

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 44/PUU-XVII/2019**

**REGARDING**

**ENFORCEMENT OF THE SAME CRIMINAL THREATS AGAINST THE CONSPIRACY CRIMINAL ACTS TO COMMIT NARCOTICS CRIMINAL ACTS AND THE PERPETRATORS OF ATTEMPTED NARCOTICS CRIMINAL ACTS WITH PERFECT CRIMINAL ACTS**

**Petitioner** : Andi Alias Aket son of Liu Kim Liong

**Type of Lawsuit**  : Judicial review of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) against the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution);

**Case of Lawsuit** : Judicial review of Article 132 paragraph (1) of the Narcotics Act against Article 28D paragraph (1) of the 1945 Constitution;

**Injunction** : Rejecting the petition of the Petitioner in its entirety.

**Date of Lawsuit**  : Wednesday, October 23, 2019;

**Verdict Summary** :

Petitioner is an individual Indonesian citizen who has been found guilty of committing a narcotics criminal crime and sentenced to death by the Banten High Court.

Related to the authority of the Court because the Petitioner's petition is a judicial review of Article 132 paragraph (1) of the Narcotics Law against Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to adjudicate the Petitioner's petition;

Related to the legal standing of the Petitioner, the Petitioner feels disadvantaged by the enactment of Article 132 paragraph (1) of the Narcotics Law which has equated imposing a criminal act for a conspiracy criminal act to commit a Narcotics criminal act and the perpetrators of attempted Narcotics criminal act with a perfect criminal act. This has resulted in the emergence of injustice and legal uncertainty which is detrimental to the Petitioner. With the argument regarding the legal standing of the Petitioner, according to the Court the Petitioner has specifically explained the matter of his constitutional rights, in which the Petitioner considers to be impaired, namely the right to obtain fair legal certainty. And it has also been seen a causal verband between the Petitioner's assumption about the constitutional rights that have been impaired by the enactment of Article 132 paragraph (1) of the Narcotics Law. Therefore, the Court has the opinion that the Petitioner has the legal standing to act as the Petitioner in a quo Petition.

Related to the substance of the Petitioner’s petition, in essence the Petitioner argues that Article 132 paragraph (1) of the Narcotics Law has created legal uncertainty for the Petitioner given the absence of a clear interpretation of the phrase "the same imprisonment in accordance with the provisions as referred to in these Articles" in which the Petitioner was sentenced to death for a "conspiracy” criminal act, without rights or against the law, in the case of becoming an intermediary in buying and selling, or receiving Narcotics Group I "as referred to in a quo article. With respect to the Petitioner's argument, the Court has the following opinion:

1. Whereas, viewed from the perspective of the Narcotics and Psychotropic Convention, applying the maximum criminal threat for certain narcotics and psychotropic crimes, including criminal acts stipulated in the norms of the Narcotics Law, which are petitioned for review in a quo petition, are part of efforts to prevent the criminal act in question and at the same time as part of fulfilling Indonesia's international obligations born from the Narcotics and Psychotropic Convention;

2. Whereas the enactment of harsh criminal threats to certain narcotics and psychotropic criminal acts, including criminal acts as provided for in the norms of the Narcotics Law petitioned for review in a quo Petition, is also justified as well as implicitly recommended by the Narcotics and Psychotropic Convention.

3. Whereas it imposes maximum criminal punishment for perpetrators of crimes or certain narcotics and psychotropic crimes in addition to constitutional obligations of the state as well as international obligations arising from agreements with due regard to the magnitude and seriousness of the threats and dangers posed by certain narcotics and psychotropic crimes in question.

4. Whereas the attempt and even more so is a conspiracy to commit a criminal act as provided for in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117, Article 118, Article 119, Article 120, Article 121, Article 122, Article 122 , Article 123, Article 124, Article 125, Article 126, and Article 129 of the Narcotics Law does not reduce, let alone eliminate, threats and dangers arising from the occurrence of narcotics and psychotropic abuse given the nature of "particularly serious" of criminal acts or narcotics and psychotropic crimes in question. It is said not to reduce let alone eliminate, because, in the case of an experiment, the thing that distinguishes it from a perfect criminal act is that the perpetrators of the attempted criminal act do not or has not yet completed his actions and the cause of the completion or not is not due to the wishes of the perpetrator but because of factors outside the perpetrator's self, for example, in this case, because the perpetrators have been arrested before successfully completing their actions. Meanwhile, conspiracy to commit a criminal act as provided for in Article 114 of the Narcotics Law, within the reasonable limits of reasoning, is no different from the act of committing a criminal act as referred to in Article 114 of the Narcotics Law. Therefore, the enactment of the same criminal threat for perpetrators of criminal acts as provided for in Article 132 paragraph (1) of the Narcotics Act with the perpetrators of criminal acts as regulated in Article 114 of the Narcotics Law is not appropriate if it is said to be unfair. Viewed from the perspective of the special function of criminal law, namely protecting the interests of the law, it must not be forgotten that the legal interests protected by criminal law are not merely individual legal interests but also the legal interests of the community and the interests of the country's law. Nor should it be forgotten that the Narcotics Law, as well as the Narcotics and Psychotropic Convention, is basically emphasizing the function of preventing the development and spread of narcotics and psychotropic crimes. Such a function demands, one of them, the threat of harsh and strict sanctions for perpetrators of this criminal act.

Based on the aforementioned consideration of the Court, the Court has handed down a verdict, in which the injunction rejected the Petitioner's petition in its 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