



**THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
ON CASE NUMBER 86/PUU-XVIII/2020**

Concerning

The definition of the word tree in the norms of Article 111 paragraph (2) and Article 114 paragraph (2) of Law Number 35 of 2009 concerning Narcotics

- Petitioner** : **Ardian Aldiano**
- Case** : Review of Law Number 35 of 2009 concerning Narcotics (Law 35/2009) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Case of Lawsuit** : Article 111 paragraph (2) and Article 114 paragraph (2) of Law 35/2009 contradicts Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution.
- Injunction** : Reject the Petitioner's petition in its entirety.
- Date of Decision** : Thursday, January 14, 2021.
- Decision overview** :

Whereas the Petitioner is an individual Indonesian citizen who is undergoing trial as a defendant in a criminal case at the District Court of Surabaya because he is accused of growing 27 cannabis plants hydroponically with plant heights ranging from 3 centimeters to 40 centimeters. The Petitioner is charged with alternative charges of violating Article 111 paragraph (2) and Article 114 paragraph (2);

In relation to the authority of the Court, because the Petitioner's petition is a petition to review the constitutionality of the norms of the Law, in casu of the Law Number 35 of 2009 concerning Narcotics (Law 35/2009) against the 1945 Constitution, the Court has the authority to adjudicate the Petitioner's a quo petition;

Whereas according to the Petitioner, by the not available provision of a limit on the interpretation of the word tree in Article 111 paragraph (2) and Article 114 paragraph (2) of Law 35/2009, investigators have carried out misdemeanor in prosecuting people or suspects who are found to have planted cannabis plants with stem heights of 0.5 centimeters to other sizes which have also created disparities in narcotics criminal case law. The Petitioner has been able to explain his constitutional rights and the constitutional losses he has suffered, including the causal relationship between the two. Therefore, according to the Court, the Petitioner has legal standing as the Petitioner in the a quo Petition;

Whereas because the Court is authorized to adjudicate the a quo petition and the Petitioner has the legal standing to file the a quo petition, the Court will consider the subject of the petition as follows:

1. Whereas Narcotics have a very negative impact, in which the effect is not only physically damaging but also psychologically damaging. Narcotics Category I is prohibited from being used for the benefit of health services and it can be used in very limited quantities and under

strict supervision for the benefit of developing science and technology, especially for the benefit of diagnostic reagents and laboratory reagents. This is because Narcotics Category I has a great potential to create dependence on the user;

2. Whereas the definition of the word tree has been described by the Great Dictionary of the Indonesian Language, botanists, and the laws and regulations. Based on these definitions, it can be concluded that what is meant by a tree is a woody plant, which has a clear form, including having clear roots, stems, and leaves, or a plant that has a shape resembling a tree in its growth or appearance. Meanwhile, regarding the classification of tree heights, based on the formulation of definitions provided by botanists, Regulation of the Ministry of Forestry, and Law 18/2013, they are different. This is because there is no definite size to describe the exact same height classification from one tree to another. In addition, the classification of tree height can be made due to the need and contextual relevance of the formulator of the definition;
3. Whereas Narcotic Plants Category I which include *Papaver Somniferum L*, coca plants, and cannabis plants (Appendix I of Law 35/2009) are plants with woody stems whose physical appearance has roots, stems, leaves, flowers, and fruit. Therefore, by referring to the characteristics of the Narcotic Plants Category I, both taxonomically and morphologically, the formulation of the word tree in Law 18/2013 cannot be applied to classify this type of plant because the Narcotic Plants Category I do not meet the formulation of having woody stems that can grow to a diameter of 10 centimeters or more measured at a height of 1.50 meters above ground level or are defined as woody plants that have clear roots, stems, and crowns with a minimum height of 5 meters as desired and argued by the Petitioner in his petition;

4. Whereas if the Court accommodates the Petitioner's petition to adopt the definition of 'tree' in Article 1 number 14 of Law 18/2013 as the same with the word 'tree' in Article 111 paragraph (2) and Article 114 paragraph (2) of Law 35/2009, it will indeed cause confusion or unclear understanding of the Narcotic Plants Category I itself. In addition, with regard to the notion of 'tree' in the Narcotic Plants Category I, which terminology is brought into a simpler interpretation, it cannot be separated from the spirit of the state to eradicate the crime of narcotics abuse which is very dangerous for the nation's generation, in which extraordinary steps are required, one of which is the ease of regulation and aspects of its implementation, including Law 35/2009;
5. Whereas in relation to the Petitioner's argument which states that the non-interpretation of the word tree in the norms of Article 111 paragraph (2) and Article 114 paragraph (2) creates disparities in the criminal law of narcotics cases, according to the Court, the disparity in the perspective of judges' decisions in adjudicating criminal cases is a discretion which the judge has in deciding, which cannot be separated from the formulation of the elements of norms and criminal threats in the criminal offense concerned. Besides, other fundamental factors that are considered by judges in adjudicating cases are legal facts from the results of existing evidence and the judge's conviction and understanding of events or values of justice that occurred and were proven in the trial, including an assessment of aggravating and mitigating matters each defendant which was authorized by the judge's assessment after considering from a philosophical, sociological, and juridical perspective;
6. Whereas there are many determining factors that make the judge's decision have different *strafmaat* (the severity of the sentence), as has been considered in the legal considerations above, besides the differences in the character of the cases between one another. Therefore,

the difference in the type and severity of the sentence imposed by the judge against the perpetrators of criminal acts of narcotics abuse does not necessarily mean that there is a disparity, both in criminal law in general and in narcotics criminal law in particular, as argued by the Petitioner;

Based on all of the above legal considerations, the Court is of the opinion that the Petitioner's argument is groundless according to law.

Therefore, the Court issued a decision that rejects the Petitioner's petition in its entirety.