

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 94/PUU-XVI/2018**

**REGARDING**

**REQUEST FOR INFORMATION RECORDING BY THE SUSPECT/DEFENDANT**

**FOR DEFENSE AT THE TRIAL**

**Petitioner** : Sadikin Arifin

**Type of Lawsuit** : Judicial review of Law Number 36 of 1999 regarding Telecommunications (Law 36/1999) against the 1945 Constitution of the Republic of Indonesia.

**Case of Lawsuit** : Judicial review of Article 42 paragraph (2) of Law Number 36 of 1999 regarding Telecommunications against the 1945 Constitution.

**Injunction** : Rejecting the Petitioner’s petition in their entirety.

**Date of Verdict** : Monday, April 15, 2019

**Verdict Summary** :

Whereas related to the authority of the Court, because the Petitioner's petition is a constitutional review of the law, in this case Article 42 paragraph (2) of Law Number 36 of 1999 regarding Telecommunications against the 1945 Constitution. Therefore, the Court has the authority to hear a quo petition.

Whereas related to the legal standing of the Petitioner, the Petitioner is an individual Indonesian citizen. As far as Article 28D Paragraph (1) of the 1945 Constitution the Petitioner has clearly outlined his assumption regarding the constitutional rights impaired by the enactment of the norms of Article 42 paragraph (2) of the Telecommunications Law and such assumptions are actual and clear causal relationships, so that if the petition is granted the assumed impairment no longer occurs. Meanwhile, related to Article 1 paragraph (3) of the 1945 Constitution, because it does not regulate constitutional rights, there is no relevance to the assumed impairment of constitutional rights. Thus, insofar as it relates to the constitutional rights as provided for in Article 28D paragraph (1) of the 1945 Constitution, the Petitioner has the legal standing to act as the Petitioner in a quo petition.

Whereas the Petitioner's argument which states the provisions of Article 42 paragraph (2) of the Telecommunications Law is contrary to the principle of due process of law because it does not provide the same legal standing between the suspect/defendant and law enforcement officers in undergoing a criminal justice process, thus contradicting Article 1 paragraph (3) of the 1945 Constitution is a groundless argument. Because the essence of the principle of due process of law is the recognition of the right of the suspect/defendant to obtain a fair and proper legal process. The definition of fair and proper here is to provide equal treatment in accordance with their rights that may not conflict with the provisions of laws and regulations. Therefore, in the context of the right of the suspect/defendant to obtain evidence of the results of telecommunications information records, in which also lies another person's privacy who must be protected, then such matters are only limitedly given to the Attorney General and the Chief of Police of the Republic of Indonesia in relation to law enforcement. Therefore, it actually does not immediately treat unfairly and appropriately the rights of the suspect/defendant.

Whereas the Petitioners' argument which states the provisions of Article 42 paragraph (2) of the Telecommunications Law is unable to provide legal certainty and fair legal protection for the suspect/defendant, in this case the Petitioner, to file their own recorded conversation as evidence for the purposes of defense while undergoing a criminal justice process, thus contradicting Article 28D paragraph (1) of the 1945 Constitution is unwarranted according to the law because the exception as provided for in the provisions of Article 42 paragraph (2) of the Telecommunications Law, namely by providing space for law enforcement officers to obtain recorded personal information is not something that violates law. Moreover, this is an attempt by the Public Prosecutor to carry out his obligations to prove his indictment in the criminal justice process. Otherwise, if Article 42 paragraph (2) of the Telecommunications Law is granted an exception as desired by the Petitioner as set out in his petition, this can actually lead to the potential misuse of information and the violation of personal information of other parties because such recorded information is not only related to his personal, but also other people's privacy rights.

Whereas the Petitioner's argument which contradicts Article 42 paragraph (2) of the Telecommunications Law with Article 28D paragraph (1) of the 1945 Constitution results in the impairment of the Petitioner's right to a fair trial because he is unable to provide legal protection against the suspect/defendant, in this case the Petitioner, to counter the accusations of the Public Prosecutor is groundless according to the law because there is no evidence of conflict between Article 42 paragraph (2) of the Telecommunications Law and Article 28D paragraph (1) of the 1945 Constitution which results in the impairment of the Petitioner's right to a fair trial. The inability of the Public Prosecutor to present the evidence requested by the Petitioner which then as argued by the Petitioner that the matter was approved by the Panel of Judges is not a matter of constitutionality of norms but rather related to implementation.

Based on all of the above considerations, the Petitioner's petition is no legal grounds in their entirety. Furthermore, the Court handed down the decision with the injunction rejecting the petition of the Petitioners in their entirety.

This document is translated from Indonesian into English by me, **Drs. EMIL SUSANTO**,

the Authorized and Sworn Translator in Jakarta - Indonesia

JAKARTA, June 24, 2020