



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 93/PUU-XXIII/2025**

**Concerning**

**Absence of Limits and Controls on the Use of Discretion in the Implementation  
of Police Duties and Authority**

<b>Petitioner</b>	: <b>Arista Hidayatul Rahmansyah</b>
<b>Type of Case</b>	: 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)
<b>Subject Matter</b>	: Article 18 paragraph (1) of Law 2/2002 is contrary to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioner's petition in its entirety
<b>Date of Decision</b>	: Thursday, July 17, 2025
<b>Overview of Decision</b>	:

The Petitioner is an Indonesian citizen who works as an advocate and often provides assistance to clients both in court and outside the court. When the Petitioner is carrying out his profession, police officers often use their powers arbitrarily using the norms being petitioned for review.

With respect to the Court's authority, because the Petitioner petitions for a review of the constitutionality of the statutory norms, *in casu* a material review of Article 18 paragraph (1) of Law 2/2002 against the 1945 Constitution, 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 norm being reviewed, namely with respect to the authority of the police to act according to their own judgment in carrying out their duties and powers in the public interest, such authority is related to the actual losses experienced by the Petitioner in the exercise of their profession as an advocate. The Petitioner has also been able to describe the existence of a loss to the Petitioner's constitutional rights and the existence of a causal relationship (*causal verband*) between the assumption of loss of constitutional rights experienced by the Petitioner and the enactment of the norm of Article 18 paragraph (1) of Law 2/2002 which is being petitioned for review. Therefore, if the petition *a quo* of the Petitioner is granted by the Court, the assumption of loss of constitutional rights experienced by the Petitioner 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 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 to hear the statements of the parties as intended in Article 54 of the Constitutional Court Law.

With respect to the petition to review Article 18 paragraph (1) of Law 2/2002, the Court has previously decided a petition concerning the same constitutional issue of the norm. After carefully examining the arguments of the petition *a quo*, it is revealed that the Petitioner has submitted a judicial review of Article 18 paragraph (1) of Law 2/2002 against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Petition is based on the argument that the provision *a quo* essentially provides unlimited discretionary space, as the phrase “may act according to their own judgment” grants very broad authority to the police apparatus without clear control or limitations and has the potential to be used as a basis for justifying arbitrary actions, thereby threatening the principles of the rule of law and legal certainty as guaranteed by Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. By linking it to the provisions of Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation 2/2021, the Court is of the opinion that, although the petition uses the same basis for review as the previous petitions, the reasons underlying the present petition are not the same as those previously submitted. This includes reasons that differ from those in Case Number 84/PUU-XXIII/2025, as in the present petition the Petitioner specifically requests that the phrases “public interest” and “their own judgment” contained in the norm of Article 18 paragraph (1) of Law 2/2002 and its Elucidation be declared contrary to the 1945 Constitution of the Republic of Indonesia. Therefore, regardless of whether the substance of the petition *a quo* is legally justifiable or not, formally, the petition *a quo* is not hindered by the provisions of Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation 2/2021, thus, it may be resubmitted.

Whereas, before the Court further considers the arguments of the Petitioner concerning the review of the norm of Article 18 paragraph (1) of Law 2/2002, after having studied and carefully examined the arguments of the Petitioner’s petition, it has become clear that the constitutional issue questioned by the Petitioner has essentially the same substance as the constitutional issue concerning the norm of Article 18 paragraph (1) of Law 2/2002 that has previously been examined and decided. Such issue has been decided, *inter alia*, with the legal considerations set forth in Sub-paragraph [3.12.1] of Constitutional Court Decision Number 84/PUU-XXIII/2025, which in essence states as follows:

[3.12.1] ...

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” contained 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.

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.

Whereas with respect to the discretion as described above, 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.” With respect to these limitations or benchmarks, they were also considered by the Court in Constitutional Court Decision Number 60/PUU-XIX/2021, as reflected in the legal considerations set forth in Sub-paragraph [3.10.3].

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 description of the legal considerations above and in relation to the arguments contained in the Petitioner's petition, even though the Petitioner has submitted reasons for the petition that differ from those in the petition previously decided, nevertheless, because the substance of the petition *a quo* is essentially the same as the substance of Case Number 84/PUU-XXIII/2025, the Court has not yet found strong and fundamental legal reasons to depart from its legal considerations set forth in Constitutional Court Decision Number 84/PUU-XXIII/2025. Accordingly, the legal considerations contained in that decision *mutatis mutandis* also apply in reviewing the arguments of the petition *a quo*. Therefore, the argument *a quo* of the Petitioner must be declared legally unjustifiable.

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