



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 114/PUU-XXII/2024

Concerning

**Actus Reus Element in Norm of Article 2 paragraph (1)  
and Article 3 of Corruption Eradication Law**

- Petitioner** : Anthony Nicholas Stephanus Kosasih
- Type of Case** : Judicial Review of Law Number 31 of 1999 concerning Eradication of Corruption Crimes (Law 31/1999) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (Corruption Eradication Law) are contrary to Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**  
To dismiss the Petitioner's petition for preliminary injunction  
**On the Merits:**  
To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Wednesday, 16 October 2024
- Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen who is currently named a suspect by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK). The Petitioner argues that the provisions of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law violate the Petitioner's constitutional rights as guaranteed in Article 28D paragraph (1) of the 1945 Constitution which provides the right to receive guarantees, protection and fair legal certainty and Article 28G paragraph (1) of the 1945 Constitution which provides the Petitioner with the right to receive protection for his personal honor and dignity, and the right to a sense of security and protection from the threat of fear to do or not do something which is a fundamental human right.

Whereas regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Court is of the opinion that the norm being petitioned for a review concerns the actions of a person that may be categorized as a criminal act of corruption, whether they were carried out unlawfully or by abusing the authority, opportunity or means available to such person due to his/her position or status, this norm is

closely related to the determination of the Petitioner as a suspect by the Corruption Eradication Committee. In such qualifications, the Petitioner has been able to specifically describe the alleged loss of the Petitioner's constitutional rights and there is a causal relationship (*causal verband*) between the alleged constitutional loss and the implementation of the norms of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law which are being petitioned for review. The alleged constitutional loss of the Petitioner is specific or special and has actually occurred. Therefore, if the *a quo* petition is granted by the Court, the alleged constitutional loss as described will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Whereas regarding the petition for preliminary injunction submitted by the Petitioner, upon careful examination by the Court, the *a quo* petition does not proceed with an examination hearing with the agenda of the hearing statements from the parties as intended in the provisions of Article 54 of the Constitutional Court Law. Therefore, the *a quo* petition will automatically be decided immediately with a final decision and the legal norms that are being reviewed will immediately receive legal certainty. Therefore, the Petitioner's petition for preliminary injunction so that the Corruption Eradication Commission would postpone the investigation process and coercive measures against the Petitioner pending the determination of legal certainty regarding the *a quo* petition is legally unjustifiable.

Whereas since the *a quo* petition is clear, as considered in the above consideration, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas regarding the Petitioner's petition, it is not *nebis in idem*, upon careful examination of the Court on the arguments of the Petitioner's petition, the articles being petitioned for review, and the legal basis used for the review, the Petitioner describes that the reasons for his petition is the absence of prohibited acts (*actus reus*) in the norms of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law, this causes legal uncertainty and creates fear of doing/not doing something and creates ambiguity between the boundaries of what constitutes a criminal, civil or administrative act, thus opening up space for broader interpretation by the law enforcement officers. Although the legal basis used in this petition has also been used several times in previous cases which have been decided by the Court, the Petitioner is able to describe distinct reasons which are then concluded in a petition as contained in the *petitum* submitted by the Petitioner. Therefore, regardless of whether the *a quo* petition is substantially legally justifiable or not, pursuant to the provisions of Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulations, formally, the *a quo* petition may be re-submitted.

Whereas the criminal acts of corruption are a serious problem because they can endanger the stability and security of society, threaten the sustainability of economic and socio-political development, damage the values of democracy and national morality and create massive poverty. Due to its highly destructive nature, corruption has been categorized as an extraordinary crime. Thus, the efforts to eradicate the criminal acts of corruption must be carried out seriously, and even extraordinarily, due to the systematic and widespread nature of the criminal acts of corruption which have resulted in the loss of the state and the misery for the people. Regarding the criminal act of corruption which is seen as a criminal act that has a very broad impact, then categorically the Corruption Eradication Law has provided a classification regarding what actions are included in the types of criminal acts of corruption, namely they can be divided into 7 (seven) categories including criminal acts of corruption related to state financial losses, bribery, extortion, embezzlement in office, fraudulent acts, conflicts of interest in procurement, and gratification.

Whereas the meaning of *actus reus* in term of terminology, it is a physical or concrete action carried out by a certain legal subject which constitutes a criminal act. In the context of an act that constitutes a criminal act, as a fundamental element, the action carried out by the said

legal subject must be unlawful. Furthermore, *actus reus* universally often referred to as an external element or objective element of an action that falls into the category of a criminal act. Therefore, from a criminal law perspective, *actus reus* must refer to the existence of two important elements, namely the existence of an act or behavior and the element of the act being unlawful. Thus, the Court is of the opinion that in order for the *actus reus*, which is a concrete act by a certain legal subject, to be subject to criminal penalties, the elements of an unlawful act must be fulfilled, so that the act can be accused of/accounted for and be punished.

Whereas the elements of an unlawful act doctrinally are any act against the law which causes any losses, any violation of the law, any act that is contrary to the rights of others, carried out without authority, and violates moral values and general principles of law. Therefore, by looking closely at the definition of the elements of unlawful act which have a very broad meaning above and by linking the said elements to the formulation of the norm contained in the law which does not expressly include the element of *actus reus*, including in this case the norms of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law, the Petitioner argues that this would immediately cause a legal uncertainty.

Whereas the norms of Article 2 of the Corruption Eradication Law have the following elements: 1) any person; 2) who enriches himself/herself, another person, or any corporation; 3) is against the law; 4) is detrimental to the state finances or the state economy. Meanwhile, the elements contained in Article 3 of the Corruption Eradication Law are: 1) any person; 2) aiming to benefit oneself or another person or any corporation; 3) abusing authority, opportunity or means available to him/her due to his/her position or status; 4) harming the state finances or the state economy. Pursuant to the formulation of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law, any acts that are categorized as criminal acts are acts that are against the law and cause the state losses. Therefore, if we look closely at the two statutory norms that the Petitioner petitions for it to be declared unconstitutional because they do not concretely include any *actus reus* elements, the Court is of the opinion that the inclusion of the elements of unlawful act in the norm of Article 2 paragraph (1) of the Corruption Eradication Law and the element of abusing authority and opportunities or means available to him/her due to his/her position or status in the norm of Article 3 of the Corruption Eradication Law, by linking them to the definition of the elements of unlawful act which have a very broad meaning as considered above, then in principle, the *actus reus* element has actually been included/covered in Article 2 paragraph (1) of the Corruption Eradication Law and there is also the same overlapping meaning in the element of abusing authority and opportunities or means available to him/her due to his/her position or status as contained in the norm of Article 3 of the Corruption Eradication Law, it is clear that the legal facts regarding Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law cannot immediately cause legal uncertainty. Moreover, if the norm is interpreted partially, there would be an interpretation as if since there is no *actus reus* element in the form of physical or concrete actions that is describable, it could be said that such act does not fulfil the elements of being against the law and harming the state finances or economy. Because, philosophically, the true essence of the formulation of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law is a form of anticipation by the legislators regarding the many variants of criminal acts of corruption which are constantly developing rapidly along with the development of the era and technology, so that the formulation is made in such a way to be able to reach various *modus operandi* that harms the state finances or harms the state economy, such *modus operandi* are increasingly sophisticated and the proving of which are increasingly complicated.

Whereas the Petitioner's concerns regarding the provisions of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law have the potential to be misused by the law enforcers in any case that has a certain legal relationship, such as business judgement rule which should not be targeted by the criminal investigation and inquiry process, as argued by the Petitioner. According to the Court, if the Petitioner's allegation is true, such matter is within the domain of the law enforcement officers handling the case related to the Petitioner to assess it. Because, in the perspective of business judgment rule which relates to the elements in Article 2

paragraph (1) and Article 3 of the Corruption Eradication Law, the law enforcement officers must carefully dissect whether the elements contained in the statutory norms used by them as the legal basis to accuse certain legal subjects have truly fulfilled the legal facts violating the principles of business judgment rule, one of the fundamental elements of which is the existence of good faith from the said legal subject and once again this is within the authority of the law enforcement officers in concrete cases to assess. Thus, a person cannot immediately petition for the norms of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law to be declared unconstitutional. Pursuant to all the above descriptions of the legal considerations, the arguments of the Petitioner's petition are legally unjustifiable and the provisions of Article 2 paragraph (1) and Article 3 of the Corruption Eradication Law have provided legal certainty and have provided a sense of security and protection from the threat of fear to do or not do something which is a fundamental human right as guaranteed in Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, instead of as argued by the Petitioner.

Accordingly, the Court passed down a decision which verdicts are as follows:

**On Preliminary Injunction:**

To dismiss the Petitioner's petition for preliminary injunction.

**On the Merits:**

To dismiss the Petitioner's petition in its entirety.