DECISION

Number 022/PUU-III/2005

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

Examining, hearing, and deciding on constitutional cases at the first and final level, has passed a decision in a case of petition for judicial review of the Law of the Republic of Indonesia Number 12 Year 1995 on Correctional Institution As the Legal Basis of Remission (Reduction of Sentence Period) For Inmates against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

Association of Constitutional Advocates (AAK), in this case represented by

1. Name : Bahrul Ilmi Yakup, SH;
   Occupation : Chairman of the Association of Constitutional Advocates (AAK).
   Address : Jalan Diponegoro Baru No. 25 Palembang Tel./Fax (0711) 364779; Hand Phone 08153800203; email: bahrul@palembang.

2. Name : Dhabi K. Gumayra, SH

Occupation : Secretary of the Association of Constitutional Advocates (AAK)

Address : Jalan Diponegoro Baru No. 25 Palembang Tel./Fax (0711) 364779; Hand Phone 08153800203; email: bahrul@palembang.

Hereinafter referred to as Petitioners;

Having read the petition of the Petitioners;

Having read the statement of the Petitioners;

Having read the statements of Witness and Expert of the Government;

Having heard the statement of the Government;

Having read the written of the Government;

Having read the written of Experts of the Government;

Having examined the evidence of the Petitioners;

LEGAL CONSIDERATIONS

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

Considering whereas prior to considering further the substance of the Petitioners' petition, the Constitutional Court (hereinafter referred to as the Court), must first lake the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide on the *a quo* petition;

2. Whether the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

In respect of the above mentioned two issues, the Court will give the following considerations:

1. AUTHORITY OF THE COURT

Whereas Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states that the Constitutional Court shall have the authority to hear cases at the first and final level the decisions of which shall be final, in conducting judicial review of laws against the 1945 Constitution. The provision is reaffirmed in Article 10 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court (hereinafter referred to as the Constitutional Court Law);

Whereas the Petitioners' petition is a petition for judicial review of Law Number 12 Year 1995 on Correctional Institutions (hereinafter referred to as the Correctional Institution Law), particularly Article 14 Paragraph (1) Sub-Paragraph

i and Paragraph (2) and Elucidation thereof in relation to the reduction of sentence period (remission) which in the Petitioners' opinion, is contradictory to the 1945 Constitution;

Hence, pursuant to Article 24 Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) of the Constitutional Court Law, the Court shall have the authority to examine, hear and decide on the *a quo* petition.

2. LEGAL STANDING OF THE PETITIONERS

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law states, *"Petitioners shall be the parties that believe that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:*

a. individual Indonesian citizens;
b. customary law community units insofar as they are still in existence in line with social development 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".

Hence for a person or a party to qualify as Petitioner in the petition for judicial review of a law against the 1945 Constitution, the person or party must first explain:

a. his/her capacity in the *a quo* petition set forth in Article 51 Paragraph (1) of the Constitutional Court Law; and
b. his/her constitutional rights and/or authorities in such qualification which, are deemed by the Petitioners to have been impaired by the law being petitioned for review.

Considering whereas based on the foregoing two standards, in evaluating whether or not there is the legal standing as Petitioner in the *a quo* case, the Court will apply requirements of constitutional impairment, as they have become the jurisprudence of the Court, which must be fulfilled by the Petitioners, namely:

1. Petitioners must have constitutional rights granted by the 1945 Constitution;
2. such constitutional rights of the Petitioners are deemed by the Petitioners to have been impaired by the law petitioned for judicial review;
3. such impairment of the Petitioners' constitutional rights shall be specific and actual or at least potential in nature which pursuant to logical reasoning, will surely occur;
4. there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law being petitioned for judicial review; and
5. thief the petition is granted, it is expected that such impairment of the constitutional rights argued will not or does not occur any longer.

Considering whereas the Petitioners have explained their qualification as a group of Indonesian advocates under the Association of Constitutional Advocates (AAK), and hence they can be deemed as individual Indonesian

citizens or group of people having a common interest. Thus, they have met the provision of Article 51 Paragraph (1) of the Constitutional Court Law and Elucidation thereof. The Court must consider further, in such qualification, whether the Petitioners' opinion that their constitutional rights have been impaired by the enactment of the law being reviewed is true.

In the petition, the Petitioners argue:

a. That the Petitioners have constitutional rights derived from the provision of Article 24 Paragraphs (1) and (2) of the 1945 Constitution, concerning *"independent judicial power to organize judicial administration in order to enforce law and justice".*
b. That such constitutional right is impaired by the coming into effect of the Law on Correctional Institution Law, **particularly Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) and Elucidation thereof**.

Considering whereas to evaluate the Petitioners' arguments, the Court must first describe the relevant:

1. Article 24 Paragraph s(1) and (2), reads as follows:

Paragraph (1)	:	*"Judicial power shall be an independent to organize judicial administration in order to enforce law and justice".*
Paragraph (2)	:	*"Judicial power shall be exercised by a Supreme Court and its inferior courts in the*

jurisdictions of general courts, religious affair courts, military tribunal, state administration courts, and by a Constitutional Court".

2. Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) of the Correctional Institution Law reads as follows:

Paragraph (1) Sub-Paragraph i:

"An inmate shall have the right to get reduction of sentence period (remission)".

Elucidation : "*Such right shall be granted after the inmate concerned has met the requirements set forth by laws and regulations".*

Paragraph (2) : *"Provisions regarding the requirements and procedures for the implementation of the inmate's' rights as intended in Paragraph (1) shall be further regulated by Government Regulation".*

Elucidation : *Self explanatory*.

Whereas in the Court's opinion the provisions set forth in Article 24 Paragraphs (1) and (2) of the 1945 Constitution regulate judicial power and the agents of judicial power, namely the Supreme Court, including its inferior courts, and the Constitutional Court. The Article does not directly regulate a person's constitutional rights including the Petitioners' constitutional rights. In other words,

Article 24 Paragraphs (1) and (2) of the 1945 Constitution does not contain any provision concerning constitutional rights which can be interpreted as the Petitioners' constitutional rights as argued in the petition.

Meanwhile, Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) of the Correctional Institution Law does not regulate all citizens, but it specifically regulates the interests of convicts. In his statement in the hearing, the witness Agiono bin Sarpan, as an ex inmate stated that the provision on reduction of sentence (remission) is not deemed as a something harmful, but in fact, it is something an advantageous, expected, and something that motivates inmates to keep a good conduct during the imprisonment.

In the hearing the Petitioners were found not to belong to the category of inmates and did not represent the interest of inmates either, and hence there is not any impairment of constitutional rights of the Petitioners which are specific and actual or potential in nature. The Court is of the opinion that even if the Petitioners argued that the AAK organization had a vision to execute integral enforcement of law and human rights in the broadest sense and had the interest in the consistent implementation of the 1945 Constitution, the vision would be still too general, not specific. The vision of AAK cannot be made as an entry point to establish a legal construction so that the Petitioners seem to have their constitutional rights specifically and actually or potentially impaired by the coming into effect of Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) of the

Correctional Institution Law, as intended in Article 51 Paragraph (1) of the Constitutional Court Law.

Considering, with respect to the Petitioners' argument which states that Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) of the Correctional Institution Law is contradictory to Article 24 Paragraph (1) of the 1945 Constitution because, according to the Petitioner, it has given an authority to the President as an executive authority holder to perform intervention on *into independent power to organize judicial administration in order to enforce law and justice*. With respect to such argument of the Petitioners, the Court is of the opinion that the authority to reduce a sentence (remission) can be granted to the executive authority branch. This is because, remission has been recognized for a long time in imprisonment system, especially in the correctional institution system, both of which being related to the scope of responsibilities of the holder of the state executive power.

In addition, Prof. Dr. Andi Hamzah, S.H. as an expert in the hearing, by referring to the opinion of J. M. van Bemmelen, stated that the scope of criminal code includes 7 (seven) phases, namely:

1 Finding the truth;

2 Finding the perpetrator (of criminal acts);

3 Arresting the perpetrator and put him into detention if necessary;

4 Collecting evidence for the trial;

5 Decision making by the judge;

6 Legal measures to oppose the judge's decision; and

7 Execution of the judge's decision.

With the execution by the prosecutor, according to the expert concerned, the due process of criminal procedures is finished. Furthermore, the guidance of inmates is no longer within the domain of the judicial power (judicative), but within the domain of the executive authority, which in this case is implemented by Correctional Institutions under the Department of Law and Human Rights. Remission shall be granted to an inmate who has been imposed with a sentence based on a judge's decision which is final and conclusive and has undergone the imprisonment for a certain period, and has also fulfilled certain requirements.

Considering, apart from the foregoing expert's opinion, the Court is of the opinion that there is no specific, actual or potential impairment of the constitutional rights of the Petitioners, which occurs from a causal relationship (*causal verband*) due to the coming into effect of Article 14 Paragraph (1) Sub-Paragraph i and Paragraph (2) of the Correctional Institution Law, and hence the Court is of the opinion that the Petitioners do not have the legal standing to file the *a quo* petition.

Considering whereas without having to give further consideration on the principal issue of the case, it has been sufficient for the Court to declare that the Petitioners' petition can not accepted (*niet ontvankeljk verklaard*).

In view of Article 56 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 on the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 94, Supplement to State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the Petitioners' petition cannot be accepted (*niet ontvankeljk verklaard*).

Hence, this Decision was made in the Plenary Consultative Meeting of 9 (nine) Constitutional Court Justices on Tuesday, February 28, 2006 and was pronounced in the Plenary Session of the Constitutional Court open for the public on this day Wednesday, March 1, 2006, by us: Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, Prof. Dr. H. M. Laica Marzuki, S.H.; H. Achmad Roestandi, S.H., Prof. H. A. S. Natabaya, S.H, LL.M., Maruarar Siahaan, S.H., Prof. H. A. Mukthie Fadjar, S.H., M.S., Dr. Harjono S.H., M.C.L, I Dewa Gede Palguna, S.H., M.H., and Soedarsono, S.H., respectively as Members, assisted by Eddy Purwanto, S.H. as Substitute Registrar in the presence of the Petitioners/their Attorneys-in-Fact, the Government, and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

signed

PROF. Dr. JIMLY ASSHIDDIQIE, S.H.

JUSTICES,

signed	**signed**
PROF. Dr. H.M. LAICA MARZUKI, S.H.	**H.ACHMAD ROESTANDI, S.H.**
signed	**signed**
PROF. H.A.S. NATABAYA, S.H, LL.M.	**MARUARAR SIAHAAN, S.H**
signed	**signed**
PROF.H.A. MUKTHIE FADJAR, S.H., MS.	**SOEDARSONO, S.H.**
signed	**signed**
DR. HARJONO, S.H., MCL.	**I DEWA GEDE PALGUNA, S.H., MH.**

SUBSTITUTE REGISTRAR,

signed

EDDY PURWANTO, S.H.