



**THE CONSTITUTIONAL COURT OF  
THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION**

**CASE NUMBER 79/PUU-IX/2011**

**CONCERNING**

**APPOINTMENT OF VICE MINISTERS**

**Petitioners** : Adi Warman, S.H.,M.H.,M.BA. and H. TB.  
Imamudin, S.Pd.,M.M.

**Type of Case** : Judicial Review of Law Number 39 Year 2008  
concerning State Ministries against the 1945  
Constitution.

**Substance of the Case** : Article 10 of Law Number 39 Year 2008 concerning  
State Ministries regarding appointment of vice  
ministers is inconsistent with articles of the 1945  
Constitution, namely:

- Article 4 paragraph (1) regarding the power of government;
- Article 17 paragraph (2) regarding appointment and dismissal of the ministers;

- Article 28D paragraph (1) regarding the right of recognition, guarantees, protection, and legal certainty as well as equal treatment before the law.

**Injunction of Decision** : To declare that the petition of the Petitioners shall be granted in part.

**Date of Decision** : Tuesday, June 5, 2012.

**Summary of the Decision:**

The Petitioners, Adi Warman, S.H.,M.H.,M.BA. as the General Chairperson of the Central National Movement for the Eradication of Corruption and H. TB. Imamudin, S.Pd.,M.M. as the General Secretary of the National Movement for the Eradication of Corruption, qualified as a legal entity in the form of community organization established with the purpose of striving for public interest. The Petitioners filed a judicial review of Article 10 of Law 39 Year 2008 concerning State Ministries (Law 39/2008) because the aforementioned article impairs the constitutional rights of the Petitioners.

With regard to the authorities of the Court, Article 24C paragraph (1) of the 1945 Constitution and Article 10 paragraph (1) sub-paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court as amended by Law Number 8 Year 2011 concerning Amendment to Law

Number 24 Year 2003 concerning the Constitutional Court (the Constitutional Court Law) *juncto* Article 29 paragraph (1) sub-paragraph a of Law Number 48 Year 2009 concerning Judicial Power state the Court has the authority to hear at the first and final levels, the decision of which shall be final, in order to review Laws against the 1945 Constitution. Since the petition of the Petitioners is a review of the norm of Article 10 of Law 39/2008 against the 1945 Constitution, the Court has the authority to examine, hear, and decide upon the petition of the Petitioners.

With regard to legal standing of the Petitioners, Article 51 paragraph (1) of the Constitutional Court Law stipulates that the parties eligible to file a petition for judicial review of Laws against the 1945 Constitution shall be the parties considering that their constitutional rights and/or authority are impaired by the coming into effect of the Law petitioned for review, namely:

- a. individual Indonesian citizens (including groups of people having a common interest);
- b. customary law community groups insofar as they are still in existence and in accordance with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated by Law;
- c. public or private legal entities; or
- d. state institutions.

Following the issuance of Constitutional Court's Decision Number 006/PUU-III/2005 and Constitutional Court's Decision Number 11/PUU-V/2007 as well as subsequent decisions, the Court has been of the opinion that the constitutional rights and/or authority as intended in Article 51 paragraph (1) of the Constitutional Court Law must meet the following five requirements:

- a. The existence of constitutional rights and/or authority of the Petitioner granted by the 1945 Constitution;
- b. The Petitioner considers that such constitutional rights and/or authority have been impaired by the coming into effect of the Law petitioned for review;
- c. The impairment of such constitutional rights and/or authority must be specific (special) and actual or at least potential in nature which, pursuant to logical reasoning, can be assured of occurring;
- d. There is a causal relationship (*causal verband*) between the intended impairment of constitutional rights and/or authority and the coming into effect of Law petitioned for review;
- e. The possibility that with the granting of the Petitioner's petition, the impairment of such constitutional rights and/or authority argued will not or will no longer occur;

In the context of legal standing, the Petitioners argued that the impairment of the constitutional rights and/or authority of the Petitioners are related to the enforcement of the sovereignty of the people [*vide* Article 1 paragraph (2) of the 1945 Constitution], the enforcement of Indonesia as a constitutional state [*vide* Article 1 paragraph (3) of the 1945 Constitution], as well as the right and responsibility of the community in the organization of the government [*vide* Article 27 paragraph (1) of the 1945 Constitution]. Other impairment of the constitutional rights and/or authority resulted from the appointment of 20 (twenty) Vice Ministers, so that the country is required to provide state special facilities funded from the State Revenues and Expenditures Budget in the form of official residence, official vehicle, operational cost, salary, functional allowance, secretary, adjutant, service staff, driver, etc. which, for the period of 3 (three) years, are expected to amount to approximately more than one trillion eight hundred million rupiahs. If there is no appointment of vice ministers, the budget can be used for businesses which can open employment opportunities as an implementation of Article 27 paragraph (2) of the 1945 Constitution or used for health services as a manifestation of Article 28H paragraph (2) of the 1945 Constitution. The budget can also be used to improve a better living standard, health service, or for increasing education expenses in the context of implementing Article 31 paragraph (1) of the 1945 Constitution, or used to help impoverished persons and abandoned children as set forth in Article 34 paragraph (1) of

the 1945 Constitution. The Petitioners, as taxpaying Indonesian citizens, deemed their rights to be impaired by such appointment of vice ministers. With respect to the argument of the petition, the Court considers that the Petitioners have fulfilled the requirement of legal standing.

Article 10 of Law 39/2009 provides that the President may appoint Vice Ministers in certain Ministries in the event that there is any workload which requires special handling. In the substance of their petition, the Petitioners are of the opinion that Article 10 of Law 39/2009 is inconsistent with Article 17 of the 1945 Constitution which regulates that the President shall be assisted by state ministers who shall be appointed and dismissed by the President, however, Article 17 of the 1945 Constitution does not mention the position of Vice Minister. Article 10 of Law 39/2009 is also inconsistent with Article 28D paragraph (3) of the 1945 Constitution which guarantees that every person shall have the right of equal opportunity in the government. The Elucidation of Article 10 of Law 39/2009 states that Vice Ministers are career officers and are not members of the cabinet. As a result, the right of citizens, who are neither career officers nor civil servants, to have equal opportunity in the government, particularly to become Vice Ministers, has been denied.

With respect to the substance of the petition of the Petitioners, the Court is of the following opinion.

1. Since Article 17 of the 1945 Constitution only mentions state ministers without mentioning vice ministers, the Court is of the opinion that if ministers can be appointed by the President, the logic is that the President can also appoint vice ministers.
2. The 1945 Constitution only regulates basic matters. Based on the constitution, the appointment of vice ministers is a part of the President's authority to perform his duties. Something which is neither instructed nor prohibited may be conducted and included in laws in so far as it is not potentially violating constitutional rights or other provisions in the 1945 Constitution.
3. The costs incurred for an office or an institution, which by the Petitioners is deemed as a waste of state finances, should not be merely considered as losses. This is because, such costs also provides advantages and benefits for the nation and the state. The existence of vice ministries can also supervise the use of budget so as to prevent wasting and corruption.
4. The appointment of vice ministers may be conducted by the President as the holder of governmental power. The persons who can be appointed as vice ministers may come from civil servants, members of the Indonesian National Army, members of the Police of the Republic of Indonesia, and common citizens.

5. Article 10 of Law 39/2009 constitutes a specific provision of Article 9 paragraphs (1) and (2) of the law *a quo* which does not include vice ministers in the organizational structure of a Ministry. Since the law does not explain the meaning of “*a workload which requires special handling*”, the President is authorized to judge the weight of the workload so as to require the appointment of a vice ministers. This is not inconsistent with the constitution if it is seen from the aspect of the prioritization of the goals to be achieved (*doelmatigheid*) or the benefit value in the context of fulfilling the ever increasing expectations and needs of the community. Therefore, Article 10 of Law 39/2009 is neither inconsistent with the 1945 Constitution nor contains any constitutionality issues.
6. Although Article 10 of Law 39/2009, from the aspect of the President’s authority to appoint vice ministers, does not constitute a constitutional authority, the regulation contained in the Elucidation of Article 10 of Law 39/2009 in practice has resulted in a legality issue, namely legal uncertainty, because the implementation is not in accordance with the personnel law or the laws and regulations in the field of government and bureaucracy. Moreover, the Elucidation of Article 10 of Law 39/2009 contains a new norm, while in fact the elucidation of an article may not include a formulation which contains a norm. This has resulted in a constitutional issue, because although the President has the prerogative rights in certain



matters, the President also has legal obligations to comply with the laws and regulations.

7. The Court considers that the appointment of vice ministers has caused legality issues, leading to legal uncertainty. *First*, the appointment of vice ministers is not in line with the background and philosophy of the formation of the Law concerning State Ministries. The formation of vice minister's office without any job analysis and job specification has given a strong impression that the office of vice minister has been established only as a political camouflage and for distributing political gifts. *Second*, when appointing vice ministers, the President did not determine the specific workload for each vice minister so that it unavoidably given a strong impression to be more a political measure rather than the appointment of civil servants professionally in public offices. What is more, the selection of vice minister position was conducted in the same way with the appointment of ministers, namely preceded by a fit and proper test in the same place and manner as the selection and appointment of ministers. This matter has become very political and it is not in accordance with the personnel law if related to the Elucidation of Article 10 of the Law *a quo*. *Third*, the Elucidation of Article 10 of Law *a quo* provides that the office of vice minister is a career office of civil servants. However, in the appointment, it is not clear whether the office is structural or functional. If it is deemed as a

structural office, the relevant person must occupy IA structural office, his/her personnel development, according to the personnel law, shall be under the guidance of the Secretary General. However, if the office of vice minister is treated as a functional office, the problem becomes strange, since functional position is specific to a field instead of different types of profession and expertise combined in one package as a functional office. It does not make sense if the office of vice minister with extremely variable fields of duty, expertise and work units, is considered to be a group of functional positions. *Fourth*, if a vice minister is appointed in a career position with a structural office of echelon IA, the appointment must be conducted through a selection and assessment by the Final Assessment Team (*Tim Penilai Akhir/TPA*) led by the Vice President upon the proposal of each of the relevant agencies. However, according to the facts at the hearings, the vice ministers were appointed without going through such procedures and inaugurated by the President himself at the State Palace, thus using the procedures applicable to the ministries rather than the procedures applicable to civil servants occupying career offices. *Fifth*, the nuance of politicization in the appointment of vice ministers is also reflected on the amendments to the Presidential Regulation concerning the Formation and Organization of State Ministries which occurred twice before and after the

appointment of vice ministers, which is considered by some people as an effort to justify the persons who did not meet the requirements to be appointed as vice ministers so that that could meet such requirements. The amendments to the Presidential Regulation seemed to have been made less carefully so as to confuse the personnel guidance system as regulated in the previously existing laws and regulations. *Sixth*, the legality complication in the appointment of vice ministers also emerges in relation to the end of office term. If vice ministers are appointed as political officials assisting the ministers, then their term of office shall end concurrently with the term of office of the President who appointed them. However, if vice ministers are appointed as bureaucrats in career offices, the office shall continue to attach until the retirement or end of service period based on the applicable provisions for career offices, so that it shall not automatically end concurrently with the office of the President who appointed them.

8. The Elucidation of Article 10 of Law 39/2009 which provides that a vice minister is a career official rather than a cabinet member is not synchronous with the provision of Article 9 paragraph (1) of Law 39/2009, because pursuant to the aforementioned article, the organizational structure of a ministry consists of the elements of: leader, namely the Minister; assistant of the leader, namely the general secretariat; implementer of main duties, namely the

director general; supervisor, namely the inspector general; support, namely the body or center; and regional implementer of main duties and/or foreign representatives in accordance with the laws and regulations. If vice ministers are stipulated as career officials, the position is not included in the organizational structure of ministries, so as to create uncertainty of just laws, which means that it is inconsistent with Article 28D paragraph (1) of the 1945 Constitution.

9. The emergence of confusion in the implementation of the issue of legality in the personnel law and government bureaucracy has occurred due to the provision of the Elucidation of Article 10 of the Law *a quo*, therefore, in the Court's opinion, the existence of the aforementioned elucidation has instead caused uncertainty of just laws in the legal implementation and it has limited or restricted the exclusive authority of the President to appoint and dismiss ministers/vice ministers based on the 1945 Constitution so that the aforementioned Elucidation must be declared unconstitutional. Since the currently existing vice ministers have been appointed among other things based on Article 10 and its Elucidation in the Law *a quo*, the Court is of the opinion that the position of vice minister needs to be re-adjusted immediately as the exclusive authority of the President according to this Court's decision. Therefore, all Presidential Decrees concerning the appointment of

each vice minister need to be renewed to become products which are in accordance with the exclusive authority of the President and to prevent them from containing legal uncertainty.

Based on the legal opinions above, the Court grants the petition of the Petitioners in part. The Court also declares that the Elucidation of Article 10 of Law 39/2009 is inconsistent with the 1945 Constitution, therefore, it does not have binding legal force.