



**CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**JUDGMENT SUMMARY
NUMBER 17/PUU-XIX/2021**

Regarding

**Workers' Rights to Access Work Results in the Form of Information/Electronic
Documents**

- Applicant** : **Rosiana Simon and Kok An**
- Case Type** : Judicial Review of Law Number 11 of 2008 on Electronic Information and Transactions as amended by Law Number 19 of 2016 on Electronic Information and Transactions (UU ITE) to the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Merits of Case** : The provisions of Article 32 and Article 48 of the ITE Law, according to the Applicants, are contrary to the 1945 Constitution because they have criminalized the actions of the Applicants who access their work in the form of electronic data/documents, in a company.
- Judgment** : Rejecting the Applicants' Request.
- Judgment Date** : Wednesday, September 29th, 2021.

Judgment Summary :

The Applicants who submitted this request were Rosiana Simon (Applicant I) and Kok An (Applicant II) as individual Indonesian citizens. Applicant I is a worker in a company and has been dismissed by the company. Meanwhile, Applicant II is the husband of Applicant I.

The Applicants requested a constitutional review of Article 32 of the ITE Law because the article prohibits “transmitting”, “transferring”, “hiding”, and/or “transferring” electronic information and/or electronic documents belonging to others. Meanwhile, the request for review of Article 48 of the ITE Law is a consequence of Article 32 of the ITE Law where Article 48 of the ITE Law contains provisions for criminal sanctions for violations of the prohibitions specified in Article 32 of the ITE Law. The Applicants requested that Article 32 and Article 48 of the ITE Law be declared contrary to the 1945 Constitution and therefore declared not to have binding legal force.

Applicant I stated that his rights were hindered by the provisions referred to, and even threatened with punishment, because she wanted to access information and/or electronic documents which according to Applicant I was the result of the work of Applicant I as a worker in a company. Meanwhile, Applicant II is also threatened with a criminal offense for helping Applicant I remember the password for the online storage media used by Applicant I to store the data on the work in question.

Regarding the authority of the Court, because of the *a quo* request to review the constitutionality of the legal norms, in this case the ITE Law to the 1945 Constitution, the Court has the authority to hear the *a quo* request.

In relation to the legal standing of the Applicants, the Court assesses that the Applicants have legal status because they can prove themselves as Indonesia citizens and is undergoing a

legal process as a witness to a criminal act of theft of electronic data related to the provisions of Article 32 in conjunction with Article 48 of the ITE Law.

Whereas based on Article 54 of the Constitutional Court Law, since the *a quo* request is clear, the Court has the opinion that there is no urgency to request information from the parties as stated in Article 54 of the Constitutional Court Law.

In relation to the merits of case of the request, the Court has the opinion that a worker and the result of his/her work have an inner relationship; then continues to be an employer's acknowledgment of the worker's contribution of the work result; and on the basis of recognition of the results of that work, workers will receive wages, salaries, or other income proportionally in accordance with the work agreement. The relationship between workers and such work, according to the Court, may not be terminated or eliminated for any reason, including: reasons related to company secrets.

For the Court, knowing and accessing the results of work is solely for the sake of performance proof is a worker's right that is protected by the 1945 Constitution. Such protection context is regulated in Article 28D paragraph (2) of the 1945 Constitution which states, "Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship"

According to the Court, the phrase "fair and proper treatment in an employment relationship" in Article 28D paragraph (2) *a quo* is a protection for two parties, namely the employer and the worker. The right of the employer in this case is to ask workers to keep company secrets for the sake of the company's business interests, and on the other hand guarantee the rights of workers to access at least know the results of their work as long as it is for the sake of performance proof.

However, because the Applicants request that Article 32 and Article 48 of the ITE Law be declared contradictory to the 1945 Constitution and have no binding legal force, which means that if the Court grants such a request, it will result in greater losses, namely the unprotected electronic data/documents belonging to citizens generally. Based on such legal considerations, the Court has the opinion that the request of the Applicants has no legal basis. Therefore, in its judgment, the Court rejected the request of the Applicants.