act or not to act in accordance with their own judgement likewise constitutes an embodiment of the discretionary authority of the police apparatus, the legal validity of which is grounded in the consideration of circumstances that are absolutely necessary to fulfill the obligations as referred to in the provisions of Article 18 paragraph (1) of Law 2/2002. With respect to the discretion, the Court, through Constitutional Court Decision Number 60/PUU-XIX/2021, pronounced in a plenary session open to the public on January 25, 2022, has provided limits or benchmarks to be used as guidelines in

decision-making when exercising police discretion. The limits or benchmarks for the exercise of police discretion are implicitly set out in Article 16 paragraph (2) of Law 2/2002, which provides that investigative and inquiry actions must fulfill five (5) requirements, namely: (1) not conflicting with any legal rules; (2) being in line with legal obligations that require such actions to be carried out; (3) being appropriate, reasonable, and within the scope of the official's position; (4) being based on proper considerations arising from compelling circumstances; and (5) respecting human rights. Moreover, the norm contained in Article 19 paragraph (1) of Law 2/2002 further emphasizes these limitations, as it stipulates that "in carrying out their duties and authority, officials of the Indonesian National Police shall always act based on legal norms, pay attention to religious norms, politeness, and morality, and uphold human rights."

Pursuant to the foregoing legal considerations, although the discretion examined in Constitutional Court Decision Number 60/PUU-XIX/2021 concerns the constitutionality of the norm of Article 16 paragraph (2) of Law 2/2002, nevertheless, as explained above, the essence of the phrase "public interest" and the phrase "their own judgement" in Article 18 paragraph (1) of Law 2/2002 is closely related to the essence of discretion as considered by the Court in assessing the constitutionality of Article 16 paragraph (2) of Law 2/2002. Accordingly, the substance of the Court's legal considerations in assessing the constitutionality of the phrases "public interest" and "their own judgement" in Article 18 paragraph (1) of Law 2/2002 may not be separated from the substance of its legal considerations in assessing the constitutionality of Article 16 paragraph (2) of Law 2/2002. Therefore, the Court is of the opinion that the phrase "public interest" and the phrase "their own judgement" in Article 18 paragraph (1) of Law 2/2002 are still required by the police as discretionary measures in order to implement and provide protection, care and services to the community, and to provide law enforcement.

Pursuant to the foregoing legal considerations, the Court is of the opinion that the Petitioners' arguments, which assert that the phrases "public interest" and "their own judgment" in Article 18 paragraph (1) of Law 2/2002 violate the principle of *lex certa* and fail to guarantee legal certainty so that it is contrary to in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, are legally unjustifiable.

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