



DECISION

Number 009/PUU-IV/2006

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

The Constitutional Court of the Republic of Indonesia

Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition for judicial review of the Law of the Republic of Indonesia Number 18 Year 2003 concerning Advocates against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) filed by:

- 1. A.WAHYU PURWANA, S.H., M.H.**, occupation: advocate and legal consultant, address: Jl. Permata V Block AD 2 Number 14 Fajar Indah Permata Colomadu Karanganyar and Jl. KH Samanhudi Number 196 Surakarta.

Hereinafter referred to as **PETITIONER I**,

- 2. M. WIDHI DATU WICAKSONO, S.H.**, occupation: staff in the Law Office of A. WAHYU PURWANA,S.H.,M.H. & ASSOCIATES, address: Jl. Permata V Block AD 2 Number 14 Fajar Indah Permata Colomadu Karanganyar.

Hereinafter referred to as **PETITIONER II**,

- 3. A. DHATU HARYO YUDO, S.H.**, Postgraduate Student and staff in the

Law Office of A. WAHYU PURWANA, S.H., M.H & ASSOCIATES,
address: Jl Kebon Kacang VI Jakarta

Hereinafter referred to as **PETITIONER III**,

4. **MOHAMMAD SOFYAN, S.H.**, occupation: staff in the Law Office of Advocate A.WAHYU PURWANA, S.H., M.H. & ASSOCIATES, address: JL. KH. Samanhudi Number 196 Surakarta and Duren RT. 024/004 Ds. Barukan Village, Tengaran District, Semarang.

Hereinafter referred to as **PETITIONER IV**,

hereinafter referred to as **PETITIONERS**;

Having read the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having examined the written evidence of the Petitioners;

Having heard the statements of Witnesses and Experts of the Petitioners.

LEGAL CONSIDERATIONS

Considering whereas the purpose and objective of the petition of the Petitioners are as described above;

Considering whereas prior to examining the principal case, the Constitutional Court (hereinafter referred to as the Court) needs to first take the following matters into account:

1. The authority of the Court to examine, hear, and decide upon the petition filed by the Petitioners;
2. The legal standing of the Petitioners to file the *a quo* petition;

With respect to the foregoing two issues, the Court is of the following opinion:

1. Authority of the Court

Considering whereas pursuant to Article 24C Paragraph (1) of the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) and as reaffirmed in Article 10 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court law) *juncto* Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 concerning Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to State Gazette of the Republic of Indonesia Number 4358), the Court shall have the authority to hear at the first and final level the decision of which shall be final, to conduct judicial review of laws against the Constitution.

Considering whereas the petition of the Petitioners is concerning judicial

review of the Law of the Republic of Indonesia Number 18 Year 2003 concerning Advocates (State Gazette of the Republic of Indonesia Year 2003 Number 49, Supplement to State Gazette of the Republic of Indonesia Number 4282, hereinafter referred to as the Advocate Law), hence the petition of the Petitioners is within the scope of authority of the Court;

Considering whereas although the Advocate Law has been petitioned for review in Case Number 019/PUU-I/2003 and Case Number 006/PUU-II/2004, the articles and/or Paragraphs petitioned for review are different, and therefore, in accordance with the provision of Article 60 of the Constitutional Court law, the Court declares to be in position to examine, hear, and decide upon the *a quo* petition;

2. Legal Standing of the Petitioners

Considering whereas pursuant to Article 51 Paragraph (1) of the Constitutional Court law, Petitioners in the review on law against the 1945 Constitution shall be parties who deem that their constitutional rights and/or authorities are impaired by the coming into effect of a, namely a) individual Indonesian citizens; b) customary law community units insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law; c) public or private legal entities; or d) state institutions. Therefore, pursuant to Article 51 Paragraph (1) of the Constitutional Court law, for a person or a party to qualify as a Petitioner in a review of law against the 1945 Constitution, the

person or party concerned must first explain and prove:

- a. His qualification as Petitioner in the *a quo* petition;
- b. The impairment of constitutional rights and/or authorities of the Petitioner due to the coming into effect of a law petitioned for review.

Considering whereas in addition, since the pronouncement of Decision Number 006/PUU-III/2005 and subsequent decisions, the Court has determined 5 (five) criteria for the impairment of constitutional rights as intended in Article 51 Paragraph (1) of the Constitutional Court law, as follows:

- 1) The Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;
- 2) such constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of the law petitioned for review;
- 3) the impairment of constitutional rights and/or authorities is specific and actual in nature, or at least potential in nature which, according to logical reasoning, will take place for sure;
- 4) there is a causal relationship (*causal verband*) between the impairment of such constitutional rights and/or authorities and the law petitioned for review; and
- 5) if the petition is granted, it is expected that, the impairment of such

constitutional rights and/or authorities argued will not or does not occur any longer;

Considering whereas the Petitioners in the petition for individual review on Article 32 Paragraph (1) of the Advocate Law are:

- 1) A. Wahyu Purwana, S.H., M.H., advocate and legal consultant (Exhibit P-1), Indonesian citizen (Exhibit P-2), as Petitioner I;
- 2) M. Widhi Datu Wicaksono, S.H., staff in the Law Office of A. Wahyu Purwana, S.H., M.H. & Associates, Indonesian citizen (Exhibit P-3), as Petitioner II;
- 3) A. Dhatu Haryo Yudo, S.H., staff in the law Office of A. Wahyu Purwana, S.H., M.H. & Associates, Indonesian citizen (Exhibit P-5), as Petitioner III;
- 4) Mohammad Sofyan, S.H., staff in the Law Office of A. Wahyu Purwana, S.H., M.H. & Associates, Indonesian citizen (Exhibit P-4), as Petitioner IV;

Thus, Petitioner I, Petitioner II, Petitioner III, and Petitioner IV are included in the qualification of individual Indonesian citizens pursuant to Article 51 Paragraph (1) Sub-Paragraph a) of the Constitutional Court Law;

Considering whereas as individual Indonesian citizens, the Petitioners argued that they have constitutional rights granted by the 1945 Constitution (Exhibit P-15), as set forth in Article 28C Paragraph (1) and Paragraph (2), Article 28D Paragraph (1) and Paragraph (3), and Article 28I Paragraph (2) which read respectively as follows:

- Article 28C Paragraph (1), *“Every person shall have the right to develop himself/herself through the fulfillment of their basic needs, shall have the right to obtain education and to enjoy the benefits of science and technology, arts and culture, for the enhancement of the quality of their life and for the welfare of the humankind”*; while Paragraph (2) reads, *“Every person shall have the right to improve himself/herself in striving for his/her rights collectively for building his/her society, nation, and state”*.
- Article 28D Paragraphs (1), *“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law”*; while Paragraph (3) reads, *“Every citizen shall have the right to obtain equal opportunities in government”*.
- Article 28I Paragraph (2), *“Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment”*.

Considering whereas although the Petitioners qualify as Petitioners in the review of the Advocate Law against the 1945 Constitution and have constitutional rights granted by Article 28C Paragraph (1) and Paragraph (2), Article 28D Paragraph (1) and Paragraph (3), and Article 28I Paragraph (2) of the 1945 Constitution, it remains to be proved whether such constitutional rights are impaired, either in actual and potential sense, by Article 32 Paragraph (1) of the Advocate Law, as argued by the Petitioners;

Considering whereas the Petitioners filed the petition for review of Article 32 Paragraph (1) of the Advocate Law, Chapter XII Transitional Provisions, which reads, “*Advocates, legal counsels, practicing lawyers and legal consultants who had been appointed at the time this law entered into force, shall be declared as Advocates as regulated in this law*”.

Considering whereas since Article 32 Paragraph (1) of the Advocate Law is a Transitional Provision, the substance of the article does not provide for the meaning or definition as commonly contained in the General Provisions in a law (*vide* Attachment C.1.74. to the Law of the Republic of Indonesia Number 10 Year 2004 concerning Formulation of Laws and Regulations, hereinafter referred to as the P3 Law). Transitional Provisions contain “adjustment to Laws and Regulations that had existed at the time the new Laws and Regulations entered into force, so that the such Laws and Regulations can be implemented properly and do not create any legal problems” (*vide* Attachment C.4.100. to the P3 Law). In addition, transitional provisions usually contain legal principles concerning the rights acquired earlier (*acquired rights* or *verkregenrechten*) which are still recognized. Besides, transitional provisions are needed to guarantee the legal certainty (*rechtszekerheid*) for continuity of rights, as well as to prevent legal vacuum (*rechtsvacuum*);

Considering whereas in fact, the substance of Article 32 Paragraph (1) of the Advocate Law recognizes the rights which have been acquired by a person or the continuation of legal condition encountered by a person, namely

“advocates, legal counsels, practicing lawyers and legal consultants who had been appointed at the time the Advocate Law entered into force, shall be recognized and declared as Advocates as regulated in the Advocate Law”. Therefore, Article 32 Paragraph (1) of the Advocate Law is not a provision intended for mixing up the definitions of advocates, legal counsels, practicing lawyers and legal consultants, but merely constitutes a recognition of their existing legal status (advocates, legal counsels, practicing lawyers and legal consultants who have been appointed and actually recognized under previous Laws and Regulations) as having the new legal status (Advocate) pursuant to the Advocate Law, which gives a great advantage to those who previously did not have the advocate status. Something which gives an advantage to other parties cannot be interpreted as harmful to and does not necessarily harm the Petitioners. A person who has not had a status in law (in the sense that he/she has not been appointed by the competent authority in accordance with the prevailing Laws and Regulations), must automatically be subject to all provisions of the new Laws and Regulations, in this matter the Advocate Law, as regulated in Article 32 Paragraph (2) of the Advocate Law. This constitutes the **essence and main functions** of a transitional provision in Laws and Regulations;

Considering whereas pursuant to the above description, the provision of Article 32 Paragraph (1) of the Advocate Law has no causal relationship at all to constitutional rights, and hence it does not impair the constitutional rights of the Petitioners. In the event that something happens as encountered by Petitioner II who was summoned by the police as suspect (Exhibit P-16), it is not based on

Article 32 Paragraph (1) of the Advocate Law but on Article 31 of the Advocate Law, with respect to which investigators apparently have not understood that the *a quo* article has been declared as having no binding legal effect by the Court in its Decision Number 006/PUU-II/2004. Even if the investigators intended to investigate the Petitioners, they could no longer apply Article 31 of the Advocate Law;

Considering whereas based on the foregoing considerations, it is evident that the Petitioners do not meet the criteria as intended in Article 51 Paragraph (1) of the Constitutional Court law. Therefore, the Petitioners do not have the legal standing to file the *a quo* petition;

Considering, since the Petitioners have no legal standing, the Court shall not need to consider the principal issue of the petition any further;

Considering whereas since the Petitioners do not meet the provisions of Article 51 Paragraph (1) of the Constitutional Court law, the *a quo* petition can not be accepted (*niet ontvankelijk verklaard*);

In view of Article 56 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*).

Hence this decision was made in the Consultative Meeting on Thursday July 6, 2006, of 9 (nine) Constitutional Court Justices, namely **Prof. Dr. Jimly Asshiddiqie, S.H.**, as Chairperson and concurrent Member, **Prof. H.A. Mukthie Fadjar, S.H., M.S.**, **H. Achmad Roestandi, S.H.**, **Maruarar Siahaan, S.H.**, **Prof. Dr. HM. Laica Marzuki, S.H.**, **Prof. H.A.S. Natabaya, S.H., LL.M.**, **Dr. Harjono, S.H., MCL.**, **I Dewa Gede Palguna, S.H., M.H.**, and **Soedarsono, S.H.**, respectively as Members, and was pronounced in the Plenary Session open for public on Wednesday July 12, 2006 of the 9 (nine) Constitutional Court Justices concerned, and assisted by Ida Ria Tambunan, S.H., as Substitute Registrar in the presence of the Petitioners/their Attorneys, the Government or its representative, and the People's Legislative Assembly of the Republic of Indonesia or its representative.

CHIEF JUSTICE,

PROF. DR. JIMLY ASSHIDDIQIE, S.H.

JUSTICES:

PROF. H.A. MUKTHIE FADJAR, S.H., M.S.

MARUARAR SIAHAAN, S.H.

H. ACHMAD ROESTANDI, S.H.

PROF. DR. HM. LAICA MARZUKI, S.H.

DR. HARJONO, S.H., M.C.L.

PROF. H.A.S. NATABAYA, S.H., LL.M.

I DEWA GEDE PALGUNA, S.H., M.H.

SOEDARSONO, S.H.

SUBSTITUTE REGISTRAR,

IDA RIA TAMBUNAN, S.H.