

LEGAL NEWS

Constitutional Court strikes out phrase “unpleasant treatment”

by Nancy Setiawati



The Constitutional Court on January 2014 struck out the phrase “unpleasant treatment” from Article 335 (1) point 1 Indonesian Criminal Code (“ICC”) declaring the vague wording unconstitutional.

Prior to the court ruling, Article 335 (1) point 1 of the ICC read:

*“By imprisonment of one year maximum or a fine of 4,500 Rupiah maximum shall be punished: first, any person who unlawfully coerces another person through force, through any other act of violence, or through **unpleasant treatment** or through threat of force, with any other acts of violence, or also with unpleasant treatment, directed either toward that other person or toward a third party, to do, not to do, or to tolerate something.”*

In the decision, the court did not annul the whole article but only the part considered ambiguous. The Panel of Judges explained that the formulation of the article, especially the phrase “...or through unpleasant treatment...” (“...sesuatu perbuatan lain maupun perlakuan yang tak menyenangkan..”), was too vague to be used as a legal term.

The article criminalizes unpleasant treatment (“perbuatan tidak menyenangkan”) which has been notoriously used in an arbitrary fashion by the police and by people to charge others, especially their opponents. For example, people can be reported to the police simply because they come to someone’s house late at night and this displeases us, based on Article 335 (1) point 1 of the ICC.

Moreover, according to article 21 (1) point b of the Indonesian Criminal Procedural Code (Kitab Undang-Undang Hukum Acara Pidana), a detention order might be applied against an accused or defendant who is strongly presumed to have committed a criminal act in case of article 335 (1) of the ICC. It might give the opportunity to people to define any treatment as an unpleasant act from their view, which can be misused for various purposes. In practical terms, this phrase has been deliberately used solely in order to detain someone.

Because the phrase has been annulled by the Constitutional Court since 14 January 2014 and the Decision was final and binding, every case involving unpleasant treatment **after such decision should be stopped by the law**. Consequently, the police will not continue an investigation into any report or complaint by the public related to article 355 (1) point 1 of the ICC. Regretfully, cases which were reported **before this decision** will still proceed based on the old version of article 355 (1) point 1 of the ICC.

The Constitutional Court decision signifies the breach of the *lex certa* principle which means the law must be specific in its formulation as an argument in annulling a specific article. It is hoped that this decision will avoid any misuse of Article 335 of the ICC by the public, the police and prosecutors.

DISCLAIMER

Articles in this newsletter are purely informational in nature and should in no way be construed as constituting legal advice.