The Constitutional Court

of the Republic of Indonesia

SUMMARY OF DECISION ON CASES NUMBER 4 / PUU-XVII / 2019

About

The phrase "Nasional" in the explanation of Article 2 paragraph (2) of the Corruption Eradication Act

Petitioner	:	Jupri, S.H., M.H., dkk.
Judical Review	:	Examination of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes (PTPK Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Case of Lawsuit	:	Examine the explanation of Article 2 paragraph (2) of the PTPK Law against the 1945 Constitution.
Injuction	:	1. To declare that Petitioners' petition to Petitioner V until Petitioner VIII and Petitioner IX cannot be accepted;

2. Reject the petition of Petitioner VI and Petitioner VII in its entirety.

Date of the Decision: Monday, 20th May of 2019

Decision Overview:

Whereas Petitioner I, Petitioner II, Petitioner III, Petitioner IV, and Petitioner V are Indonesian citizens who work as lecturers and students. Petitioner VI and Petitioner VII are Indonesian citizens who live in an area that has been hit by a natural disaster. Petitioner VII is an Indonesian citizen as a paralegal in a non-governmental organization and Petitioner IX is an Indonesian citizen who works as an employee in a law office;

In relation to the authority of the Court, because the Petitioners' petition is a review of the constitutionality of legal norms, in case Elucidation of Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime (The PTPK Law) against the 1945 Constitution, the Court has the authority to try the a quo petition;

Concerning the Petitioners' legal standing, the Court in its legal considerations stated that only Petitioner VI and Petitioner VII had the legal position to submit the a quo petition. The Court in its legal considerations stated that Petitioner VI and Petitioner VII were both Indonesian citizens who at the time the a quo petition was filed were domiciled in an area that was hit by a natural disaster. Petitioner VI includes proof of an Identity Card with the domicile of Palu City, Central Sulawesi Province, while Petitioner VII includes proof of an Identity Card with the domicile of Makassar City, South Sulawesi Province, which at

the time of the a quo application was submitted the area where he was domiciled experienced the large flood disaster.

In explaining the loss of their constitutional rights, Petitioner VI and Petitioner VII explained that they experienced direct losses because they could not receive assistance as they should, especially Petitioner VI, who had difficulty getting clean water. Regarding the description of Petitioner VI and Petitioner VII above, although Petitioner VI and Petitioner VII did not explicitly explain that a criminal act of corruption caused the real losses they suffered, the Court states that the actual losses suffered had at least resulted in Petitioner VI's constitutional rights. And Petitioner VII obtains fair legal certainty as citizens who are currently experiencing a disaster, as stated in one of the petition's arguments. Therefore, regardless of whether or not the arguments of Petitioner VI and Petitioner VII regarding the unconstitutionality of the phrase "national natural disaster" in the Elucidation of Article 2 paragraph (2) of the PTPK Law are proven or not, the Court states that Petitioner VI and Petitioner VII have legal standing to act as Petitioners in the petition a quo. As for Petitioners, I up to. Petitioner V, Petitioner VIII, and Petitioner IX do not have legal standing because the evidence presented is insufficient to prove that the Petitioners have legal standing.

Whereas concerning the main point of the petition, basically, the Petitioners argue that the unconstitutionality of the Elucidation of Article 2 paragraph (2) of the PTPK Law is deemed contrary to Article 1 paragraph (3), Article 28D paragraph (1), and Article 28H paragraph (1) of the 1945 Constitution.

In order to answer the issue of the constitutionality of the a quo article, the Court, in its legal considerations, basically stated as follows:

- Whereas before further considering whether the inclusion of the word "nasional" in the phrase "bencana alam nasional" in the Elucidation of Article 2 paragraph (2) of the PTPK Law, the explanation of Article 2 paragraph (2) of the PTPK Law contradicts the idea of a rule of law as referred to in Article 1 paragraph (3). The 1945 Constitution, while the Petitioners did not provide a specific explanation regarding the purpose of the conflict, it is essential for the Court first to consider what the actual substance contained in the idea of the rule of law in question. As has been considered several times by the Court in its decisions, the term the rule of law is a general term that can refer to the idea of Rechtsstaat, which was originally developed in Germany as well as the idea of Etat de Droit, which was originally developed in France and the Rule of Law which was originally developed in France—originally developed in England. However, apart from the differences in conceptions and origins, also apart from the theoretical and practical complexities contained in the three conceptions of the rule of law, in its development up to now, the three ideas of the rule of law contain the same three main substances, namely: First, substance. that the government (in the broadest sense, which includes both the legislative, executive and judicial branches of power) is limited by law. This substance contains the intention or objective of limiting the power of the state to abolish and, at the same time, prevent the emergence of tyrannical power, and at the same time, it contains the purpose or objective of protecting individual freedom. This substance contains two definitions, namely (i) that the state apparatus (both legislative, executive, and judicial) is bound and subject to the existing positive laws; (ii) although the state

has the power to change the positive law, the power to make such changes is not unlimited but subject to certain conditions. Second, the substance of formal legality is the existence and enforcement of an order which is bound to the rules made and maintained by the state. This substance's purpose is that everyone knows from the start what actions are allowed, should, or are prohibited from being carried out along with the threat of sanctions imposed for violations of that obligation or prohibition. Third, the substance that the law rules, not humans. The manifestation of this third substance is the presence of judicial power or independent judicial power. Without the presence of independent judicial power, it is impossible for the first and second substances of the idea of the rule of law above to manifest in practice because it is impossible for the law to interpret and enforce its provisions. Because of this third substance, the first and second substances in the rule of law become possible to be realized. [vide Constitutional Court Decision Number 7 / PUU-XV / 2017].

- When connected with the arguments of Petitioners 'petition, it becomes unclear in the context of the substance of the rule of law in which the a quo Petitioners' argument lies. Thus, postulating the word "national" in the phrase "national natural disaster" in the Elucidation of Article 2 paragraph (2) of the PTPK Law is contrary to the idea of a rule of law as referred to in Article 1 paragraph (3) of the 1945 Constitution, without specific arguments to support the statement. That is too vague a proposition. Therefore, the Court needs to explore further the true intent of the a quo Petitioners' argument.

- Whereas after the Court thoroughly examined the Petitioners' intentions, it was evident that the Petitioners wanted to state the word "nasional" in the phrase "bencana alam nasional" in the Elucidation of Article 2 paragraph (2) of the PTPK Law, according to the Petitioners, had caused the enactment of a weighted sentence in the form of capital punishment for perpetrators of criminal acts of corruption against funds intended for national natural disaster management. This is evident from the firm statement in the Petitioners' argument, which states:

  6.1 The existence of the word National after the phrase “Becana Alam” causes obstacles to implementing the death penalty for perpetrators of corruption in a disaster situation. In fact, this crime is an uncivilized crime that should no longer be tolerated.

  6.2 The word "Nasional" after the phrase "Becana Alam" causes the perpetrators of corruption not to worry about committing corruption. When knowing that the status of a natural disaster that occurs does not get the status of a national natural disaster because the maximum sanction is the only imprisonment, considering that the prison system in Indonesia is still full of compromises for convicted perpetrators of corruption. meaning that this does not provide justice for disaster victims and legal certainty for the Petitioners

Whereas the logical construction which is constructed a contrario from the Petitioners' arguments is as follows:

(i) whereas according to the Petitioners, only if the imposition of a sentence in the form of capital punishment allows the perpetrators of the criminal act of corruption to apply the funds used for overcoming all kinds of characteristics of natural disasters (without the need for qualification of a “nasional” character), then it can be said that they do not contradict the idea a rule of law because it provides justice for the victims and legal certainty for the Petitioners;

(ii) Whereas according to the Petitioners, the existence of the word "nasional" in the phrase "bencana alam nasional" in the Elucidation of Article 2 paragraph (2) of the PTPK Law is against the idea of a rule of law because it does not provide justice for victims and does not provide legal certainty for the Petitioners because the perpetrators of the act criminal corruption against funds allocated for natural disaster management will not be deterred because he knows he will only be sentenced to imprisonment, while the prison system in Indonesia is still full of compromises.

- Whereas concerning this logical construction, the Court is of the opinion that, in the context of number (i), the Petitioners have relied on the fulfillment of the idea of the rule of law solely on the imposition of capital punishment for perpetrators of criminal acts of corruption against funds intended for natural disaster management. Such logical construction cannot be accepted because with this logic; it also means constitutional or unconstitutional a provision that regulates criminal sanctions imposed on perpetrators of criminal acts of corruption against funds allocated for natural disaster management and then depends on the conditions of the enforceable or non-enforceable death penalty. Such logic also brings the next logical consequence, namely that without the need to consider or

consider the size of a natural disaster or whether the effects of a natural disaster are serious or not, capital punishment must be enforced for perpetrators of corruption against the funds used to deal with natural disasters because this is following the idea of a rule of law as referred to in Article 1 paragraph (3) of the 1945 Constitution.

- Whereas regarding the logical construction of the Petitioners in point (ii), the Court believes in this case, the Petitioners have confused the constitutionality issue with effectiveness. The constitutional issue of whether norm or provision in a law is not assessed, at least not merely judged by the effectiveness or ineffectiveness of the norms or provisions in the law must be assessed from not contradicting or contradicting the provisions of the norms in the law. - Law is meant by norms, definitions, the spirit of the Constitution, and the objectives to be achieved by the Constitution (in casu UUD 1945). When a statutory norm or a provision in a law is ineffective, it does not necessarily mean that the statutory norm or a provision in the law is contrary to the 1945 Constitution.
- Whereas furthermore, the Petitioners' argument relating to the responsibility of the government in implementing natural disaster management has nothing to do with the constitutionality issue of the phrase "national natural disaster" in the Elucidation of Article 2 paragraph (2) of the PTPK Law. Whether the phrase is constitutional or not does change the government's responsibility for natural disaster management, as regulated in Article 5 and Article 6 letter b and letter c of Law 24/2007, among other things. Moreover, suppose this is related to the norms of the 1945 Constitution, which are used as the basis for testing by the Petitioners,

namely the idea of the rule of law in Article 1 paragraph (3) of the 1945 Constitution. In that case, there is absolutely no correlation nor coherence to link the idea of the rule of law with government responsibility in natural disaster management. The government remains responsible for natural disaster management regardless of whether the phrase "bencana alam nasional" is constitutional or unconstitutional in the Elucidation of Article 2 paragraph (2) of the PTPK Law; moreover, if we refer to the criminal provisions in Article 78 of Law 24/2007, which have provided a very serious criminal threat to perpetrators of misuse of disaster relief resource management. Article 78 of Law 24/2007 states, "Every person who deliberately misuses the management of disaster relief resources as referred to in Article 65, shall be punished with imprisonment with life imprisonment or imprisonment for a minimum of 4 (four) years or a maximum of 20 (twenty) years and a fine of at least Rp. 6,000,000,000.00 (six billion rupiahs) or a maximum fine of Rp. 12,000,000,000.00 (twelve billion rupiah)". Thus, if the Petitioners' intention is a criminal burden for the perpetrators of misuse of disaster relief resource management, within certain limits, such objectives have been accommodated in Article 78 of Law 24/2007. This means that even if the perpetrators of such crimes are not prosecuted under the PTPK Law, they have actually been threatened with serious penalties by using Article 78 of Law 24/2007.

- Whereas as for the Petitioners' argument linking their argument with the original intent of the PTPK Law, especially concerning Article 2 paragraph (2) of the PTPK Law, the Court believes that conformity to the original intent does not

necessarily make a statutory norm or a provision in the law which compatible with the idea of the rule of law and is therefore constitutional. What if the original intent itself contradicts the Constitution. Likewise, on the other hand, the incompatibility with the original intent does not necessarily make a statutory norm or provision in law contrary to the idea of the rule of law and, therefore, unconstitutional. Likewise, on the other hand, the incompatibility with the original intent does not necessarily make a statutory norm or provision in law contrary to the idea of the rule of law and, therefore, unconstitutional. After all, by referring to the procedures for discussing and administering debates in the process of discussing the law, what is meant by original intent is not easy to identify because not all debates and discussions take place in the courtroom but are also carried out through the lobbying process which is not always documented. Original intent is also not individual opinions that develop in the discussion of law but the unanimity of thought that is finally agreed upon, regardless of how the agreement was obtained.

- Whereas with all the considerations above, it does not mean that the Court believes that it is not essential to enforce criminal penalties for perpetrators of corruption against funds allocated for natural disaster management. Because, after all, corruption is a very dangerous evil act. As said by the former UN Secretary-General, Kofi Annan, in his remarks when welcoming the United Nations Convention Against Corruption (United Nations Convention Against Corruption), corruption is a "dangerous epidemic that has a hugely destructive effect on

society" (an insidious plague that has a wide range of corrosive effects on societies). However, weighted punishment does not have to be a death sentence without considering the gradation or size of a natural disaster. Only if the natural disaster has reached a gradation or national status can the weighting of the death penalty be appropriate and proportional to apply. Therefore, the phrase "national natural disaster" in the Elucidation of Article 2 paragraph (2) of the PTPK Law, according to the Court, has met the considerations of appropriateness and proportionality, so that the Petitioners' argument states that there is a word "national" in the phrase "national natural disaster. "In the elucidation of Article 2 paragraph (2), the PTPK Law contradicts the 1945 Constitution; it is legally groundless.

Based on the above legal considerations, the Court issued a decision was as follows:

1. To declare that Petitioners' petition to Petitioner V and Petitioner VIII and Petitioner IX cannot be accepted;

2. Reject the petition of Petitioner VI and Petitioner VII in its entirety.