CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 157/PUU-XXI/2023

Concerning

Death Penalty for Perpetrators of Criminal Acts of Corruption

Petitioners	:	**Michael Munthe, et al.**
Type of Case	:	Judicial Review of Law Number 31 of 1999 concerning Eradication of the Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of the Criminal Acts of Corruption (PTPK Law) and Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (P3 Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Article 2 paragraph (1) and paragraph (2) of the PTPK Law and Article 15 paragraph (1) of the P3 Law are contrary to Article 1 paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (1), Article 28H paragraph (3), Article 28I paragraph (1), Article 28I paragraph (2), Article 28I paragraph (4), Article 28J paragraph (1), Article 30 paragraph (1), Article 31 paragraph (5), and Article 33 paragraph (3) of the 1945 Constitution
Verdict	:	To dismiss the Petitioners' petition entirely
Date of Decision	:	Wednesday, January 31, 2024
Overview of Decision	:	

Whereas the Petitioners submit a petition for the unconstitutionality of the norms of Article 2 paragraph (1) and paragraph (2) of the PTPK Law and Article 15 paragraph (1) letter a of the P3 Law, which are considered to be contrary to the 1945 Constitution. In the Petitioners' opinion, perpetrators of criminal acts of corruption can be sentenced to death because they have prejudiced the Petitioners and Indonesian citizens as taxpayers. Therefore, the norms of Article 2 paragraph (1) and paragraph (2) of the PTPK Law create ambiguity, thus hampering efforts to eradicate the criminal acts of corruption. In addition, the norms of Article 15 paragraph (1) letter a of the P3 Law restrict the authority of the Constitutional Court in terms of petitions related to criminal policies. In fact, the Court is in a position to review whether the restrictions

imposed by law are in accordance with the constitution or exceed the limits specified in the constitution. Therefore, the addition of the norms of the death penalty is not contrary to Article 28I paragraph (1) of the 1945 Constitution.

Regarding the Court's authority, because the Petitioners submit a petition for review of the constitutionality of norms of Law, *in casu* Article 2 paragraph (1) and paragraph (2) of the PTPK Law and Article 15 paragraph (1) of the P3 Law against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioners' legal position, in the Court's opinion, the Petitioners have been able to prove that there is a causal relationship (*causal verband*) between the assumptions regarding the injury of their constitutional rights that is actual or at least potential and the enactment of the norms being petitioned for judicial review. This is because the Petitioners as individual Indonesian citizens and citizens have good intentions to participate in preventing and eradicating the criminal acts of corruption. Citizens' participation to be involved in preventing and eradicating the criminal acts of corruption is also stipulated in Article 41 and Article 42 of the PTPK Law, including the Petitioners as taxpayers. Regarding the *a quo* petition, the Petitioners wish to convey ideas, suggestions, and opinions to law enforcers, in this case, the Constitutional Court to examine, adjudicate, and decide the constitutionality of the norms of the articles being petitioned for review. Therefore, if the Petitioners' petition is granted, then the assumption regarding the injury of constitutional rights experienced or has the potential to be experienced by the Petitioners will not or no longer occur. Thus, regardless of whether the Petitioners' argument regarding the unconstitutionality of the norms of Article 2 paragraph (1) and (2) of the PTPK Law and Article 15 paragraph (1) letter a of the P3 Law is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas because the constitutional issue questioned by the Petitioners is evident, in the Court's opinion, there is no longer any urgency and relevance in requesting information from the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, the Petitioners argue that in principle the norms of Article 2 paragraph (1) of the PTPK Law need to add the threat of the death penalty as an alternative to criminal threats if the action is accompanied by other criminal acts, such as collusion, nepotism, premeditated murder, etc. In the Petitioners' opinion, these other actions can be used as aggravating reasons for imposing the death penalty, so that the application of "certain circumstances" as specified in Article 2 paragraph (2) of the PTPK Law is not appropriate as an aggravating reason, because it prevents the imposition of death penalty on perpetrators of criminal acts of corruption. Regarding the *a quo* Petitioners' argument, in the Court's opinion, the argument of the *a quo* Petitioners' petition cannot be separated from the nature of the criminal acts of corruption which have been categorized as an extraordinary crime. This means that the criminal acts of corruption can be equated with other extraordinary crimes, namely the criminal acts of terrorism, narcotics abuse, or serious environmental damage which have very serious consequences. In fact, based on the Rome Statute, the criminal acts of corruption are equated with the crime of genocide, the crime against humanity, and the crime of aggression. This cannot be separated from the impact of the criminal acts of corruption which not only threaten the foundations of the country's economy but also may result in making people's lives miserable. Therefore, answering the Petitioners' argument should consider whether, given the nature of the criminal acts of corruption as extraordinary crime and special criminal acts, prosecution may be carried out jointly if perpetrators of the criminal acts of corruption turn out to have also committed other criminal acts at the same time or have other backgrounds/motives, such as collusion, nepotism, premeditated murder and so on. In other words, whether the criminal acts of collusion, nepotism, premeditated murder and other crimes committed together with the criminal acts of corruption can become aggravating factors for perpetrators of criminal acts of corruption. Therefore, the two types of criminal acts can be accumulated into a combined criminal act and become an aggravating reason and a strong basis for the perpetrators to be prosecuted simultaneously for the two types of criminal acts in question so that the type of criminal threat in the provisions of the norms of Article 2 paragraph (1) of the PTPK Law can be added so that the heaviest threat is not the threat of life imprisonment, but the death penalty. In this regard, the Court needs to emphasize that the criminal acts of corruption are criminal acts categorized not only as extraordinary crime but also doctrinally included into special criminal acts which are different from general criminal acts in terms of the institutions authorized

to carry out investigations, prosecutions and adjudications and the procedural law. Thus, if the Petitioners' wishes are accommodated by the Court, then new problems will arise, because the criminal acts that the Petitioners intend to use as aggravating reasons, namely collusion, nepotism, premeditated murder, and so on, are criminal acts that fall into the category of general criminal acts, which are different from criminal acts of corruption in terms of the procedures for investigation, prosecution and adjudication as regulated in Article 2 paragraph (1) of the PTPK Law. The new problem in question is how it is possible to combine the process of investigation, prosecution, and adjudication of special criminal acts with that of general criminal acts because between the two there are several different aspects, including several aspects in the procedural law (formal law) used.

The Court can understand the enthusiasm of the Petitioners who wish to participate/play an active role in preventing and eradicating the criminal acts of corruption, as mandated by Article 41 and Article 42 of the PTPK Law. In the Petitioners' opinion, the existing norms of Article 2 paragraph (1) of the PTPK Law without any threat of the death penalty do not provide a deterrent effect. However, because the *a quo* Petitioners' wishes are constrained by formal issues, namely regarding the procedures for prosecution or other aspects, the violation of them will actually give rise to uncertainty and injustice, both for perpetrators and victims of the criminal acts of corruption, including, in this case, the wider community. Whereas based on the description of the legal considerations above, the Court is of the opinion that the argument of the Petitioners' petition which states that the provisions of the norms of Article 2 paragraph (1) of the PTPK Law are unconstitutional to the extent that they do not contain the threat of death penalty is legally unjustifiable.

In considering the constitutionality of the norms of Article 2 paragraph (1) of the PTPK Law, the Court has taken the stance that it is impossible to include the phrase 'death penalty' in the norms of Article 2 paragraph (1) of the PTPK Law. Therefore, the Petitioners' petition for the Court to declare the provisions of Article 2 paragraph (2) of the PTPK Law unconstitutional becomes irrelevant to be considered further, given that the threat of the death penalty against perpetrators of criminal acts of corruption in Indonesia is still necessary, because the threat of death penalty, despite having to fulfill the requirement of "certain circumstances", is still the main choice as a sanction that contains an effective deterrent effect. Thus, in *a contrario* way, if the provisions of the norms of Article 2 paragraph (2) of the PTPK Law are declared unconstitutional and do not have binding legal force, then the PTPK Law loses the threat of 'death penalty' for perpetrators of criminal acts of corruption. Thus, perpetrators of criminal acts of corruption under any circumstances, including criminal acts of corruption committed under 'certain circumstances', can no longer be subject to the death penalty.

Doctrinally, in the Court's opinion, the application of the death penalty is not prohibited because it still needs to be maintained to prevent extraordinary crime from occurring to protect the interests of wider society. In fact, the fundamental reference that is often used to allow the application of the death penalty is Article 6 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) which emphasizes that the right to life must be protected by law and cannot be taken away arbitrarily, which was later ratified by Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights. Therefore, the strong reasons to continue implementing the *a quo* death penalty still need to pay attention to the provisions of Article 6 paragraph (2) of the ICCPR. Thus, the application of the death penalty cannot be necessarily carried out without respecting human rights as guaranteed by Article 28J paragraph (1) of the 1945 Constitution and, in the context of the *a quo* case, can only be applied or exceptionally applied to extraordinary crime which, if connected with the provisions of Article 6 paragraph (1) and paragraph (2) of the ICCPR which have been ratified by Law 12/2005, is a type of criminal acts which death penalty is permitted to be applied, especially with the requirement of 'certain circumstances' as one of the elements of delict in Article 2 paragraph (2) of the PTPK Law. Thus, this shows that the application of the death penalty is possible, and must be carried out carefully and exceptionally. Based on these legal considerations, the Petitioners' argument petitioning that the provisions of the norms of Article 2 paragraph (2) of the PTPK Law be declared contrary to the 1945 Constitution and not having binding legal force is legally unjustifiable.

The Petitioners further argue that the Constitutional Court can pass down a decision relating to the criminalization of crime so that the addition of the death penalty norm in the norms of Article 2 paragraph (1) of the PTPK Law in the Court decision is not contrary to Article 28I paragraph (1) of the 1945

Constitution. Furthermore, in the Petitioners' opinion, the norms of Article 15 paragraph (1) letter a of the P3 Law have limited the authority of the Constitutional Court to add criminal norms, so that the norms of Article 15 paragraph (1) letter a of the P3 Law are contrary to the 1945 Constitution. Regarding the *a quo* Petitioners' arguments, in the Court's opinion, one of the fundamental materials in criminal law is matters relating to criminal threats/sanctions. In the context of criminal threats/sanctions, a law formulates how a criminal act is prohibited and threatened with criminal threats/sanctions. In such a case, the criminal provisions formulated are not a concrete event but cover all circumstances and conditions so that no criminal act escapes criminal punishment. The formulation of a criminal provision includes the legal subjects that are the target of the criminal norm (*addressaat norm*), prohibited acts (*in casu*, *strafbaar*), either in the form of doing something, not doing something, and causing the consequences of a criminal act so that the act is threatened with criminal sanctions. However, in this regard, the Court needs to emphasize its stance that the authority regarding whether or not it is needed to complete criminal provisions in the norms of a statutory article, including in this case adding heavier criminal threats/sanctions, is the authority of the legislators [*vide* Constitutional Court Decision Number 46/PUU-XIV/2016, p. 452-453]. Therefore, regarding the *a quo* petition, the Court has not yet found a reason to shift from its previous stance that the criminal policy remains the authority of the legislators. Thus, regardless of whether a Constitutional Court decision may become part of the provisions of the norms of Article 15 paragraph (1) letter a of the P3 Law, given that the *a quo* case is substantially specific to criminal policy, the matter is impossible to implement/accommodate. Therefore, the Petitioners' argument questioning the unconstitutionality of the provisions of the norms of Article 15 paragraph (1) letter a of the P3 Law is legally unjustifiable.

Based on the entire description of the legal considerations above, it is evident that the norms of Article 2 paragraph (1) and paragraph (2) of the PTPK Law and Article 15 paragraph (1) letter a of the P3 Law do not violate the guarantee of self-protection, security, the right to life, fulfillment of and respect for human rights, state defense and security as guaranteed in the 1945 Constitution, not as argued by the Petitioners. Therefore, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision in which the verdict was to dismiss the Petitioners' petition entirely.