CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 28/PUU-XX/2022

Concerning

Indictments Declared Null and Void

Petitioner	:	**Umar Husni**
Type of Case	:	Judicial review of Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial review of Article 143 paragraph (3) of the Criminal Procedure Code against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	1. To grant the Petitioner's petition partially; 2. To declare that the phrase "null and void" in the provisions of the norms of Article 143 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia Number 76, Supplement to the State Gazette of the Republic of Indonesia, 1981, Number 3209), is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "Regarding the indictment of the public prosecutor which has been declared as null and void by the judge, it can be revised and resubmitted in court 1 (one) time , and if the defendant/legal attorney still file for any objection, the judge shall immediately examine, consider, and decide it together with the subject matter of the case in the final decision"; 3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
Date of Decision	:	Monday, October 31, 2022
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen who has been indicted 3 (three) times by the Purwokerto District Attorney at the Purwokerto District Court and regarding the three charges there have been 6 (six) decisions. The Petitioner feels that his constitutional rights have been impaired by the enactment of the provisions of Article 143 paragraph (3) of the Criminal Procedure Code, because there is no interpretation of the phrase "null and void" in Article 143 paragraph (3) of the Criminal Procedure Code.

Whereas in relation to the authority of the Constitutional Court (the Court), because the Petitioner petitioned for a review of law *in casu* KUHAP (Criminal Procedure Code) against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Whereas with regard to the legal standing as an individual Indonesian citizen, who is a defendant who has been indicted 3 (three) times by the Purwokerto District Attorney at the Purwokerto District Court, namely the first indictment on 12 February 2020, the second indictment on 31 August 2020, and the third indictment on 25 October 2021 and regarding the three indictments there were 6 (six) decisions, namely, 3 (three) decisions of the Purwokerto District Court which declared that the charges are null and void and 3 (three) decisions of the Semarang High Court (*Pengadilan Tinggi* or PT) which upheld the decision of the Purwokerto District Court which declared that the charges are null and void. The existence of these 6 (six) decisions does not rule out the possibility that there will be further revisions to the indictment, namely the fourth, fifth and so on charges. This happened because there was no interpretation of the meaning of null and void in Article 143 paragraph (3) of the Criminal Procedure Code, so that the cases as experienced by the Petitioner continued to return repeatedly without any clear point of resolution and legal certainty, besides that the public prosecutor had no limit on how many times they may submit a revision to any indictment that has been declared as null and void, thus the public prosecutor has unlimited authority in submitting any revision to any indictment that has been declared as null and void.

Whereas the Petitioner has been sufficiently clear in describing the presumed loss of his constitutional rights, which according to the Petitioner has the potential to be harmed by the enactment of Article 143 paragraph (3) of the Criminal Procedure Code. In addition, the Petitioner has been able to explain the existence of a causal relationship (*causal verband*) between the presumed loss and the enactment of the norms of the Article being petitioned for review. Therefore, if the petition is granted, the potential loss as referred to by the Petitioner shall not occur. Therefore, regardless of whether or not there is an issue of constitutionality of norms as argued by the Petitioner, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

With regard to the subject matter of the petition, the Petitioner in principal argues that at a glance the provision of Article 143 paragraph (3) of the Criminal Procedure Code seems clear, but in practice it has created multiple interpretations and violates the principle of *lex certa* as well as principle of *lex stricta* as the general principles in the establishment of criminal law, and such provisions which have multiple interpretations shall result in legal uncertainty. The events as experienced by the Petitioner also happened to 8 (eight) other defendants. This is due to the unclear construction and interpretation of the phrase "null and void" contained in Article 143 paragraph (3) of the Criminal Procedure Code, the elasticity of the norm is used arbitrarily by the state and all of its aspects, so that it has harmed the Petitioner who has been indicted many times for the same thing. Without any interpretation of the phrase "null and void" in Article
143 paragraph (3) of the Criminal Procedure Code, it shall result in a citizen who hold a status as a defendant, to have his case left hanging without any follow-up from the public prosecutor, therefore the *a quo* norm has shackled any legal certainty, as well as justice guaranteed by the Constitution to all citizens without exception.

Whereas because the Court has the authority to adjudicate the *a quo* petition and the Petitioner has the legal standing to act in submitting the *a quo* petition, then the Court will consider the subject matter of the petition.

Whereas after the Court has carefully read the Petitioner's petition along with the evidence submitted by the Petitioner, the statements of experts and witnesses submitted by the Petitioners, as well as the conclusions of the Petitioners, the statements of the DPR, the statement of the President, the statements of the Related Parties to the Attorney General, the statements of experts and witnesses submitted by the Related Parties to the Attorney General, as well as the conclusion of the Related Party to the Attorney General and the statement of the Related Party to the Supreme Court, the Court considers that in principal, an indictment is a deed drawn up by the public prosecutor which contains the formulation or flow of events of a crime against which a defendant or several defendants based on the conclusions of the results

of the investigation, then the indictment is an instrument that exclusively gives the rights and authority to the public prosecutor based on the principle of opportunity, as a representative of the state to carry out a prosecution against someone who is being suspected of having committed a crime. With regard to the terms of the indictment, based on the provisions of Article 143 paragraph (2) of the Criminal Procedure Code, an indictment must meet the requirements, both formally and materially. When examined carefully, one of the main requirements in preparing an indictment is the existence of a careful description which contains an imperative nature in the form of the accuracy of the public prosecutor in preparing the indictment that will be carried out to the defendant. This is because the indictment shall be the basis for carrying out an examination of a defendant in a trial whose truth will be proven based on the evidence presented and then the results of the evidence in the trial shall be used as the basis for making a decision for the judge whether the defendant will be proven guilty or not. Therefore, an indictment is a fundamental requirement for whether or not someone can be blamed for having committed any crime and subsequently sentenced to a crime penalty, one of which is deprivation of one's freedom. The word "careful" at the beginning of the formulation of the norms of Article 143 paragraph (2) letter b of the Criminal Procedure Code, philosophically it can be understood that the legislators want the public prosecutor to make an indictment carefully and thoroughly. As for an indictment that does not meet the requirements, both formal and material, it can be cancelled and even declared as null and void [*vide* Article 143 paragraph (2) of the Criminal Procedure Code].

In connection with the decision which declared that the indictment is null or void, it has not considered the subject matter of the case at all, therefore there has been no *nebis in idem* element attached in such decision [*vide* Article 76 of the Criminal Code (KUHP)]. Therefore, in addition to the public prosecutor being able to submit any legal countermeasures to the high court against the district court's decision which has declared an indictment as null and void, the public prosecutor also has the authority to resubmit such case at the trial court by substituting the old indictment and submitting a new indictment that has been revised and perfected in such a way that it truly meets the requirements for an indictment as specified in Article 143 paragraph (2) of the Criminal Procedure Code. Furthermore, upon the new indictment that was submitted, the court shall examine and decide on the criminal case that was charged against the defendant. Thus, in fact the court's decision which has declared the indictment as null and void, juridically does not eliminate the authority of the public prosecutor to bring the defendant back to be examined at trial. However, the next crucial issue is that there is no time limit for how long an indictment can be revised and how many times the indictment can be revised and how many times the judge can declare the public prosecutor's indictment as null and void. Therefore, without clarity on the status and time limit for when the case will be finished, this shall cause the defendant and/or the victims of any criminal acts to lose their constitutional rights due to legal uncertainty and injustice.

Whereas the ambiguity regarding the number of times any revision of the indictment against a defendant can be resubmitted at the trial and the limit on the number of times the judge can make an preliminary injunction, this shall make the status of the defendant and the protection of the rights of victims of any criminal acts an issue that must be answered and anticipated by the Court in order to obtain legal certainty and justice for the defendants and the victims of any criminal acts as well as the public interest. Therefore, it is quite reasonable for the Court to place a limit on the number of times the public prosecutor can submit a revision of any indictment which shall bring the defendant back to court trials and the number of times the judge can issue a preliminary injunction on any indictment being objected to by the defendant/legal attorney. In line with the importance of these restrictions, such thing cannot be separated from the authority of the judge who examines and tries criminal cases, whose authority also able to consider the fulfilment of the requirements of an indictment, both formally and materially as well as any indictment that are considered *ex-officio* vague in nature, can be considered together with the subject matter of the case. Nevertheless it can be excluded if an objection is filed against the criminal case (exception) based on the provisions of Article 156 paragraph (1) of the Criminal Procedure Code, whether there is an objection from the defendant/legal adviser because the court does not have the authority to adjudicate such case, the indictment is inadmissible or the indictment must be cancelled, the judge can accept

or pass a decision together with a final decision after the examination of the subject matter of the case is completed [*vide* Article 156 paragraph (2) of the Criminal Procedure Code]. Based on the provisions of the norms of Article 156 paragraph (1) and paragraph (2) of the Criminal Procedure Code, when examined carefully, there is actually no obligation for the judge to issue a preliminary injunction on every exception submitted by the defendant/legal attorney in the event that the court does not have the authority to adjudicate such case, the indictment is inadmissible or the indictment must be cancelled, as stipulated in Article 156 paragraph (1) of the Criminal Procedure Code. Therefore, the Court is of the opinion that because of the provisions of Article 156 paragraph (1) and paragraph (2) of the *a quo* Criminal Procedure Code is not imperative or optional, so for the sake of creating legal certainty and justice for the defendants and the victims of any criminal acts as well as the public interest, the existence of the *a quo* Article is the fundamental reason for imposing restrictions on indictments that can be revised and re-submitted repeatedly against the defendant at trial. In addition, also for the judge in passing any preliminary injunction over any exception from the defendant/legal attorney in the event that the court does not have the authority to adjudicate such case, the indictment is inadmissible or the indictment must be cancelled. In addition, because actually the opportunity to submit an exception against the public prosecutor's indictment is only a right and not an obligation, then in fact there should be restrictions on revising the indictment due to it is declared as null or void and restrictions on the judges in imposing any preliminary injunctions on any exception from the defendant/ legal attorney, which shall not reduce the rights of the defendant or the public prosecutor, even the judge, in the discretion to examine a criminal case. This is because the judge of the criminal court who examines and adjudicates such case shall be able to conduct an examination of the subject matter of the case together with other formal requirements, which can then be decided on the case in a final decision simultaneously. This is in line with the principle of a fast, simple and low-cost trial [*vide* Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power]. Based on the entire description of the aforementioned legal considerations, it has been shown that the provisions of the norms of Article 143 paragraph (3) of the Criminal Procedure Code have created legal uncertainty and injustice. However, because the Court will provide a conditional interpretation of the norms of the *a quo* Article, not as being petitioned for by the Petitioner, therefore the Court is of the opinion that the argument for the Petitioner's petition is partially legally reasonable.

Based on all of the aforementioned considerations, accordingly, the Court passed down a decision which verdict states:

1. To grant the Petitioner's petition partially;
2. To declare that the phrase "null and void" in the provisions of the norms of Article 143 paragraph (3) of Law Number 8 of 1981 concerning Criminal Procedure Code (State Gazette of the Republic of Indonesia Number 76, Supplement to the State Gazette of the Republic of Indonesia, 1981, Number 3209), is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "Regarding the indictment of the public prosecutor which has been declared as null and void by the judge, it can be revised and resubmitted in court 1 (one) time , and if the defendant/legal attorney still file for any objection, the judge shall immediately examine, consider, and decide it together with the subject matter of the case in the final decision";
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.