



DECISION

Number 20/PUU-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition for Judicial Review of Law Number 31 Year 1999 regarding the Eradication of Criminal Acts of Corruption against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **Doctor SALIM ALKATIRI**; place/date of birth: Namlea, Buru Island, December 30, 1946, age: 62 years old, Religion: Islam, occupation: retired doctor, Indonesian nationality, having his address at Jalan Pedati Number 10 (Fatahilla Clinic), Kampung Melayu, East Jakarta;
Hereinafter referred to as **the Petitioner**;

[1.3] Having read the petition of the Petitioner;
Having heard and read the statement of the Petitioner;
Having heard the statements of the witnesses of the Petitioner;
Having examined the evidence;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the *a quo* petition are to review the constitutionality of Article 3 of Law Number 31 Year 1999 regarding the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia Year 1999 Number 140, Supplement to State Gazette of the Republic of Indonesia Number 3874, hereinafter referred to as the CEC Law), as amended with Law Number 20 Year 2001 (State Gazette of the Republic of Indonesia Year 2001 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 4150) deemed to be contradictory to the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering, prior to further considering the principal issue of the petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;
2. Whether the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

In respect of the foregoing two issues, the Court is of the following opinion:

Authority of the Court

[3.3] Considering whereas pursuant to Article 24C paragraph (1) of the 1945 Constitution *juncto* Article 10 paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the CC Law), the Court has the authority to hear at the first and final level the decision of which shall be final, among others in conducting judicial review of laws against the 1945 Constitution;

[3.4] Considering whereas the *a quo* petition is the petition for judicial review of law against the 1945 Constitution. Hence, the Court has the authority to examine, hear and decide upon such petition;

Legal Standing of the Petitioner

[3.5] Considering whereas Article 51 paragraph (1) of the CC Law states that Petitioners shall be the parties that deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

- a. Individual Indonesian Citizens (including group of people having a common interest);
- b. customary law community units insofar as they are still in existence in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated by law;

- c. public or private legal entities; or
- d. state institutions;

Hence, for a person or a party's legal standing to be accepted in a petition for judicial review of a law against the 1945 Constitution, the person or party concerned must first:

- a. explain his qualification whether as an individual Indonesian citizen, a customary law community unit, legal entity or a state institution;
- b. explain the impairment of his constitutional rights and/or authorities in his qualification as intended in the foregoing sub-paragraph a.

[3.6] Considering also, following the issuance of Decision Number 006/PUU-III/2005 dated May 31, 2005 and Decision Number 011/PUU-III/2007 dated September 20, 2007 and subsequent decisions, the Court is of the opinion that the impairment of constitutional rights and/or authorities must meet the following criteria:

- a. The Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;
- b. The Petitioners believe that their constitutional rights and/or authorities have been impaired by the coming into effect of a law being petitioned for review;

- c. the impairment of such constitutional rights and/or authorities is specific and actual in nature, or at least potential in nature which, according to logical reasoning, will take place for sure;
- d. there is a causal relationship (*causal verband*) between the impairment of such constitutional rights and/or authorities and the law being petitioned for review;
- e. if the petition is granted, it is expected that, the impairment of such constitutional rights argued will not or does not occur any longer.

[3.7] Considering whereas the Petitioner has explained his qualification as an Indonesian citizen, namely as a retired doctor and former Acting Head of the Health Service Office off Buru Regency of Maluku Province;

Whereas the Court must further consider, whether in such legal standing the constitutional rights of the Petitioner have been impaired by the coming into effect of Article 3 of the CEC Law;

[3.8] Considering whereas with his presumption that the impairment of his constitutional rights has been the result of the coming into effect of Article 3 of the CEC Law *juncto* Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 regarding the Eradication of Criminal Acts of Corruption, the Petitioner presents the following legal arguments:

- a. whereas the Petitioner is a doctor, an Indonesian citizen, who deems that his constitutional rights have been impaired by the provision of Article 3 of the CEC Law;

b. whereas the Petitioner has once been charged by a public prosecutor for allegedly committing a criminal act of corruption with the indictment that the defendant has committed a criminal act as explained and shall be subject to criminal sanction in Article 2 paragraph (1) *juncto* Article 18 paragraph (1) sub-paragraph a, sub-paragraph b, and sub-paragraph c of the CEC Law *juncto* Law Number 20 Year 2001 *juncto* Article 64 paragraph (1) of the Criminal Procedure Code or Article 3 *juncto* Article 18 paragraph (1) sub-paragraph a, sub-paragraph b, and sub-paragraph c of Law Number 31 Year 1999 *juncto* Law Number 20 Year 2001 *juncto* Article 64 paragraph (1) of the Criminal Procedure Code and by the District Court of Ambon Number 200/Pid.B/2004/PN.AB he was sentenced with the following rulings:

1. To declare that the defendant dr. Salim Alkatiri, namely Salim, is not legally and convincingly proven to have committed a criminal act of corruption as the first alternative indictment;
2. Hence, to release the defendant from the first alternative punishment;
3. To declare that the defendant dr. Salim Alkatiri, namely Salim, is legally and convincingly proven as guilty of committing a criminal act of corruption;
4. Hence, to pass a criminal sanction against the defendant with the criminal sanction for 2 (two) years;

5. To stipulate that the detention period that has been undertaken by the defendant shall be deducted from the entire period of the aforementioned criminal sanction.

Subsequently the foregoing decision was confirmed by the Decision of the District Court of Ambon Number 41/PID/ 2006/PT. MAL with the following rulings:

1. To accept the appeal application of the defendant and the Public Prosecutor;
2. To confirm the Decision of the District Court of Ambon dated November 22, 2005 Number 200/Pid.B/2004/PN.AB being appealed;
3. To charge the cost of the case to the defendant in two levels of judicature, while the cost at the appeal level is in the amount of Rp10,000 (ten thousand rupiah).

and subsequently by the Decision of the Supreme Court of the Republic of Indonesia Number 2349 K/Pid/2006 with the following rulings:

1. To reject the petition for the appeal to the Supreme Court of the Appellant/Defendant dr. Salim Alkatiri, namely Salim;
 2. To charge the Appeallant/Defendant concerned to pay for the cost of the case of this appeal to the Supreme Court level in the amount of Rp 2,500 (two thousand and five hundred rupiah);
- c. whereas the Petitioner deems that the aforementioned Article 3 of the CEC Law has impaired his constitutional rights, because the coming into effect of Article 3 of the CEC Law was applied in discriminatory manner

- towards the Petitioner when there was a riot in Maluku from January 19, 1999 until mid-2003 when the provision regarding the civil emergency state is applied, while the riot, the killing of one another in very unbelievable ways by showing human heads on the streets, have never been investigated until now;
- d. whereas the Petitioner argues about the existence of a discriminatory treatment where the Public Prosecutor was supposed to exercise his authority by setting aside the case of the Petitioner for the sake of public interest, because what the Petitioner did was a duty of humanity for the sake of the public interest during the riot in Maluku when the provision regarding the civil emergency state was applied;
 - e. whereas the Petitioner feel to have been treated with discrimination where the Petitioner reported an alleged corruption in the procurement of health devices in the Health Service Office of Buru Regency, while in fact, the Petitioner was arrested and brought into the hearing by the public prosecutor, and on the contrary the public prosecutor was defending the biggest corruptor in Maluku;
 - f. The Petitioner argues that Article 3 of the CEC Law could not be applied at the time of the application of the provision on civil emergency state because in an emergency state or situation, the forbidden becomes permitted, what is not law becomes law; in an ordinary situation an extraordinary law may arise because if it is in normal situation, then the measures taken would be said as to be unlawful or even arbitrary;

- g. whereas Article 3 of the CEC Law is contradictory to Article 12 and Article 22 paragraph (1) of the 1945 Constitution regarding the authority of the President to stipulate the state of emergency and the authority of the President to formulate the Government Regulation in Lieu of Law;
- h. The Petitioner argues that the Regent of Buru is entitled to stipulate the Decision of the Regent in the procurement of medicines and determination of the price of medicines the authority of which is based on Article 18 paragraph (2), paragraph (5), and paragraph (6) of the 1945 Constitution, so therefore Article 3 of the CEC Law is contradictory to Article 18 paragraph (2), paragraph (5) and paragraph (6) of the 1945 Constitution;
- i. The Petitioner also argues that the District Court of Ambon, the High Court of Maluku, and the Supreme Court have been mistaken in applying the law. Making a mistake in prosecuting means violating the law which means that it contradicts Article 28D paragraph (1), Article 28G paragraph (2) and Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution.

[3.9] Considering whereas based on the foregoing descriptions in paragraph **[3.5]** through paragraph **[3.8]**, the Court is of the opinion that the requirement for the legal subject of the Petitioner has been met in accordance with Article 51 paragraph (1) sub-paragraph a of the CC Law, so that the Petitioner meets the legal standing requirement to act as Petitioner in the *a quo* petition;

[3.10] Considering whereas insofar as relating to the impairment of the constitutional rights of the Petitioner, the Court shall consider and pass the legal judgment after examining the legal facts in the form of statements of the Petitioner, witnesses and legal facts in form of evidence of documents submitted in the hearing, and hence the impairment of the *a quo* constitutional rights shall be reserved and considered in the principal issue of the petition;

Principal Issue of the Petition

[3.11] Considering whereas the constitutional issue being the principal issue of the *a quo* petition is the constitutionality or unconstitutionality of Article 3 of the CEC Law against Article 12 regarding the state of emergency and the conditions for such state of emergency, Article 22 paragraph (1) of the 1945 Constitution regarding the authority of the President to stipulate Government Regulation in Lieu of Law, Article 18 paragraph (2) of the 1945 Constitution regarding the authority of autonomous regions to organize and manage the government affairs independently in accordance with the principles of autonomy and duty of assistance, paragraph (5) regarding the authority of the regional government to implement the autonomy to the broadest possible extent, except for the government affairs which are stipulated by law to be the affairs of the Central Government, and paragraph (6) regarding the authority of the autonomous regions in stipulating regional regulations, Article 28D paragraph (1), Article 28G paragraph (2), Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution, the constitutional rights of the Petitioner for the recognition, guarantee, protection and

certainty as well as equal treatment before the law as regulated in Article 28D paragraph (1) of the 1945 Constitution. The right to be free from torture or treatments degrading human dignity and the right to obtain political asylum from another country as regulated in Article 28G paragraph (2) of the 1945 Constitution. The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive laws as regulated in Article 28I paragraph (1) of the 1945 Constitution, and the right to be free from discriminatory treatment on any basis whatsoever and the right to obtain protection against any such discriminatory treatment as regulated in Article 28I paragraph (2) of the 1945 Constitution;

[3.12] Considering whereas the Petitioner argues with respect to the contradiction between Article 3 of the CEC Law and Article 28D paragraph (1) of the 1945 Constitution by stating the legal argumentations as follows:

- a. whereas for the first time the Petitioner was arrested for the reason of not being cooperative, while at that time it was already P-21 and there was still no permit from the Governor; after that the permit from the Governor was issued for investigation and not for arrest, the Petitioner, however, was arrested and put into prison for more than 3 (three) months, subsequently the detention of the Petitioner was deferred pending the decision on the appeal to the Supreme Court and was arrested again when the Petitioner filed a petition for judicial review of the *a quo* law in the Constitutional Court and for Review to the Supreme Court;

- b. whereas the Petitioner feels that he has worked with all his might in performing the duty of humanity during the riot in Maluku, while on contrary he was arrested for the popularity of the public prosecutor instead of the biggest corruptor in Maluku (*vide* Exhibit P-10);

[3.13] Considering whereas in addition, with regard to the contradiction between Article 3 of the CEC Law and Article 12 and Article 22 paragraph (1) of the 1945 Constitution, the Petitioner presents the following arguments:

- a. whereas based on the *a quo* articles, the President has the authority to declare a state of emergency and to stipulate government regulation in lieu of law in the event of state of exigency which was implemented by the enactment of Law Number 23 Year 1959 serving as the basis for the President to stipulate Presidential Decree Number 88 Year 2000 regarding the Civil Emergency State in Maluku Province and North Maluku Province. Hence according to the Petitioner, Article 3 of the CEC Law cannot be applied in Maluku Province and North Maluku Province;
- b. whereas to affirm the foregoing arguments, the Petitioner quoted the opinion of the experts that in civil emergency state, the forbidden becomes permitted, what is not law becomes law, and in fact the Petitioner also quoted the legal principle in Islamic law as set forth in the Koran chapter *Al Baqarah* paragraph 173, "*Whoever is constrained by necessity, not out of insolence, nor with the intention of repeating it, then no sin is on him,*" and

the principle in *Ushul Fiqh* (Islamic Law) which states that “*emergency state permits the forbidden and unforbidden matters if accompanied with emergency state and is not flawed if accompanied with urgent necessity.*”

[3.14] Considering whereas in addition, with regard to the contradiction between Article 3 of the CEC Law and Article 18 paragraph (2), paragraph (5), and paragraph (6) of the 1945 Constitution, the Petitioner presents the following arguments:

- a. whereas Article 18 paragraph (2) of the 1945 Constitution provides that the regional Government of regency/municipality shall organize and manage the Government affairs independently according to the principles of autonomy and duty of assistance. Article 18 paragraph (5) of the 1945 Constitution provides that the regional Governments shall exercise autonomy to the broadest possible extent, with the exception of governmental affairs determined by law as the affairs of the Central Government, and Article 18 paragraph (6) of the 1945 Constitution states that the regional governments shall have the right to stipulate regional regulations and other regulations to implement autonomy and duty of assistance;
- b. whereas with the formulation of the *a quo* articles, the Petitioner is of the opinion that the Regent of Buru is entitled to stipulate the Decision of the Regent with respect to the procurement of medicines and determination of the price of medicines in the Fiscal Years of 2001 and 2002;

[3.15] Considering whereas, pursuant to the provision of Article 39 of the CC Law, in the preliminary examination hearing towards the *a quo* petition, the Panel of Justices has given legal advice or instructions to the Petitioner on the importance for the Petitioner to be accompanied by an attorney and of the revisions of the substance of petition, in addition, the Petitioner's petition for the Court to appoint an attorney to accompany the Petitioner cannot be granted because such matter is surrendered completely to the Petitioner. The *a quo* legal instructions or advice has been corrected by the Petitioner on July 18, 2008;

Whereas with respect to the petition of the *a quo* Petitioner, in the Consultative Meeting of Justices (RPH) it has been decided that the Panel will examine the witnesses presented by the Petitioner, and in addition, the Consultative Meeting of Justices decided that it is not necessary to hear the statements from the Government and the People's Legislative Assembly;

[3.16] Considering whereas on August 11, 2008 the statements of witnesses of the Petitioner named Moksen Jamlean, S.H. (Assistant I in the Division of Government and Government Law of the Regional Government of Buru Regency) and drg. Laila Al Amrie (Head of the Health Service Office of the Regional Government of Buru Regency) who gave their testimony with the following substance:

Statement of the Witness of the Petitioner, Moksen Jamlean, S.H.

- whereas the regent of Buru once issued his decision in 2001 and 2002 which became the basis for the implementation of the procurement of goods and services.
- whereas the Petitioner carried out the project of procurement of medicines in accordance with the price as regulated in the Decision of the Regent and in year 2001, 2002, 2003, until 2008 such decision is still applicable, but on contrary, in 2001 and 2002 during the state of riot the Decision of the Regent concerned was not acknowledged in Buru regency;
- whereas the Decision of the Regent only regulates the standardization of price, while the Petitioner was the Acting Head of the Health Service Office based on the authority granted to him, because Maluku was really in the state of riot so that the Petitioner in performing his duty had to deal with companies in order to procure the medicines;
- whereas during the procurement of medicines, the witness did not know but heard that the Petitioner had been appointed as the Acting Head of the Health Service Office by the Regent in the procurement of medicines.

Statement of the Witness of the Petitioner, drg. Laila Al Amrie

- whereas in 2001-2002, the witness had not assumed as the position of Head of the Health Service Office, but the witness is also a dentist. During the riot, everything was difficult; medicines were also hard to find, and in addition, the officers were not at place;

- whereas during the riot, the Petitioner and the witness went to villages bringing medicines in order to provide free medications and the witness knew the efforts made by the Petitioner to help the people;
- whereas the Petitioner provided free medications not only in villages, but also in Buru Island, even until today there has never been a patient who pay for such medication. The Petitioner never opened any practice, but only treated and gave free medicines when there were patients;
- whereas during the riot, the Petitioner worked everyday in many places for giving medications and at the same time holding reconciliation for peace;

Opinion of the Court

[3.17] Considering whereas based on the foregoing description and legal arguments, the Court is of the opinion that there are 3 (three) legal issues stated by the Petitioner;

[3.17.1] *First*, with respect to the argument of the Petitioner which states that Article 3 of the CEC Law is contradictory to Article 12 of the 1945 Constitution. Article 12 of the 1945 Constitution reads, “*The President shall declare a state of emergency. The conditions and consequences thereof shall be prescribed by law*”. The Court is of the opinion that Article 12 of the 1945 Constitution grants the authority to the President to declare a state of emergency. The provision with respect to such state of emergency has been regulated in the Government

Regulation in Lieu of Law Number 23 Year 1959 regarding the Revocation of Law Number 74 Year 1957 on the Stipulation of State of Emergency (State Gazette of the Republic of Indonesia Year 1959 Number 139, Supplement to State Gazette of the Republic of Indonesia Number 1908) as already amended twice, most recently with Law Number 52 *Prp* Year 1960 (State Gazette of the Republic of Indonesia Year 1960 Number 170, Supplement to State Gazette of the Republic of Indonesia Number 2113). The *a quo* law basically regulates as follows:

1. The stipulation and nullification of a state of emergency;
2. The emergency state level authority and the agencies assisting the state of emergency authority;
3. Levels of state of emergency along with their criteria, namely the civil emergency state, military emergency state, and war emergency state;
4. The provisions to enforce and manage the consequences of the exercise of power, as well as criminal provisions;
5. The authority of the Civil Emergency Authority, Military Emergency Authority and War Emergency Authority.

Whereas in the *a quo* law in Chapter V regarding the Provisions on the Enforcement and Management of the Consequences of the Exercise of Power, as well as the Criminal Provisions as regulated by Article 46 through Article 60, which among other things regulate the authority of the Civil Emergency Authority to use coercion, eliminate, prevent, carry out, or to return to normal condition all that

are being or made or have been made, committed, ignored, damaged, or taken. The *a quo* provisions also regulates the criminal sanction on the violation by the Civil Emergency Authority, and also the authority of the Civil Emergency Authority to perform the expropriation of articles used in committing the criminal acts, to impose a penalty. In addition, the *a quo* Law also includes the sanctions of confinement and imprisonment against those violating the regulations of the Civil Emergency Authority. The Petitioner has also stated the same matter in his objection/legal basis at the level of appeal to the Supreme Court, but the *a quo* legal basis is set aside by the Supreme Court (*vide* Exhibit P-1D);

With respect to the arguments of the Petitioner which state the legal justification that the criminal act he has committed actually cannot be applied to the Petitioner because it was committed in civil emergency state, the Court is of the opinion that between the formulation of Article 3 of the CEC Law and the emergency state applied in Maluku Province and North Maluku there is no legal connection because Article 3 of the CEC Law regulating criminal acts reads: *“Every person with the intention of enriching himself or another person or a corporation, abusing the authority, opportunity or facilities at his disposal due to his rank or position which can harm the state finance or state economy, shall be sentenced with life imprisonment or a minimum imprisonment of 1 (one) year and a maximum imprisonment of 20 (twenty) years and or minimum penalty of Rp 50,000,000 (fifty million rupiah) and maximum penalty of Rp 1,000,000,000 (one billion rupiah)”*, while the provision on civil emergency state applied in Maluku Province and prolonged riots in North Maluku Province have has endangered the

enforcement of law and order which cannot be settled in an ordinary manner. It is true that an emergency state gives freedom to the Civil Emergency Officials to breach the applicable regulations in normal condition, but it does not nullify or eliminate the unlawful nature (*wederrechtelijkheid*) of criminal acts of corruption which shall not be committed by anyone including the Civil Emergency State officials. With respect to the judgment of whether the Civil Emergency State can become a justification (*rechtvaardigingsgronden*) or an excuse (*strafuitluitingsgronden*) in the criminal proceedings as it has been the case with the Petitioner, is the authority of the judges *in casu* the judges of the court of general judicature to judge and consider. Hence, the Court is of the opinion that there is no unconstitutionality issue on the norm in Article 3 of the CEC Law, even though it is applied in the Civil Emergency State. The Provisions in Law Number 23 *Prp* Year 1959 or in Presidential Decree Number 88 Year 2000 regarding the Civil Emergency State in Maluku Province and North Maluku Province do not negate at all the application of the norm of Article 3 of the CEC Law. Moreover, in Law Number 23 *Prp* Year 1959, there is no article negating the provisions of general criminal sanction or provision on special criminal sanction *in casu* the criminal act of corruption indicted on the Petitioner;

[3.17.2] *Second*, the Petitioner argues that Article 3 of the CEC Law cannot be applied to the Petitioner since pursuant to Decision Number 821.3/SK/06/2000 dated March 15, 2000 the Petitioner is appointed in the position as the Acting Head of the Health Service Office Buru Regency, and based on the Decision of the Regent of Buru Regency Number 918-80 Year

2001 dated September 12, 2001, as well as the Decision of the Regent of Buru Number 445-205 Year 2002 dated July 25, 2002 to assume the position as the direct superior of the Project Leader on January 2001 until December 2002 and based on the Decision of the Regent of Buru dated November 11, 2002 (*vide* Exhibit P-15) the substance of which is regarding the permit for direct election/direct appointment of projects in the circle of the Health Service Office of Buru Regency, while in the *a quo* Decision of the Regent there is a clause stating that the matters related to the project administration shall be settled in accordance with the applicable procedures and regulations, which is contradictory to Article 18 paragraph (2), paragraph (5), and paragraph (6) of the 1945 Constitution. With respect to such argument, the Court is of the opinion that the provision of Article 18 paragraph (2) is a constitutional provision in the administration of regional government by granting the authority to the head of region to organize and manage the government independently according to the principles of autonomy and duty of assistance. Even though it is true that the autonomy of regency region has granted the authority to the Regent to organize and manage his region independently including to stipulate the decision assigning the Petitioner with the duty of carrying out the procurement of medicines, in the Decision of the Region concerned, such procurement has also been confirmed in that the matters related to the project administration must be in accordance with the applicable procedures and regulations. Even though the Petitioner has received the authority based on the *a quo* Decision of the regent, it cannot serve as a justification or an excuse as considered in sub-paragraph

[3.17.1]. It is evident that the *a quo* Decision of the Regent has been misused by the Petitioner based on the Decisions of the District Court, the High Court and the Supreme Court which have binding legal effect (*vide* Exhibit P-1B, Exhibit P-1C and Exhibit P-1D).

[3.17.3] *Third*, with regard to the argument of that Petitioner stating that Article 3 of the CEC Law is contradictory to Article 28D paragraph (1) of the 1945 Constitution which reads, “*Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law,*” the Court is of the opinion that Article 28D paragraph (1) of the 1945 Constitution recognizes and protects the constitutional rights of citizens to obtain the guarantee and protection of legal certainty, which in the penal law sector in Indonesia is considered as the legality principle derived from the basic idea/value of legal certainty as included in Article 1 paragraph (1) of the Criminal Procedure Code, “*There is no action that can be punished, unless based on the power of the provision of penal legislations that has existed before*”. The principle of *nullum delictum nulla poena sine praevia lege punali* which has gone through development or refinement as *nullum delictum sine ius* which is the requirement to guarantee the legal certainty (*lex certa*).

Whereas based on the foregoing description, the presumption of the Petitioner stating that there is a contradiction between Article 3 of the CEC Law and Article 28D paragraph (1) of the 1945 Constitution is inappropriate and legally groundless because Article 3 of the *a quo* law has expressly formulated

the criminal acts qualified as criminal acts of corruption, meaning that the stipulation of criminal act in the *a quo* law has been clear and certain.

The argument of the Petitioner which states that the criminal sanction of imprisonment being served by the Petitioner as the result of the application of Article 3 of the CEC Law constitutes a torture or inhuman treatment, so that according to the Petitioner it is contradictory to Article 28G paragraph (2) of the 1945 Constitution. The Court is of the opinion that such matter is a logical consequence of the criminal proceedings decided by the judges, which is not the authority of the Court to judge. Hence, the substance of the impairment suffered by the Petitioner is more related to the implementation of law rather than an issue of constitutionality;

With respect to the argument of the Petitioner which states that Article 3 of the CEC Law is contradictory to Article 28I paragraphs (1) and (2) of the 1945 Constitution, the Court is of the opinion that there it is not relevant to be considered further, because there is no provision being applied retroactively in the case experienced by the Petitioner.

4. CONCLUSION

Based on all the foregoing considerations on facts and law described above, the Court has come to the following conclusion:

[4.1] Whereas the impairment suffered by the Petitioner is more about the issue of implementation of norm rather than the issue of constitutionality of the norm being reviewed;

[4.2] Whereas the civil emergency state stipulated pursuant to Government Regulation in Lieu of Law Number 23 Year 1959 regarding the Revocation of Law Number 74 Year 1957 and the Stipulation of State of Emergency (State Gazette of the Republic of Indonesia Year 1959 Number 139, Supplement to State Gazette of the Republic of Indonesia Number 1908) as already amended twice, most recently with Law Number 52 *Prp* Year 1960 (State Gazette of the Republic of Indonesia Year 1960 Number 170, Supplement to the State Gazette of the Republic of Indonesia Number 2113), does not negate the applicability of Article 3 of the CEC Law;

[4.3] Whereas Article 3 of the CEC Law is not contradictory to Article 18 paragraph (2), paragraph (5), and paragraph (6), Article 28D paragraph (1), Article 28G paragraph (2), Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution;

[4.4] Whereas accordingly, the Petitioner's petition is legally groundless, so that it must be rejected.

5. DECISION

In view of Article 56 paragraph (5) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia

Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316), therefore based on the 1945 Constitution of the Republic of Indonesia,

Passing the decision,

To declare that the Petitioner's petition is rejected;

Hence this decision was made in the Consultative Meeting of Justices, by nine Constitutional Court Justices on Tuesday dated the twelfth of August year two thousand and eight, pronounced in the Plenary Session of the Constitutional Court open for public on this day, Friday, dated the fifteenth of August year two thousand and eight, by eight Constitutional Court Justices, namely H. Harjono, as the Chairperson and H.M. Arsyad Sanusi, Moh. Mahfud MD, H. Abdul Mukthie Fadjar, H.A.S. Natabaya, I Dewa Gede Palguna, Maruarar Siahaan, and Muhammad Alim respectively as Members, assisted by Eddy Purwanto as the Substitute Registrar in the presence of the Petitioner, the Government or its Attorney, and the People's Legislative Assembly or its Attorney.

CHAIRPERSON,

sgd.

H. Harjono

JUSTICES,

sgd.

HM. Arsyad Sanusi

sgd.

Moh. Mahfud MD

sgd.

H. Abdul Mukthie Fadjar

sgd.

H.A.S. Natabaya

sgd.

I Dewa Gede Palguna

sgd.

Maruarar Siahaan

sgd.

Muhammad Alim

SUBSTITUTE REGISTRAR,

sgd.

Eddy Purwanto