



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 106/PUU-XVIII/2020

Concerning

Use of Narcotics for Health and Therapy

- Petitioners** : Dwi Pertiwi, et al.
- Type of Case** : Examination of Law Number 35 of 2009 concerning Narcotics (Law 35/2009) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) 35/2009 against Article 28C paragraph (1) and Article 28H paragraph (1) of the 1945 Constitution.
- Verdict** : 1. To declare that the petition of the Petitioner V and VI is unjustifiable.
2. To dismiss the petition of the Petitioners in its entirety.
- Date of Decision** : Wednesday, July 20, 2022.

Overview of Decision :

Whereas Petitioner I, Petitioner II, and Petitioner III are individual Indonesian citizens who are respectively the biological mothers of children suffering from certain diseases, and Petitioner IV, Petitioner V, and Petitioner VI are private legal entities (the Petitioners) that believed that their constitutional rights have been prejudiced by the promulgation of the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009. According to the Petitioners, the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 which prohibits the use of Narcotics Category I for health services, it is clearly in contrary to Article 28C paragraph (1) of the 1945 Constitution. In addition, the use of narcotics as part of the right to health services has been restricted based on the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 which states that Narcotics Category I is prohibited from being used for the benefit of health services, as guaranteed in Article 28H paragraph (1) of the 1945 Constitution.

Regarding the authority of the Court, because the Petitioner is reviewing the Law, *in casu* the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 against the 1945 Constitution, the Court has the authority to hear and decide on the *a quo* Petition.

Regarding the legal standing of the Petitioners, the Petitioner I, Petitioner II, Petitioner III, and Petitioner IV have legal standing to act as Petitioners in the *a quo* Petition. Meanwhile for Petitioner V and Petitioner VI, no convincing evidence is found that Petitioner V and Petitioner VI in carrying out their duties and roles have any direct relationship with the existence of the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 against the 1945 Constitution. Therefore, Petitioner V and Petitioner VI shall not be given legal standing to act as Petitioners in the *a quo* Petition.

The Petitioners argue that the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 has resulted in the loss of the rights of the Petitioners to obtain the development of science and technology benefits in the form of research results

on the health benefits of Narcotics Category I. According to the Petitioners, the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 which prohibits the use of Narcotics Category I for health services is clearly in contrary to Article 28C paragraph (1) of the 1945 Constitution. In addition, the use of narcotics as part of the right to health services has been restricted based on the Elucidation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law 35/2009 which states that Narcotics Category I is prohibited from being used for the benefit of health services, as guaranteed in Article 28H paragraph (1) of the 1945 Constitution.

Whereas regarding the use of Narcotics Category I for health services and/or therapy, as petitioned by the Petitioners, this is the same as the desire to change the use of Narcotics Category I which is imperatively allowed only for the purpose of developing knowledge. Such restrictions on the utilization cannot be separated from the consideration that the Narcotics Category I has a very high potential to cause dependence. Therefore, based on the legal facts obtained in the trial, it has been found that the wishes of the Petitioners to allow Narcotics Category I for health services and/or therapy has not yet been proven to have ground in the form of a comprehensive and in-depth scientific study and research in Indonesia. In the absence of evidence regarding the comprehensive study and research, it is difficult for the Court to consider and justify the wishes of the Petitioners to accept their arguments, whether medically, philosophically, sociologically, and juridically. Meanwhile, regarding the legal facts in the trial which confirmed that several countries have legally allowed the use of narcotics, it cannot necessarily be generalized that the countries that do not or have not legalized the use of narcotics, do not optimize the benefits of the narcotics in question.

In addition to the aforementioned legal considerations, the Court can understand and have a high sense of empathy for the patients of certain diseases which “phenomenally” according to the Petitioners can be cured by using Narcotics Category I therapy, as experienced by the child of Petitioner I, the Petitioner II, and Petitioner III. However, considering that there has not been a valid result of scientific study and research and by considering the effects or impacts that can be caused if the Court accepts the arguments of the *a quo* Petitioners, therefore, there is no other option for the Court to encourage the use of Narcotics Category I by first conducting the scientific study and research relating to the possibility of using Type I Narcotics for health services and/or therapy. Furthermore, the results of such scientific study and research can be used as the material for the consideration of the legislators in formulating the possible amendments to the policy regarding the use of Narcotics Category I.

Whereas the study and research as referred to above can be carried out by the Government or the private sector after obtaining a permit from the Minister of Health as regulated in Article 13 paragraph (1) of Law 35/2009, which states “Scientific institutions in the form of educational and training institutions as well as research and development organized by the government or the private sector may obtain, plant, store, and use Narcotics for the benefit of science and technology after obtaining permission from the Minister”. It is further emphasized that the requirements and procedures for obtaining a permit and the use of Narcotics as referred to are based on a Ministerial Regulation, in accordance with the spirit of Article 13 paragraph (2) of Law 35/2009. That means, the government and private institutions jointly or the government separately conducts study and research to scientifically examine Narcotics Category I for the benefit of health services or therapy. Furthermore, the study and research conducted on Narcotics Category I shall be concretely carried out based on professional health research standards as regulated in laws and regulations. The results of the study and research can provide a scientific study that proves the truth of such “hypothesis”, namely the use or utilization of Category I Narcotics can be designated for the purposes of health services and/or therapy for the treatment of certain diseases, which shall then be continued by testing its application to practical interest.

Whereas it can be further explained that in fact, the need for certainty whether or not Narcotics Category I can be used for the benefit of health services and/or therapy has long been a very urgent need. This is evidenced by the existence of legal facts in the Elucidation

of Article 6 paragraph (1) letter a of Law 35/2009 which already includes "a strict prohibition on the use of Narcotics Category I for therapy". In other words, actually the "phenomenon" regarding the need for Narcotics Category I to be used for therapeutic purposes has emerged since before Law 35/2009 was promulgated. Therefore, through the *a quo* Judgment, The Court needs to emphasize that the government **shall immediately** follow up on the *a quo* Decision regarding the study and research of Narcotics Category I for the purpose of health services and/or therapy, the results of which can be used in determining the policies, including in this case the possibility of amendments to the law by the legislators to accommodate such needs. This is because the delegation of authority by the Court to the legislators is based on the ground that *a quo* Law 35/2009 is not only regulates the classification of narcotics but also regulates criminal sanctions. Because such law contains the substance of any matters relating to criminal act (criminalization/decriminalization), the Court in several of its decisions is of the opinion that these matters are within the authority of the legislators (open legal policy). Therefore, even regarding this Law 35/2009, because in addition to the regulation of the use of narcotics needs to be very rigid, substantially narcotics are very sensitive issue, and because Law 35/2009 contains criminal sanctions, it is quite reasonable if the regulation of the norms shall be left to the legislators to follow up.

Whereas according to the results of the study and research, if it turns out that Narcotics Category I can be used for health services and/or therapy and implementing regulations are needed, then the government together with the stakeholders must regulate in detail the anticipation of the possibility of Narcotics Category I abuse. Therefore, through the *a quo* Decision, the Court is also reminding the legislators, including implementing regulations makers, to be very diligent and careful in anticipating these things, considering the culture and legal structure in Indonesia still requires continuous education.

Whereas based on the entire description of the aforementioned legal considerations, the Court has concluded that the provisions of the Elucidation of Article 6 paragraph (1) letter a of Law 35/2009 have provided benefits and legal certainty in relation to the right to develop oneself through the fulfilment of basic needs, the right to education and to benefit from science and technology, and for the sake of improving the quality of life and for the welfare of mankind as referred to in Article 28C paragraph (1) of the 1945 Constitution. In addition, these provisions have also provided legal certainty in relation to the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services as referred to in Article 28H paragraph (1) of the 1945 Constitution. Therefore, the argument of the Petitioners' petition regarding the unconstitutionality of the provisions of the Elucidation of Article 6 paragraph (1) letter a of Law 35/2009 is legally unjustifiable.

Whereas furthermore, the Petitioners' argument in relation to the unconstitutionality of the norms of Article 8 paragraph (1) of Law 35/2009 which according to the Petitioners has resulted in the loss of the Petitioners' rights to benefit from the development of science and technology in the form of health benefits from the Narcotics Category I as regulated in Article 28C paragraph (1) of the 1945 Constitution. Regarding the arguments in the Petitioners' petition, the Court is of the opinion that since the substance of the provisions of Article 8 paragraph (1) of Law 35/2009 is to emphasize the prohibition of the use of Narcotics Category I for health services, meanwhile the Elucidation of Article 6 paragraph (1) letter a of Law 35 /2009 confirms the restriction of the use of narcotics only for the development of science and the prohibition of the use or utilization of Narcotics Category I for therapy. Therefore, because in considering the constitutionality of the Elucidation of Article 6 paragraph (1) letter a of Law 35/2009, the Court is of the opinion that an immediate study and research should be conducted on Narcotics Category I to determine whether or not it can be used for health services and/or therapy, where such therapy is also a part of healthcare, the Court's affirmation relates to the immediate study and research to be conducted on Narcotics Category I, which may be used for health services and/or therapy, then this shall also apply in considering the constitutionality of the norm of Article 8 paragraph (1) of *a quo* Law 35/2009. Therefore, the Court is of the opinion that the legal considerations in assessing the constitutionality of the Elucidation of Article 6 paragraph (1) letter a of Law 35/2009 are

meant to be combined and shall be used in considering the constitutionality of the norms of Article 8 paragraph (1) of Law 35/2009. Therefore, since the Court is of the opinion that the Elucidation of Article 6 paragraph (1) letter a of Law 35/2009 is constitutional, as a juridical consequence, the provisions of the norms of Article 8 paragraph (1) of Law 35/2009 must also be declared as constitutional.

Based on all the aforementioned legal considerations, the Court has concluded that the provisions of Article 8 paragraph (1) of Law 35/2009 have provided legal certainty in relation to the right to develop oneself through the fulfilment of basic needs, the right to education and to benefit from science and technology, and for the sake of improving the quality of life and for the welfare of mankind, as referred to in Article 28C paragraph (1) of the 1945 Constitution. In addition, these provisions have also provided legal certainty in relation to the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services, as referred to in Article 28H paragraph (1) of the 1945 Constitution. Therefore, the argument in the Petitioners' petition regarding the unconstitutionality of the provisions of Article 8 paragraph (1) of Law 35/2009 is legally unjustifiable.

Regarding the *a quo* petition, the Court has issued a decision with the verdicts as follows

1. The petition of Petitioner V and Petitioner VI is unjustifiable.
2. To dismiss the petition of the Petitioners in its entirety.