



DECISION

Number 002/SKLN-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 on a case of petition with respect to the Dispute on the Authority of State Institutions, the authority of which is granted by the 1945 Constitution of the State of The Republic of Indonesia, filed by:

1. Name : Drs. H. Badrul Kamal, MM;
Place and Date of Birth : Bogor, December 20, 1945;
Religion : Islam;
Occupation : Retired Civil Servant
Address : Sector Anggrek III Number 1 Depok;
ID Card Number : 32.77.73.1011/00108/73000519;
Telephone : (021) 924 0960;
Facsimile : (021) 924 0960;
Mobile Number : 0811 901 569;

2. Name : KH. Syihabuddin Ahmad, BA;

Place and Date of Birth : Bogor, December 07, 1949;
Religion : Islam;
Occupation : Teacher;
Address : Jl. Alamanda Number 17 Kp. Areman
Rt. 08/07 Tugu, Cimanggis, Depok;
ID Card Number : 32.77.01.1009/9273/3280614;
Telephone : (021) 8721717;
Facsimile : -
Mobile Number : 0816184 9046;

in this matter granting the power of attorney to Alberth M. Sagala and Muhyar Nugraha, SH., both of whom are Lawyers and Advocates at Alberth M Sagala, SH & Partner Law Office, having their address at Sector Anggrek III Number. 1 Kota Kembang Depok, based on a Special Power of Attorney dated January 12, 2006 who are acting both individually and/or jointly as candidate pair for Mayor and Deputy Mayor of Depok City, participants of the Regional Head Election of Depok City Year 2005, hereinafter referred to as **The Petitioners**;

Against

Regional General Elections Commission for Depok City (KPUD)
having its domicile in Depok, Jalan Raya Sawangan, Pancoran Mas, Depok City, West Java Province, hereinafter referred to as **Respondent**;

Having read the petition of the Petitioners;

Having heard the statement of Petitioners;

Having heard the statement of the Respondent,
the General Elections Commission of Depok City, represented by its attorney-in-
fact considered legal by the Court;

Having read the written statement of the Respondent, the General
Elections Commission of Depok City represented by its attorney-in-Fact
considered legal by the Court;

Having heard the statement of the Related Party, the Supervisory
Committee for Regional Elections of Depok City;

Having heard the statement of the Related Party, the candidate pair
of Nurmahmudi Ismail and Yuyun Wirasaputra or as represented by their
attorneys-in-fact;

Having heard the statement of the experts presented by the
Petitioners;

Having heard the statement of the experts presented by the
Related Party, the candidate pair of Nurmahmudi Ismail and Yuyun Wirasaputra;

LEGAL CONSIDERATIONS

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

Considering whereas prior to going into further consideration on the authority of the Constitutional Court (hereinafter referred to as the Court) and the legal standing of the Petitioners in the *a quo* petition, the Constitutional Court shall first consider the following matters into account:

- whereas the *a quo* Petition has been administratively complete as intended in Article 29, Article 31 Paragraph (1) Sub-Paragraph a, and Paragraph (2) of the Law of the Republic of Indonesia Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law), and hence the petition has been recorded in the Registration Book of Constitutional Cases (BRPK) in accordance with the provisions of Article 32 Paragraph (3) of the Constitutional Court Law;
- whereas pursuant to the provision of Article 16 Paragraph (1) of Law Number 4 Year 2004 regarding Judicial Power, the Court must not reject to hear a case and that moreover, to examine, hear and decide upon a petition, the Court must organize a hearing in the context of an honest and fair proceeding (*processual fairness, een goede process*);

Considering whereas based on the above description, the Court shall organize a hearing to hear and to give the opportunity to all parties to substantiate the truth of their arguments;

Considering whereas prior to entering the principal case, the Court also needs to first take the following matters into account:

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

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

1. The Authority of the Court

Considering whereas the constitutional authority of the Court 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) is to hear at the first and final level, the decision of which shall be final, in deciding, among others, on disputes of authorities of state institutions, the authorities of which are granted by the Constitution and as reaffirmed in Article 10 Paragraph (1) Sub-Paragraph b of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law), and Law Number 4 Year 2004 regarding Judicial Power (Judicial Power Law);

Considering whereas furthermore, the provision of Article 61 of the Constitutional Court Law provides as follows:

- (1) *“Petitioners are the State Institutions the authorities of which are granted by the 1945 Constitution which have direct interest upon the disputed authority.”*
- (2) *“Petitioners are obligated to clearly describe their direct interest in the petition and to describe the disputed authority as well as to clearly specify which state institution shall be the respondent.”*

Based on the above mentioned Article 61 of the Constitutional Court Law, the following matters can be concluded:

- a) That both the Petitioner and the Respondent shall be state institutions the authorities of which are granted by the 1945 Constitution;
- b) That there must be the constitutional authority disputed by the Petitioner and the Respondent, in which the Petitioner’s constitutional authority has been taken over and/or impaired by the act of the Respondent;
- c) That the Petitioner must have a direct interest in the disputed constitutional authority;

Considering whereas the petition of the Petitioners in accordance with the title of the Petition, is **“Petition for the Review of the Authorities of State Institutions Granted by the 1945 Constitution”**, while the substance of the petition of the Petitioners is the petition for the review of the authorities of a state institution, namely the review of the authority of the General Elections Commission of Depok City (Respondent) that filed a petition for Judicial Review

to the Supreme Court on the decision of the High Court of West Java Number 01/PILKADA/2005/PT.Bdg. dated August 4, 2005, as well as the review of the decision of the Supreme Court of the Republic of Indonesia concerning Judicial Review on the decision of the High Court *a quo*. Furthermore, the Petitioners have presented their arguments as the grounds of the petition, as follows:

- a. whereas the Petitioners are the elected candidate pair for Mayor and Deputy Mayor based on the *a quo* decision of the High Court of West Java, and hence they can be categorized as State Institution;
- b. whereas the General Elections Commission of Depok City, in performing the instruction of Article 57 of Law Number 32 Year 2004 regarding Regional Government (hereinafter referred to as the Regional Government Law), can be categorized as a State Institution;
- c. whereas by filing a petition for judicial review of the decision of the High Court of West Java Number 01/PILKADA/2005/PT.Bdg. dated August 4, 2005, the General Elections Commission of Deputy City has acted beyond the authority granted by either the Regional Government Law or by the 1945 Constitution;

Considering whereas in the hearing, the Experts presented by the Petitioners namely Prof. Dr. Ryaas Rasyid and Dr. I Gede Panca Astawa, S.H., and the written statement of Prof. Soehino, S.H., gave the following explanations:

Prof. Dr. Ryaas Rasyid

- whereas to assume the position as a public official such as a Mayor, there must be requirements as provided for in laws without fulfilment of which a person can not be referred to as a public official;
- whereas the procedures to be the head of region has been provided for in laws, namely on the basis of the Regional General Elections Commission of (KPUD). Which then administratively proposes the decision to the Minister of Home Affairs through the Governor, and then the Minister of Home Affairs on behalf of the President shall pass the decision regarding the legalization of the appointment. Subsequently, the Governor on behalf of the President shall inaugurate the elected candidate pair of the Mayor and Deputy Mayor;
- whereas before being inaugurated or before taking an official oath as a public official, it is impossible for the person to act in the capacity of such public official position;

Dr. I Gede Panca Astawa, S.H.

- whereas the state institution shall be a state institution which carries out or organizes state authorities, in relation to the opinion of Montesquieu with his *trias politica* doctrine, stating that the state institution shall be a state institution which carries out one of the branched of state authorities;
- whereas the Regional General Elections Commission (KPUD) as a part of regional government can be considered as a state institution Because State institution includes not only those in the centre but also those in regions and as institutions in the regions also carry out one of the authorities of the state;

and that state institutions are not limited to those regulated in the 1945 Constitution;

- whereas the position of Mayor is seen to be included in the scope of state institution, not individuals;
- whereas while a person is a candidate of either a mayor or a deputy mayor, the person cannot be referred to as a state institution;

Prof. Soehino, S.H.

- an elected candidate has not been/cannot be referred to as a “state institution” or as the Mayor/Deputy Mayor before the person is inaugurated and put under oath of office by an authorized official.;
- however, the Petitioners can be deemed as having the *legal standing* as individual persons can have the legal standing;

Considering whereas in its verbal and written statements, the Respondent, the Regional General Elections Commission of Depok City has argued as follows:

- whereas the position of Head of Region and the Deputy Head of Region (Governor and Deputy Governor, Regent/Mayor and Deputy Regent/Deputy Mayor) along with the authorities shall have the legality after having taken the oath of office, as explicitly stated in the provision of Article 110 of Law Number 32 Year 2004 regarding Regional Government. Due to the fact that the Petitioners have not taken their oath of office, the Petitioners shall not be referred to as State Institution, and thus they have not met the requirements

stipulated in Article 61 of Law Number 24 Year 2003, or in other words, the Petitioners do not have the legal standing in the *a quo* petition;

- Judicial review is a legal measure which is the right of every legal subject, including a State Institution, which is involved in a case. The right to file a petition for judicial review by a state institution is not and can not be viewed or positioned in the context of the authority of State Institution. Whether or not a state institution involved in a legal case has the authority to file a petition for judicial review is not an issue of authority which can be disputed in the proceeding of the Constitutional Court, as expressly set forth in the provision of Article 23 of Law Number 4 Year 2004 regarding Judicial Power;

Considering whereas the statement of the Respondent, the General Elections Commission of Depok City was supported by the statements of Expert of the Related Parties of the candidate pair for Mayor and Deputy Mayor Nurmahmudi Ismail and Yuyun Wirasaputra, by the name of Topo Santoso, S.H., M.H., and Denny Indrayana, S.H., LL.M., Ph.D, who explained the following matters:

Topo Santoso, S.H., M.H.

- whereas a person who has not been inaugurated as an official in such position can not be referred to as a state institution. Therefore, the Petitioners can not represent the titles of Mayor and Deputy Mayor as a state institution;

Denny Indrayana, S.H., LL.M., Ph.D.

- whereas the Petitioners cannot be or at least have not been qualified as a state institution because there has not been any process of the legalization of the appointment and inaugurated, and hence the Petitioners' argument claiming to be a state institution is premature;

Considering whereas the Supervisory Committee of the Regional Head Election of Depok City has given its statement which is principally in line with the arguments presented by the Petitioners. According to the Supervisory Committee for the Regional Head Election of Depok City, the General Elections Commission of Depok City is a state institution granted the authority by the 1945 Constitution and the Regional Government Law to hold Regional Head Elections of Depok City, and therefore, the duties and authority of the General Elections Commission of Depok City shall be as provided for in Article 66 Paragraph (1) of the Regional Government Law. The Supervisory Committee for the Regional Head Election of Depok City do not view or consider either textually and non-textually that the General Elections Commission of Depok City has the authority to file a petition for judicial review of the decision of the High Court;

With respect to the foregoing, the Court is of the opinion that due to the fact that the authority of the Court in examining, hearing and deciding upon the *a quo* petition is related to the legal standing of the Petitioners, the Court shall therefore consider the matter together with the examination of the legal standing of the Petitioners;

2. Legal Standing of the Petitioners

Considering whereas to determine whether the Court has the authority to examine, hear and decide upon the petition of Petitioners, as well as whether the Petitioners have the legal standing in the case of dispute on the authorities of state institutions the authorities of which are granted by the 1945 Constitution, the Court shall give the following considerations:

- Whereas the petition of Petitioners regarding the authority of the General Elections Commission of Depok City in filing a petition for Judicial Review of the decision of the High Court of West Java Number 01/Pilkada/2005/PT.Bdg, does not constitute a dispute of constitutional authority as intended in Article 24C Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law, but pertains to a right arising from the authority as intended in Article 66 Paragraph (1) of the Regional Government Law concerning the duties and authority of the Regional General Elections Commission (KPUD) in the election of head of region and deputy head of region, and hence the object of the dispute is not one concerning constitutional authorities among between state institutions as provided for in Article 61 of the Constitutional Court Law;
- Whereas there is not any authority of the Petitioners which has been taken over and/or impaired by the acts of the Respondent, and hence there is no dispute of constitutional authority of state institution between the Petitioners and Respondent;

- Whereas the Head of Region, in this matter the Elected Mayor and Deputy Mayor, in accordance with the provisions of Article 109 Paragraph (2) of the Regional Government Law and Article 100 Paragraph (2) of Government Regulation Number 6 Year 2005 regarding Election, Legalization of Appointment and Dismissal of Head of Region and Deputy Head of Region (hereinafter referred to as Government Regulation Number 6 Year 2005), still requires the legalization of the appointment by the Minister of Home Affairs on behalf of the President and the inauguration by the Governor on behalf of the President, in accordance with the provisions of Article 110 Paragraph (1) and Article 111 Paragraph (2) of the Regional Government Law and Article 102 Paragraph (2) of Government Regulation Number 6 Year 2005. Hence, the Elected Mayor and Deputy Mayor candidate pair have not become the head of region as intended in Article 18 Paragraph (4) of the 1945 Constitution *juncto* the Regional Government Law *juncto* Government Regulation Number 6 Year 2005;
- Whereas the General Elections Commission of Depok City is the Regional General Elections Commission (KPUD) the authorities of which are granted by laws, namely in this case the Regional Government Law. In Regional Head Elections (Pilkada), in accordance with the Regional Government Law and as also admitted by the Petitioners, the Regional General Election Commission (KPUD) is not a division of General Elections Commission (KPU) as intended in Article 22E of the 1945 Constitution. Hence, although the KPUD is a state

institution, its authority in organizing Regional Head Elections is not the authority granted by the Constitution, as intended in the 1945 Constitution and the Constitutional Court Law;

- Whereas with respect to the Petitioners' argument that the petition for judicial review filed by the Respondent, in this matter the General Elections Commission (KPU) of Depok City is not an authority granted by the Regional Government Law Article 66 to the Respondent, the Court is of the opinion that the authorities and the rights arising from of the procedural law must be distinguished. Whereas in fact the petition for judicial review is not the organic authority of the General Elections Commission of Depok City, but that it constitutes the right to seek and to obtain justice in the judiciary process, as every legal subject has the freedom to seek and obtain justice. Hence, the filing of a petition for judicial review can not be construed as the basis for determining the existence or non-existence of any dispute on constitutional authority among state institutions;

Considering whereas based on the whole foregoing considerations, either from the aspect of the object of dispute on constitutional authority, or from the aspect of the subject, the Petitioners and the Respondent, the *a quo* petition does not belong to the scope of disputes on constitutional authority between state institutions as intended in Article 24C Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) Sub-Paragraph b *juncto* Article 61 of

the Constitutional Court Law. Hence, it must be declared that the petition of Petitioners can not be accepted (*niet ontvankelijk verklaard*);

Considering whereas because it has been declared that the Petitioners petition can not be accepted, the principal issue of the case shall not need any further consideration;

In view of Article 64 Paragraph (1) of the Law of the Republic Indonesia Number 24 Year 2003 on Constitutional Court;

PASSING THE DECISION

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

Hence, this Decision was made in the Plenary Consultative Meeting of 9 (nine) Constitutional Court Justices on this day Wednesday, January 25, 2006, and was pronounced in the Plenary Session of the Constitutional Court open for public on this very day, by us Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., Prof. H. A. Mukthie Fadjar, S.H. M.S., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H., respectively as Members, assisted by Sunardi, S.H., as Substitute Registrar in the presence of Petitioner/Petitioner's Attorney-in-Fact, the Regional General Elections

Commission of Depok City, the Supervisory Committee for the Regional Head Elections of Depok City, Related Parties, and Government representatives.

CHIEF JUSTICE

signed

Prof. Dr. Jimly Asshiddiqie S.H.

JUSTICES

Signed

Prof. Dr. H. M Laica Marzuki, S.H.

Signed

Prof. H.A.S Natabaya.S.H. LLM

Signed

Prof. H. Abdul Mukthie Fadjar, S.H. M.S.

Signed

H. Achmad Roestandi, S.H.

Signed

Dr. Harjono, S.H., M.CL.

Signed

I Dewa Gede Palguna, S.H., M.H.

Signed

Maruarar Siahaan, S.H.

Signed

Soedarsono, S.H.

SUBSTITUTE REGISTRAR

Signed

Sunardi, S.H.