



**THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF
INDONESIA**

**SUMMARY OF THE
DECISION CASE NUMBER
31/PUU-XIX/2021**

Concerning

**Prosecution Against Case With the Same Substance of Criminal Acts,
*Tempus Delicti, Locus Delicti, And Complainant***

- Petitioner** : **Lee Yang Hun**
- Type of Case** : Review over the Indonesian Criminal Code (KUHP) and Law Number 39 of 1999 regarding Human Rights (Law 39/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Review over the phrase "upon a decision that becomes final" in Article 76 paragraph (1) of the Indonesian Criminal Code, the phrase "if the decision becomes final" in Article 76 paragraph (2) of the Indonesian Criminal Code and the phrase "a final and binding court decision" in Article 18 paragraph (5) of Law 39/1999 against Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety.
- Date of Decision** : Thursday, September 30th, 2021
- Overview of Verdict** :

The Petitioner is an Indonesian citizen who has constitutional rights granted by the 1945 Constitution as regulated in Article 28D paragraph (1) of the 1945 Constitution, and his constitutional rights are considered to have been impaired by the applicability of the phrase "upon a final decision" in Article 76 paragraph (1) of the Criminal Code, the phrase "if the decision becomes final" in Article 76 paragraph (2) of the Criminal Code and the phrase "a final and binding court decision" in Article 18 paragraph (5) of Law 39/1999.

In relation to the jurisdiction of the Court, since the Petitioner's petition is to review the phrase "upon a final decision" in Article 76 paragraph (1) of the Criminal Code, the phrase "if the decision becomes final" in Article 76 paragraph (2) of the Criminal Code and the phrase "a final and binding court decision" in Article 18 paragraph (5) of Law 39/1999, the Court has the jurisdiction to hear the petition of the Petitioner.

In relation to the legal standing of the Petitioner, according to the Court, the Petitioner as an Indonesian citizen and also an entrepreneur whose business is carried out and established in Indonesia has constitutional rights as guaranteed by Article 28D paragraph (1) of the 1945 Constitution which is impaired by the enactment of the norm in the phrase "upon a decision which becomes final" in Article 76 paragraph (1) of the Criminal Code, the phrase "if the decision becomes final" in Article 76 paragraph (2) of the Criminal Code and the phrase "a final and binding court decision" in Article 18 paragraph (5) of Law 39/1999. The norm in this case caused the Petitioner to be reported, made a suspect and made a defendant in a case with the same substance of a criminal act, either locus nor tempus, and the same complainant. Therefore, based on the above description, regardless of whether or not the unconstitutionality of norms in the phrase "upon a decision which becomes final" in Article 76 paragraph (1) of the Criminal Code, the phrase "if the decision becomes final" in Article 76 paragraph (2) of the Criminal Code and the phrase "a final and binding court decision" in Article 18 paragraph (5) of Law 39/1999 for which the review has been requested, the Court is in the opinion that the Petitioner has the legal standing to submit the petition in this case.

In relation to the Petitioner's argument that the norm in this case can be used as an excuse by investigators, public prosecutors and judges to investigate, indict and prosecute, detain and extend detention and hold trial more than once for the same act, *tempus* and *locus delicti* and the same complainant due to the absence of a final and binding court decision (*inkracht van gewisdje*), and if this situation continues, it will obviously lead to abuse by law enforcement agents as they will be able to designate suspects and accused persons as they wish or at the request of certain parties.

Whereas due to the clarity of the Petitioner's petition, the Court believes that based on Article 54 of the Constitutional Court Law, it is not necessary to hear the statements from such parties as referred to in Article 54 of the Constitutional Court Law.

In relation to the foregoing argument, the Court considers that the phrase "with a decision that becomes final" as contained in Article 76 paragraph (1) of the Indonesian Criminal Code and the phrase "if the decision becomes final" as contained in Article 76 paragraph (2) of the Indonesian Criminal Code, as well as the phrase "final and binding court decisions" as contained in Article 18 paragraph (5) of Law 39/1999 actually provide legal protection and certainty to an accused person as he will not be prosecuted for the second time for an alleged crime where *tempus delicti*, *locus delicti* and the substance of the alleged crime are similar on the ground that a final and binding decision has been issued and no further legal remedies are available to amend it. The issue dealt with by the Petitioner is not, in the Court's opinion, related to the constitutionality of norms in respect of the phrase "with a decision that becomes final" as contained in Article 76 paragraph (1) of the Indonesian Criminal Code and the phrase "if the decision becomes final" as contained in Article 76 paragraph (2) of the Indonesian Criminal Code, as well as the phrase "final and binding court decision" as contained in Article 18 paragraph (5) of Law 39/1999 but, even if the issues mentioned above actually occur, it is a matter of law enforcement which may occur in the implementation of a norm.

The Petitioner further argues that the above-mentioned norm does not protect Indonesian citizens who are designated as defendants, suspects and accused persons because of the phrase in question provides an opportunity for investigators to "mutilate" provisions raised/claimed by the claimant and this is clearly contradictory with Article 63 paragraph (1) of the Indonesian Criminal Code, Article 64 paragraph (1) of the Indonesian Criminal Code and Article 65 paragraph (2) of the Indonesian Criminal Code. In relation to the Petitioner's argument, according to the Court, if the Petitioner's assumption is accurate, the matter is not within the Court's jurisdiction. In addition, any conflict with Article 63 paragraph (1), Article 64 and Article 65 paragraph (2) of the

Indonesian Criminal Code may be separately reviewed if there are grounds for claiming the lack of harmonization among laws.

Therefore, upon all considerations above, the Court believes that the phrase "with a decision that becomes final" as contained in the norms of Article 76 paragraph (1) of the Indonesian Criminal Code and the phrase "if the decision becomes final" as contained in Article 76 paragraph (2) of the Indonesian Criminal Code, as well as the phrase "final and binding court decision" as contained in Article

18 paragraph (5) of Law 39/1999 do not create any lack of legal certainty in the law enforcement so that they are not contradictory with Article 28D paragraph (1) of the 1945 Constitution, as the Petitioner otherwise has claimed.

Based on the foregoing considerations, the Court believes that the Petitioner's petition is not legally justifiable in its entirety and thus the Court issued a decision which in its verdict dismissed the Petitioner's petition in its entirety.