



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 95/PUU-XXII/2024**

Concerning

**Deportation and Detention
For Foreign Citizens Committing Narcotics Crimes**

Petitioner	: Yuyun Yuanita
Type of Case	: Judicial Review of Law Number 35 of 2009 concerning Narcotics (Law 35/2009) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial Review of Article 146 paragraph (1) and paragraph (2) of Law 35/2009 against Article 28B paragraph (1) and paragraph (2), Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution.
Verdict	: To dismiss Petitioner's petition in its entirety
Date of Decision	: Thursday, 26 September 2024
Overview of Decision	:

The Petitioner is an Indonesian citizen who is married to a Swiss citizen named Jean Marc Frederic Gaudin bin Charly Andre who has been deported from the territory of the Republic of Indonesia and is prohibited from re-entering the territory of the Republic of Indonesia for committing a narcotics crime and the Petitioner and her husband have a child who was born in the marriage.

Regarding the Court's authority, since the Petitioner petitions for judicial review of Article 146 paragraph (1) and paragraph (2) of Law 35/2009 against Article 28B paragraph (1) and paragraph (2), Article 28D paragraph (1), Article 28I paragraph (2) of the 1945 Constitution, the Court has the authority to hear the Petitioner's petition.

Regarding the legal standing of the Petitioner, who in principle argues that the constitutional rights of the Petitioner and the Petitioner's child are potentially violated because they cannot be together with the Petitioner's husband within the territory of the Republic of Indonesia and therefore the Petitioner and the Petitioner's child do not receive affection, protection, care and spiritual sustenance due to the implementation of the norms of Article 146 paragraph (1) and paragraph (2) of Law 35/2009. The granting of the *a quo* petition will allow the Petitioner and the Petitioner's children to regain their constitutional rights as stated in the 1945 Constitution of the Republic of Indonesia and they will be able to reunite with the Petitioner's husband within the territory of the Republic of Indonesia. Therefore, the Court is of the opinion that the Petitioner has specifically and actually described her alleged constitutional loss which she believes occurs due to the enactment of the legal norms being petitioned for

review. Therefore, Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* Petition;

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance to hear the statements from the parties as intended in Article 54 of the Constitutional Court Law.

Whereas in the subject matter, the Petitioner argues that the norms of Article 146 paragraph (1) and paragraph (2) of Law 35/2009 which regulates deportation and detention for foreign citizens committing narcotics crimes have given rise to injustice and discrimination for spouses and children from marriages with foreign citizens who have committed narcotics crimes in Indonesian territory. Regarding the Petitioner's arguments, the Court in principle considers the following:

- (1) Whereas narcotics crimes are crimes which in many countries, including Indonesia, are classified as extraordinary crimes or serious crimes and have a transnational nature because such crimes are often cross-border crimes, the criminals are of different nationalities, and the object of the crimes being the narcotics originating from one country which are then transported to another country. Indonesia has ratified the Convention on the Eradication of Narcotics and Psychotropics as part of its efforts to realize one of the goals of the state, namely, to protect all Indonesian people and all of Indonesian territory as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. The regulations regarding deportation and detention for foreign citizens are regulated as legal norms in Law 35/2009, for which a judicial review is being petitioned in the *a quo* petition. The Court is of the opinion that the regulation is not only the correct legal policy, but it is also necessary as part of the state's obligation to protect all Indonesian people and all of Indonesian territory as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia and at the same time to maintain the legal sovereignty of the Republic of Indonesia.
- (2) Whereas Article 146 paragraph (1) of Law 35/2009, which constitutes an additional criminal threat in the form of deportation for foreign citizens committing narcotics crimes, it has a relation to the basic immigration regulations for foreigners (alien) which also applies in many countries. In addition, the *a quo* article is a derivation of the basic immigration regulations of Indonesia which states any foreign citizens who enter the territory of Indonesia and apply for a residence permit in the territory of Indonesia must comply with the intent and purpose of being in Indonesia, in this case only foreign citizens who provide benefits and do not endanger the security and public order within the territory of Indonesia are allowed to enter, regardless of whether a person or a foreign citizen is married to and has a family with a local citizen or not. Meanwhile, Article 146 paragraph (2) of Law 35/2009 is a logical consequence of the norm in Article 146 paragraph (1) of Law 35/2009. Whereas the *a quo* petition is not in line with the spirit of eradicating narcotics crimes in the territory of the Republic of Indonesia and the interpretation being petitioned by the Petition may become a new mode of narcotics distribution in Indonesia carried out by organized crime groups which is transnational in nature.
- (3) Whereas the Court is of the opinion that the Petitioner may use the opportunity to submit other efforts in accordance with the laws and regulations. This effort may be made because the Petitioner has a child who lives with the Petitioner within the territory of Indonesia. Therefore, the Petitioner's argument stating that Article 146 paragraph (1) and paragraph (2) of Law 35/2009 are contrary to Article 28B paragraph (1) and paragraph (2), Article 28D paragraph (1) and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia is entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.