CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 13/PUU-XXII/2024

Concerning

The Use of Medical Cannabis

Petitioners	:	**Pipit Sri Hartanti and Supardji**
Type of Case	:	Judicial Review of Law Number 8 of 1976 concerning the Ratification of Single Convention on Narcotic Drugs of 1961 along with the amending protocols (Law 8/1976) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Material review of Article 1 number 2 of Law 8/1976 along with the Elucidation against Article 28H paragraph (2) of the 1945 Constitution
Verdict	:	To dismiss the Petitioners' petition entirely
Date of Decision	:	Wednesday, March 20, 2024
Overview of Decision	:	

The Petitioners are individual Indonesian citizens a husband and a wife who have a daughter named Shita Aske Paramita. The Petitioners submit a petition for review of the norms of Article 1 number 2 of Law Number 8 of 1976 concerning the Ratification of Single Convention on Narcotic Drugs of 1961 along with the amending protocols (Law 8/1976) along with the elucidation so that the Petitioners can treat the disease suffered/experienced by their daughter using medical cannabis legally.

Regarding the Court's authority, because the Petitioners' petition is a review of the norms of Article 1 number 2 of Law 8/1976 along with the Elucidation against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioners' legal standing, 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, actually or at least potentially, and the enactment of the norms petitioned for judicial review. This is because as individual Indonesian citizens, the Petitioners as the biological parents of a girl named Shita Aske Paramita have good intentions and a strong determination to treat their daughter who experiences/suffers from cerebral palsy. To improve their daughter's health condition, the Petitioners wish to use medical cannabis legally and lawfully. Therefore, if the Petitioners' petition is granted, then the

assumptions regarding the constitutional injury experienced or potentially experienced by the Petitioners will no longer or will not occur so that the Petitioners can legally use medical cannabis for the treatment of their biological daughter without being constrained by legal regulations. Thus, regardless of whether the Petitioners' argument regarding the unconstitutionality of the norms of the article petitioned for review 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 constitutionality issue being questioned by the Petitioners, in the Court's opinion, is clear, there is no relevance in requesting the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, the Petitioners argue that the content of Article 1 number 2 of Law 8/1976 along with the Elucidation, regarding the phrase "the Protocols Amending Single Convention on Narcotic Drugs of 1961", is contrary to Article 28H paragraph (2) of the 1945 Constitution, to the extent that it is not interpreted as "the Protocols Amending Single Convention on Narcotic Drugs of 1961, to the protocol of the 63rd session, including the document of Commission on Narcotic Drugs Sixty-third session Vienna, 2–6 March 2020, which uses document symbols: E/CN.7/2020/CRP.19".

Before the Court considers the norms of Article 1 number 2 of Law 8/1976 which is the subject matter of the Petitioners' petition, the Court will first carefully examine the Elucidation to the *a quo* Article, where in citing/quoting the Elucidation to Article 1 number 2 of the *a quo* Law, the Petitioners write that the elucidation to the article is "Self-explanatory" [*vide* revised petition p. 6, 29, and 30]. The Court finds the legal fact that the Elucidation to Article 1 of Law 8/1976 as quoted by the Petitioners is not exactly the same as the Elucidation to Article 1 of Law 8/1976 attached to the petition evidence, namely evidence P-2, which reads: "Indonesia proposes requirements for Article 48 paragraph (2) in accordance with the principle of not accepting an obligation to submit international disputes in which Indonesia is involved to the International Court of Justice, especially if such disputes have a political aspect." If the Petitioners pay close attention to the two articles and the elucidation as the material of review of the *a quo* Law, it is evident that the Elucidation contained in Article 1 is an Elucidation to number 1 and number 2. This elucidation is a unity for both number 1 and number 2 of Article 1 of Law 8/1976. This means that there is no separation in terms of elucidation between number 1 and number 2 of the *a quo* Law as stated by the Petitioners in their petition. The Elucidation to paragraph 2 quoted by the Petitioners with the phrase "Self-explanatory" is indeed the Elucidation to Article 2, not an Elucidation to Article 1 paragraph 2. So, regarding the Elucidation to Article 1 number 2 (the Petitioners mentions paragraph 2), in the Court's opinion, the Elucidation of Article 1 of the *a quo* Law must be read as a single elucidation for number 1 and number 2, so that there is no separate elucidation for number 2, but there is only one elucidation in Article 1 for both number 1 and number 2. This means that there is no specific elucidation for number 2, while the phrase "self-explanatory" is the elucidation of Article 2, not the elucidation of paragraph 2 because Article 1 only contains 1 (one) Elucidation. Therefore, in the Court's opinion, the Petitioners have been inaccurate in citing the Elucidation to Article 1 of Law 8/1976. However, regarding the contents of the Elucidation to Article 1 of Law 8/1976, which is part of the object of review, in the Court's opinion, the existence of the Elucidation to Article 1 of the *a quo* Law constitutes the Indonesian Government's response to Article 48 of Single Convention on Narcotic Drugs of 1961.

Article 48 of the Single Convention on Narcotic Drugs of 1961 provides: *First*, if a dispute arises between two or more parties regarding the interpretation or application of this convention, the Parties must consult together to resolve the dispute through negotiation, investigation, mediation, conciliation, arbitration, assistance to regional bodies, judicial processes or other

peaceful means of their own choice; *Second*, any dispute that cannot be resolved in the prescribed manner shall be referred to the International Court of Justice for a decision. Against the provisions of Article 48 of the Single Convention on Narcotic Drugs of 1961, and pursuant to the Elucidation to Article 1 of Law 8/1976, Indonesia proposed a reservation towards Article 48 paragraph (2) of the Single Convention on Narcotic Drugs of 1961 by confirming the Indonesian government's stance of not accepting an obligation to submit international disputes in which Indonesia is involved to the International Court of Justice, especially if such disputes have a political aspect. In the Court's opinion, the stance/decision of the Indonesian government not to be involved in an obligation to the International Court of Justice regarding the interpretation and application of the Single Convention on Narcotic Drugs, especially if such disputes have a political aspect, is part of Indonesia's foreign policy as a sovereign country, especially being sovereign in determining its stance regarding foreign policy to be free from the threat of illicit trafficking of narcotics so that domestic security instability does not occur. In addition, this shows that Indonesia is also sovereign in building synergy and international cooperation in the field of preventing and eradicating narcotics crimes which are carried out in a focused, maximum, and collaborative manner. The Indonesian government's foreign policy choice not only shows the Indonesian delegation's firm and elegant attitude in responding to global and sensitive issues but also shows the Indonesian government's mainstreaming in protecting the entire nation and the native land of Indonesia as a realization of the principle of protection of the people and the principle of state sovereignty as guaranteed and in line with the principles/values in the Pancasila and the 1945 Constitution. Thus, the Petitioners' argument that the phrase "... along with the Elucidation to Article 1 number 2 of Law 8/1976" is contrary to Article 28H paragraph (2) of the 1945 Constitution which guarantees ease and special treatment in order to obtain the same opportunity and benefit in order to achieve equality and justice is legally unjustifiable.

Regarding the review of the norms of Article 1 number 2 of Law 8/1976, after the Court carefully examines the argument of the Petitioners' petition, even though the norms being reviewed in the *a quo* petition are different from the norms reviewed in Constitutional Court Decision Number 106/PUU-XVIII/2020, the constitutionality issue of the norms reviewed in both cases is the same which basically questions the use of cannabis for health services. Therefore, the constitutionality issue of the norms of Article 1 number 2 of Law 8/1976 cannot be separated from the Court's stance in Constitutional Court Decision Number 106/PUU-XVIII/2020, which essentially prohibits the use of cannabis for health services. The Court also emphasized that the Government should immediately conduct research and study on the types of Narcotics Category I for health services and/or therapy, the results of which can be used to determine policies, including changes to laws.

Because the issue of the constitutionality of the norms in the a quo petition is, in principle, the same as Case Number 106/PUU-XVIII/2020, the legal considerations of Constitutional Court Decision Number 106/PUU-XVIII/2020 also apply *mutatis mutandis* as a legal consideration in assessing the constitutionality of the norms of Article 1 number 2 of Law 8/1976 which are petitioned for review by the Petitioners in the a quo Case. Although the Petitioners argue the latest developments from the Commission on Narcotic Drugs, Reconvened sixty-third session, in Vienna on 2 – 4 December 2020 in accordance with document E/CN.7/2020/CRP.19, which basically describes that the World Health Organization (WHO) as a world health agency which is part of the United Nations, recommends deleting cannabis and cannabis resin from Schedule IV of the 1961 Convention, the Indonesian government submitted a different statement regarding the WHO's recommendation.

Pursuant to the official document in Conference Room Paper E/CN.7/2020/CRP.24, the Indonesian Government in principle stated its objections regarding the ECDD's (Expert Committee on Drug Dependence) Recommendation and voiced Indonesia's commitment to continue upholding the consensus on narcotics that had been achieved a long time ago. Indonesia also warned about the dangers of using cannabis and substances related to cannabis which are greater than the benefits. Likewise, it should be clear that accepting such recommendations was not an attempt to legitimize the use of cannabis freely. In this regard, Indonesia urged caution regarding the wider use of cannabis. In addition, regarding regulations within the jurisdiction of countries participating in the narcotics convention, Indonesia emphasized that each country had the sovereignty to regulate the use of illegal drugs in its national law in order to protect its citizens from the dangerous implications/impacts of narcotics [*vide* Document E/CN.7/2020/CRP.24, dated 15 December 2020, Commission on Narcotic Drugs, Reconvened sixty-third session on 2-4 December 2020, pages 36 – 37].

Because the Indonesian Government has firmly stated the commitment to continue upholding the consensus on narcotics that was achieved a long time ago as delivered at the Conference of Commission on Narcotic Drugs on 15 December 2020, it is clear that the Indonesian Government has not adopted and ratified document E/CN.7/2020/CRP.19 issued by Commission on Narcotic Drugs, Reconvened sixty-third session, in Vienna on 2 – 4 December 2020, so that Indonesia is not bound to legalize the use of medical cannabis for health services. Even though in this convention the issue of cannabis has shifted/moved from Schedule IV to Schedule I, this has not caused the Indonesian government to budge and shift from its previous stance which essentially strictly prohibits the use of Narcotics Category I for therapy and health services. Narcotics Category I can only be used to develop science and cannot be used in therapy because of having a high potential to cause dependence [*vide* Elucidation to Article 6 paragraph (1) letter a of Law 35/2009]. Moreover, as confirmed in Constitutional Court Decision Number 106/PUU-XVIII/2020, there is no evidence that comprehensive and in-depth scientific studies and research have been carried out in Indonesia to allow Narcotics Category I for health and/or therapy services. In the absence of evidence regarding comprehensive studies and research following the Constitutional Court decision, the desire to use cannabis or cannabis substances for health services, once again, is difficult for the Court to consider and justify for rational reasons medically, philosophically, sociologically, and juridically. In this regard, through the a quo decision, the Court needs to reiterate that the Government should immediately carry out special, in-depth, and comprehensive studies/research regarding the use of cannabis for medical purposes in Indonesia. This is important for the Court to emphasize in its *a quo* decision to ensure that the issue is immediately resolved and answered rationally and scientifically. Moreover, from the perspective of state ideology to protect the entire nation and the native land of Indonesia as a realization of the principle of protection of the people and the principle of state sovereignty, it is very important for the government to immediately resolve it and then accommodate it in changes to related laws through the National Legislation Program in an open cumulative list. This needs to be considered because every day there are increased aspirations from the public regarding the need to use cannabis for health purposes and humanitarian reasons. Therefore, the Court remains in its previous stance that special, in-depth, and comprehensive studies/research regarding the use of cannabis for medical purposes in Indonesia need to be carried out immediately so that it can become a reference for the legislators. Therefore, the Petitioners' argument regarding the unconstitutionality of the norms of Article 1 number 2 of Law 8/1976 is legally unjustifiable.

Subsequently, the Court passed down a decision in which the verdict was to Dismiss the Petitioner's petition entirely.