CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 114/PUU-XXIII/2025

Concerning

Prohibition on Police Officers Holding Positions Outside the Police Institution

Petitioners	**:**	**Syamsul Jahidin and Christian Adrianus Sihite**
Type of Case	**:**	Petition for a Judicial Review of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (Law 2/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	**:**	Review of the Phrase "**or not based on an assignment from the Chief of National Police of the Republic of Indonesia**" in the Elucidation of Article 28 paragraph (3) of Law 2/2002 against the 1945 Constitution
Verdict	**:**	1. To grant the Petitioners' petition entirely; 2. To declare the phrase "**or not based on an assignment from the Chief of National Police of the Republic of Indonesia**" in the Elucidation of Article 28 paragraph (3) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force; 3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
Date of Decision	**:**	Thursday, November 13, 2025
Overview of Decision	**:**	

The Petitioners are individual Indonesian citizens, with Petitioner I working as an advocate and Petitioner II being a law graduate who has not yet secured employment, and who believe that their constitutional rights have been violated by the enactment of the Elucidation to Article 28 paragraph (3) of Law 2/2002, which is being challenged in the present petition.

With respect to the Court's authority, because Petitioners petition for a judicial review, *in casu* Elucidation of Article 28 paragraph (3) of Law 2/2002 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

With respect to the Petitioners' legal standing, with respect to the alleged potential loss of the constitutional rights of Petitioner I and Petitioner II resulting from the enactment of the phrase "or not based on an assignment from the Chief of Police of the Republic of Indonesia" in the Elucidation of Article 28 paragraph (3) of Law 2/2002, which is being

challenged in the present petition, the Court is of the opinion that Petitioner I and Petitioner II have sufficiently demonstrated that the alleged potential loss of their constitutional rights has a causal relationship (*causal verband*) with the enactment of the Elucidation for which judicial review is sought. Within the limits of reasonable reasoning, the alleged loss of constitutional rights is specific and potential and can reasonably be expected to occur. Accordingly, if the petition *a quo* is granted, the assumption of potential loss of constitutional rights of Petitioner I and Petitioner II will not occur. Thus, regardless of whether or not the unconstitutionality of the phrase "or not based on an assignment from the Chief of National Police of the Republic of Indonesia" in the Elucidation of Article 28 paragraph (3) of Law 2/2002 is proven, the Court is of the opinion that Petitioner I and Petitioner II (hereinafter referred to as the Petitioners) have the legal standing to act as Petitioners in the petition *a quo*.

Whereas, with respect to the Elucidation of Article 28 paragraph (3) of Law 2/2002, which forms an integral part of Law 2/2002, its spirit must be understood and interpreted in the context of Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and the Decree of the People's Consultative Assembly of the Republic of Indonesia (MPR Decree) Number VII/MPR/2000 concerning the Role of the Indonesian National Armed Forces and the Role of the National Police of the Republic of Indonesia. Although MPR Decree Number VII/MPR/2000 was adopted on the same day as Article 30 of the 1945 Constitution of the Republic of Indonesia, namely 18 August 2000, in fact, the MPR Decree entered into effect only after Article 30 of the 1945 Constitution of the Republic of Indonesia had been adopted. This chronological sequence can be seen from the fact that Article 30 of the 1945 Constitution of the Republic of Indonesia is cited as one of the legal bases under the "Observing" section of MPR Decree Number VII/MPR/2000, *in casu*, point 1 of the "Observing" section. According to the Court, establishing this chronological sequence is important in order to emphasize that MPR Decree Number VII/MPR/2000 embodies the same legal-policy spirit as Article 30 of the 1945 Constitution of the Republic of Indonesia, namely that the National Police of the Republic of Indonesia is a state institution responsible for maintaining public security and public order, protecting and serving the public, and enforcing the law. Textually, this harmony of spirit is reflected in Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 6 paragraph (1) of MPR Decree Number VII/MPR/2000, which respectively provide as follows:

> Article 30 paragraph (4) of 1945 Constitution
>
> The National Police of the Republic of Indonesia, as the state instrument responsible for maintaining public security and public order, shall be tasked with protecting, serving the public, and enforcing the law.
>
> Article 6 paragraph (1) of MPR Decree Number VII/MPR/2000
>
> The National Police of the Republic of Indonesia is a state instrument that plays a role in maintaining public security and public order, enforcing the law, and providing protection and services to the public.

In the context of this harmony of spirit, although there is a time gap between the adoption of Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and MPR Decree Number VII/MPR/2000, on the one hand, and the enactment of Law 2/2002, on the other, since Law 2/2002 was enacted on 8 January 2002, all of its provisions should have been drafted in the same spirit. In this regard, from a formal perspective, Law 2/2002 was drafted on the basis of, among other legal sources, Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia and MPR Decree Number VII/MPR/2000. The formal reference can be found in the "Observing" section of Law 2/2002, which expressly cites Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia [*vide* point 1 of the "Observing" section of Law 2/2002] and MPR Decree Number VII/MPR/2000 [*vide* point 3 of the "Observing" section of Law 2/2002].

Whereas the Court further emphasizes that, when viewed in the context of the spirit described above, although MPR Decree Number VII/MPR/2000 has been declared revoked and is no longer in force pursuant to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number I/MPR/2003 concerning the Review of the Material and Legal Status of the Decrees of the People's Consultative Assembly of the Republic of Indonesia from 1960 to 2002 (MPR Decree Number I/MPR/2003), the spirit and legal policy embodied in MPR Decree Number VII/MPR/2000 remain a reflection of the spirit and legal policy of Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. Therefore, the substance of Law 2/2002 must always be understood and interpreted in accordance with Article 30 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. By placing the phrase "or not based on an assignment from the Chief of Police of the Republic of Indonesia" in the Elucidation of Article 28 paragraph (3) of Law 2/2002, the constitutionality of which is being questioned by the Petitioners, the Court needs to first quote the provisions of Article 10 of MPR Decree Number VII/MPR/2000 and Article 28 of Law 2/2002 as follows:

Article 10 of MPR Decree Number VII/MPR/2000:

Participation of the National Police of the Republic of Indonesia in State Administration

(1) The National Police of the Republic of Indonesia shall remain neutral in political life and shall not engage in practical political activities.

(2) Members of the National Police of the Republic of Indonesia shall not exercise the right to vote or to be elected. The participation of the National Police of the Republic of Indonesia in determining the direction of national policy shall be channeled through the People's Consultative Assembly until no later than 2009.

(3) Members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service.

Article 28 of Law 2/2002:

(1) The National Police of the Republic of Indonesia shall remain neutral in political life and shall not engage in practical political activities.

(2) Members of the National Police of the Republic of Indonesia shall not exercise the right to vote or to be elected.

(3) Members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service.

After carefully examining the two provisions above, there can be no doubt that the substance of Article 10 of MPR Decree Number VII/MPR/2000 and Article 28 of Law 2/2002 concerning the participation of the National Police of the Republic of Indonesia in state administration is the same. If any difference is to be identified, it lies only in the provision stating that "the participation of the National Police of the Republic of Indonesia in determining the direction of national policy shall be channeled through the People's Consultative Assembly until no later than 2009," as contained in Article 10 paragraph (3) of MPR Decree Number VII/MPR/2000. Apart from that provision, there is no difference between the two, and the norm of Article 28 of Law 2/2002 is merely a reformulation of the substance of Article 10 of MPR Decree Number VII/MPR/2000.

Furthermore, if the formulation and structure of Article 10 of MPR Decree Number VII/MPR/2000 and Article 28 of Law 2/2002 are considered in relation to the Petitioners'

petition, the Court's legal considerations must focus on Article 10 paragraph (4) of MPR Decree Number VII/MPR/2000, which provides, "Members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service," and Article 28 paragraph (3) of Law 2/2002, which provides, "Members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service." Substantively, these two provisions emphasize one important principle, namely that **members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service**. This means that, when properly understood and interpreted, "resigning or retiring from police service" constitutes a mandatory requirement that must be fulfilled by members of the National Police of the Republic of Indonesia before holding positions outside the police institution. There is no doubt that this is an *expressis verbis* normative formulation that requires no further interpretation. In this regard, the Court emphasizes that the "positions" requiring members of the National Police of the Republic of Indonesia to resign or retire from police service are positions that have no connection with the police institution. In this respect, reference may be made to Law Number 20 of 2023 concerning the State Civil Apparatus (Law 20/2023), under which such positions are State Civil Apparatus (*Aparatur Sipil Negara* or ASN) positions consisting of managerial and non-managerial positions [*vide* Article 13 of Law 20/2023].

In relation to the foregoing considerations, the phrase "or not based on an assignment from the Chief of Police of the Republic of Indonesia" in the Elucidation of Article 28 paragraph (3) of Law 2/2002, the constitutionality of which is essentially challenged by the Petitioners, must be read and interpreted in conjunction with Article 28 paragraph (3) of Law 2/2002. Because the Petitioners are challenging the Elucidation of a statutory provision, it is important for the Court to first emphasize the function of an Elucidation as provided under Law Number 12 of 2011 concerning the Formation of Legislation, as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (Law 12/2011, in conjunction with Law 13/2022), which states that "the Elucidation serves as the official interpretation of the norms contained in the body of Laws and Regulations with respect to certain provisions." Therefore, an elucidation should contain only explanations of foreign words, phrases, sentences, or equivalent terms, which may be adjusted to the norms and supplemented with examples. Elucidation is needed to clarify the norms contained in the main provision, so as not to render such norms unclear. It is further stated, "The elucidation may not include formulations containing norms" [*vide* point 176 and point 177 of Appendix II of Law 12/2011].

After referring to the function of an Elucidation in legislation, the Court notes that Article 28 paragraph (3) of Law 2/2002 provides, "Members of the National Police of the Republic of Indonesia may hold positions outside the police institution only after resigning or retiring from police service," while the Elucidation of Article 28 paragraph (3) of Law 2/2002 provides, "What is meant by 'positions outside the police institution' are positions that have no connection with the police or are not based on an assignment from the Chief of Police." From the structure of the Elucidation of Article 28 paragraph (3) of Law 2/2002, the phrase "what is meant by 'positions outside the police institution' are positions that have no connection with the police" fulfills the function of an elucidation of a legal norm as contemplated in points 176 and 177 of Appendix II to Law 12/2011. In this regard, the phrase "what is meant by 'positions outside the police institution' are positions that have no connection with the police" is intended solely to explain the norm contained in the body of the Law, *in casu*, to clarify the meaning of "positions outside the police institution," so as to avoid ambiguity in the interpretation of Article 28 paragraph (3) of Law 2/2002. Meanwhile, the phrase "or not based on an assignment from the Chief of Police of the Republic of Indonesia" does not, in any way, clarify the norm contained in Article 28 paragraph (3) of

Law 2/2002, rather, it gives rise to ambiguity regarding that norm. Moreover, the phrase “or not based on an assignment from the Chief of Police of the Republic of Indonesia” obscures the substance of the phrase “after resigning or retiring from police service” in Article 28 paragraph (3) of Law 2/2002. Such a formulation creates legal uncertainty regarding the eligibility of members of the National Police of the Republic of Indonesia to hold positions outside the police institution and, at the same time, creates legal uncertainty with respect to the career development of State Civil Apparatus personnel outside the police institution.

Pursuant to all the foregoing legal considerations, the Petitioners’ argument, which states that the phrase “or not based on an assignment from the Chief of Police of the Republic of Indonesia” in the Elucidation of Article 28 paragraph (3) of Law 2/2002 has caused confusion and expanded the scope of the norm contained in Article 28 paragraph (3) of Law 2/2002, thereby giving rise to legal uncertainty and is contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is legally justifiable. Accordingly, the phrase “or not based on an assignment from the Chief of Police of the Republic of Indonesia” in the Elucidation of Article 28 paragraph (3) of Law 2/2002 has been proven to be inconsistent with the guarantee of legal protection and legal certainty under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as argued by the Petitioners. Therefore, the Petitioners’ argument is legally justifiable in its entirety.

Accordingly, the Court subsequently passes down a decision, the verdict of which states as follows:

1. To grant the Petitioners’ petition entirely;
2. To declare the phrase **“or not based on an assignment from the Chief of National Police of the Republic of Indonesia”** in the Elucidation of Article 28 paragraph (3) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2002 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 4168) contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force;
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

Concurring Opinion and Dissenting Opinion

Against the decision *a quo* of the Court there is a concurring opinion from 1 (one) Constitutional Justice, namely Constitutional Justice Arsul Sani and there is also a dissenting opinion from 2 (two) Constitutional Justices, namely Constitutional Justice Daniel Yusmic P. Foekh and Constitutional Justice M. Guntur Hamzah which states as follows.

Concurring Opinion by Constitutional Justice Arsul Sani

Whereas, with respect to the phrase in the Elucidation of Article 28 paragraph (3) of Law 2/2002 whose constitutionality is challenged by the Petitioners, namely the phrase “or not based on an assignment from the Chief of Police of the Republic of Indonesia,” the Petitioners argue that the phrase creates legal uncertainty and opens the possibility for it to be interpreted as allowing the Chief of Police to assign members of the National Police of the Republic of Indonesia to occupy or hold positions outside the police institution, including positions having no connection with police duties, without first resigning or retiring from police service. With respect to the argument *a quo* of the Petitioners, I consider as follows.

First, by referring to the constitutional design of the National Police of the Republic of Indonesia under the 1945 Constitution of the Republic of Indonesia, as amended by the Second Amendment, which establishes the National Police of the Republic of Indonesia as a state institution responsible for maintaining public security and public order, with the duties of protecting and serving the public and enforcing the law, as well as to the new paradigm of the National Police of the Republic of Indonesia emphasized in the General Elucidation of Law 2/2002, the Elucidation of Article 28 paragraph (3) of Law 2/2002 must not deviate from, or be inconsistent with, that constitutional design and new paradigm. Pursuant to the constitutional design and the new paradigm embodied in Law 2/2002, members of the National Police of the Republic of Indonesia may hold positions outside the police institution that are not closely related to police duties only after resigning or retiring from active police service. Conversely, where a position is closely related to the duties of the National Police of the Republic of Indonesia, resignation or retirement from active police service is not a prerequisite.

Second, although Law 2/2002 was enacted before the adoption of legislation governing the formation of laws and regulations, the principles of legislative drafting that were subsequently incorporated into such legislation may be used as a basis for interpreting the norms and elucidations of laws enacted earlier and that remain in force, *in casu*, Law 2/2002.

In this regard, legislation governing the formation of laws and regulations was first introduced through Law Number 10 of 2004, which was subsequently replaced by Law Number 12 of 2011, as last amended by Law Number 13 of 2022. The principle that the Elucidation of an article or paragraph of an article may not contain words/phrases/sentences that create new norms or alter, expand, or restrict the scope of an existing norm is set out in Appendix II letter E of Law 12/2011. The provisions contained in the Appendix *a quo* may be applied in assessing the validity of a norm, part of a norm, or an Elucidation of a law that remains in force. In this case, in my opinion, the phrase “or not based on an assignment from the Chief of Police of the Republic of Indonesia” in the Elucidation of Article 28 paragraph (3) of Law 2/2002 has the potential to create room for interpretation that expands the scope of the phrase “positions outside the police institution” without any clear limits.

Whereas based on the foregoing considerations, I conclude that the Petitioners’ petition is legally justifiable and should be granted.

Dissenting Opinion by Constitutional Justice Daniel Yusmic P. Foekh and Constitutional Justice M. Guntur Hamzah

Pursuant to all the foregoing legal considerations, the review of the phrase “not based on an assignment from the Chief of Police of the Republic of Indonesia” in the Elucidation of Article 28 paragraph (3) of Law 2/2002 concerns not the constitutionality of the norm, but rather the implementation of the norm. Accordingly, in our opinion, the Petitioners’ petition should be dismissed because it is legally unjustifiable (*wordt ongegrond verklaard*).