



# **IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION NO. 15/PUU-XXIII/2025 ON THE IMPLEMENTATION OF COERCIVE MEASURES AGAINST PROSECUTOR SUSPECTS**

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## **Abstract**

*The Constitutional Court (MK) ruled that coercive measures by investigators against prosecutor suspects must still be carried out with the permission of the Attorney General, except in cases of being caught red-handed or based on sufficient preliminary evidence indicating the commission of crimes punishable by death, crimes against state security, or special crimes. This article discusses the implications of this ruling on the implementation of coercive measures against prosecutor suspects. The discussion concludes that the decision has significant implications for changes in law enforcement governance. The ruling reinforces the application of the principle of equality before the law, demonstrating that there is no absolute immunity for law enforcement officials in Indonesia. This Constitutional Court decision should serve as a note for lawmakers, namely the government and the DPR RI, particularly the Legislative Body (Baleg) or Commission III, to revise Article 8 paragraph (5) of the Law on the Prosecutor's Office when discussing the Draft Law on the Second Amendment to Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia.*

## **Introduction**

The Constitutional Court (MK) granted in part a judicial review petition against Law No. 11 of 2021 on the Amendment to Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Office Amendment Law) in relation to the 1945 Constitution of the Republic of Indonesia. The petition was submitted by Agus Setiawan (activist/student), Sulaiman (lawyer), and the Perhimpunan Pemuda Madani. The ruling was pronounced in a plenary session on Thursday, October 16, 2025, chaired by Chief Justice Suhartoyo and attended by eight other constitutional justices ("Hak Imunitas Jaksa Bertentangan," 2025).

One of the key articles under review was Article 8 paragraph (5) of the Amendment to Law No. 16 of 2004 on the Prosecutor's Office, which reads: "In carrying out their duties and authorities, the summoning, examination, search, arrest,

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and detention of prosecutors may only be conducted with the permission of the Attorney General.” The petitioners argued that this provision contradicts Article 28D paragraph (1) of the 1945 Constitution (equality before the law). In its ruling, the Court granted the petition in part, declaring Article 8 paragraph (5) unconstitutional and non-binding insofar as it does not include exceptions for cases where prosecutors are caught red-handed, or there is sufficient preliminary evidence indicating the commission of crimes punishable by death, crimes against state security, or special crimes.

This article specifically discusses the implications of Constitutional Court Decision No. 15/PUU-XXIII/2025 for the implementation of coercive measures against prosecutor suspects. It also provides insights for the government and DPR during the deliberation of the Draft Law on the Second Amendment to Law No. 16 of 2004 on the Prosecutor’s Office (Prolegnas 2025).

## **Implications of the Constitutional Court Decision on Coercive Measures Against Prosecutor Suspects**

This Constitutional Court decision is classified as a conditionally unconstitutional ruling, meaning that the article under review is unconstitutional unless the conditions set by the Court are fulfilled. The provision becomes constitutional only if the conditions stipulated by the Court are met (Syukri Asy’ari, 2013).

The condition in this context refers to exceptions. The Constitutional Court Decision No. 15/PUU-XXIII/2025 mandates that Article 8 paragraph (5) of the Prosecutor’s Office Law must now be read as follows: “In carrying out their duties and authorities, the summoning, examination, search, arrest, and detention of prosecutors may only be conducted with the permission of the Attorney General, except in cases of:

- a. being caught red-handed committing a crime; or
- b. sufficient preliminary evidence indicating the commission of crimes punishable by death, crimes against state security, or special crimes.”

Based on this ruling, coercive measures such as summoning, examination, searches, arrests, and detention of prosecutors suspected of committing crimes must generally be approved by the Attorney General, except under the two conditions mentioned above. When these conditions apply, permission from the Attorney General is not required.

Interestingly, this decision explicitly revises the Court’s earlier position in Decision No. 55/PUU-XI/2013, which addressed the same article. Previously, the Court considered the provision constitutional, emphasizing that the Attorney General, as the highest authority in the Prosecutor’s Office, was responsible for maintaining discipline and the integrity of prosecutors as legal professionals. In contrast, the new ruling limits that protection, applying it only under specific, measurable circumstances.

The Court reasoned that the absence of limitations or exceptions in providing legal protection to law enforcement officials or state officials involved in judicial functions could hinder law enforcement and weaken the principle of equality before the law, a universal legal and constitutional principle.

This ruling brings substantial changes to Indonesia's law enforcement governance. Although investigators must still obtain the Attorney General's permission to conduct coercive measures against prosecutors, exceptions now apply to cases of being caught red-handed or suspected of committing serious crimes. This development represents progress in upholding equality before the law and affirms that no absolute immunity exists for law enforcement officers. Consequently, the Corruption Eradication Commission (KPK) and the National Police (Polri) now have greater latitude to investigate prosecutors, especially in sensitive cases that risk conflicts of interest ("Batas Kuasa Jaksa," 2025).

Essentially, the Court calibrated the scope of legal protection for law enforcement officials, prosecutors in this context, so that it does not differ from protections granted to other legal professions. While prosecutors should indeed be afforded certain protections as outlined in the UN Guidelines on the Role of Prosecutors (1990) and The Status and Role of Prosecutors (2014), such protections are not absolute. Prosecutorial immunity is inherently relative, limited only to the lawful exercise of prosecutorial duties, intended to prevent undue criminalization of prosecutors during case handling ("Duel Argumentasi Kejaksaan Vs Polri," 2025).

As a comparison, judges also enjoy limited legal protection. Article 17 paragraph (1) of Law No. 14 of 1985 on the Supreme Court, as amended by Law No. 3 of 2009, stipulates that: "The Chief Justice, Deputy Chief Justice, Junior Chief Justice, and Supreme Court Justices may be arrested or detained at the order of the Attorney General after obtaining approval from the President, except in cases of:

- a. being caught red-handed committing a crime; or
- b. sufficient preliminary evidence indicating the commission of crimes punishable by death or crimes against state security."

A similar provision applies to Constitutional Court Justices under Article 6 paragraph (3) of Law No. 8 of 2011 on the Amendment to Law No. 24 of 2003 on the Constitutional Court. Thus, the immunity afforded to law enforcement officials, such as police, prosecutors, and lawyers, is limited and applies only when they act in good faith within the scope of their professional duties. They remain subject to legal proceedings if proven to have committed crimes.

This ruling also implies the need for legislative follow-up by lawmakers, namely the government and DPR RI, particularly Baleg or Commission III, during deliberations on the Draft Law on the Second Amendment to Law No. 16 of 2004 on the Prosecutor's Office, currently part of the 2025 Priority National Legislation Program (Prolegnas). Lawmakers must adjust Article 8 paragraph (5) of the Prosecutor's Office Law in accordance with the Constitutional Court's decision.

The Academic Manuscript (Naskah Akademik) of the Draft Law on the Second Amendment to Law No. 16 of 2004 on the Prosecutor's Office (DPR RI, 2023) has yet to incorporate revisions to Article 8 paragraph (5), which is understandable given that the Court's ruling was only issued on October 16, 2025.

## Conclusion

Constitutional Court Decision No. 15/PUU-XXIII/2025 introduces significant changes in law enforcement governance. Although the requirement for investigators to obtain the Attorney General's permission to conduct coercive measures against prosecutors remains in place, the recognition of exceptions for certain conditions, such as being caught red-handed or suspected of committing serious crimes, marks progress in implementing the principle of equality before the law. It also reinforces the absence of absolute immunity for law enforcement officials in Indonesia. This ruling broadens the scope for KPK and the police to investigate prosecutors, especially in cases previously considered sensitive or prone to conflicts of interest.

The Constitutional Court's decision should serve as a key reference for lawmakers. The government and the DPR RI, particularly Baleg or Commission III, must revise Article 8 paragraph (5) during discussions of the Draft Law on the Second Amendment to Law No. 16 of 2004 on the Prosecutor's Office to align it with the Court's ruling.

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