

## **DECISION**

Case Number: 004/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 upon constitutional cases at the first and final level, has passed a decision in case of petition for Judicial Review of Chapter VI Article 36 Paragraphs (1), (2), and (3) Law Number 4 Year 2004 regarding Judicial Authority against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

**MELUR LUBIS, S.H.** Occupation Advocate, having his address at Jl. Sidodame Komplek Pemda No.37 Medan hereinafter referred to as Petitioner;

Having heard the testimony of Petitioner;

Having examined the evidence;

### **LEGAL CONSIDERATIONS**

Considering whereas the purpose and objective of the petition of Petitioner a quo are as mentioned above;

Considering whereas prior to examining the substance or the principal issue of the case, the Court must first take the following matters into account:

1. Whether or not the Court has the authority to examine and decide upon the petition for the judicial review of Law Number 4 Year 2004 regarding Judicial Authority
2. Whether the Petitioner has any constitutional rights that have been impaired by the coming into effect of the law;

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

#### **1. THE AUTHORITIES OF THE COURT**

Considering whereas pursuant to Article 24C Paragraph (1) of the 1945 Constitution, the Constitutional Court has the authority among other things to hear at the first and final instances, the decisions of which are final, to conduct judicial review laws against the constitution; this matter is reaffirmed in Article 10 of Law Number 24 Year 2003 regarding the Constitutional Court.

Considering whereas the Petitioner has filed a petition for judicial review of Law Number 4 Year 2004, especially Article 36 Paragraphs (1), (2), and (3), therefore the aforementioned petition for judicial review is the authority of the Court;

#### **2. LEGAL STANDING OF THE PETITIONER**

Considering whereas Article 51 of Law Number 24 Year 2003 reads as follows:

“(1) Petitioner shall be a party who claims that his constitutional rights and/or authorities have been impaired by the coming into effect of a law, namely:

- a. Individual Indonesian citizen;
- b. Customary law community unit insofar as it is in existence and in accordance with the developments in the community and the principles of the Unitary State of the Republic of Indonesia as set forth in a law;
- c. Public or private legal entity; or
- d. State Institution.

(2) Petitioner must explain clearly his constitutional rights and/or obligations as intended in Paragraph (1) in his petition”.

Considering whereas based on the aforementioned provision, then to be accepted as a Petitioner before the court as a party having a legal standing, the party should first explain (i) his capacity in the petition in accordance with the qualifications set forth in Article 51 Paragraph (1) of Law Number 24 Year 2003 and (ii) the impairment to the constitutional right suffered in such quality due to the coming into effect of a law;

Considering whereas the Petitioner in his petition argued himself as a native Indonesian citizen, an individual who has an occupation as an advocate, whose constitutional right has been impaired with the coming into effect of Law Number 4 Year 2004 regarding Judicial Authority, since Article 36 Paragraphs (1), (2), and (3) of the law *a quo* is contradictory to Article 28D Paragraph (1) of the 1945 Constitution since, according to the Petitioner, the provision in the Paragraph has placed the Chief Judge as the head and supervisor of the execution of Court decisions resulting in-absolute power. This absolute power has caused the occurrence of arbitrary action by acting beyond his power as occurred in the execution of case decision Number 4080K/PDT/1998 in conjunction with Number 385/PDT/1997/PT.MDN in conjunction with Number 16/PDT-G/1997/PN.PsP;

Considering whereas despite the fact that the Petitioner argued himself to be an individual person having an occupation as an advocate whose constitutional right has been impaired by the coming into effect of Article 36 Paragraphs (1), (2), and (3) of Law Number 4 Year 2004 regarding Judicial Authority, due to the abuse of the absolute power by the Chief Judge against the Petitioner. However, based on the entire set of evidence in the form of P-1 to P-45, it is evident that the court decision in civil case Number 4080K/PDT/1998 in conjunction with Number 385/PDT/1997/PT.MDN in conjunction with Number 16/PDT-G/PN.PsP is a case between Mrs. Badariah Mawar Harahap as the plaintiff versus Parlindungan Harahap et al as the defendants, in which case the Petitioner for judicial review of the *a quo* Law acted as attorney in fact of H.

Muchtar Siregar, the heir of the Plaintiff. However the power of attorney was explicitly not found to have been enclosed, despite the fact that it had been ordered to be enclosed at the Court hearing, either in the primary case filed before the court of general jurisdiction or in the petition for judicial review of the *a quo* law;

Considering whereas furthermore, based on the evidence and the testimony of Petitioner presented before the Court hearing, the Court has found that the constitutional right deemed to have been impaired by the coming into effect of Article 36 Paragraphs (1), (2) and (3) of Law Number 4 Year 2004 is the constitutional right of Mrs. Badariah Mawar Harahap who according to information given had passed away and been survived by her heir H. Muchtar Siregar and did not involve any personal impairment against the *a quo* Petitioner;

Considering whereas the disputed impairment is the constitutional impairment deemed to have been experienced by Mrs. Badariah Mawar Harahap *Cq.* H. Muchtar Siregar as her heir, and on the other hand the Petitioner has been unable to produce a power of attorney giving him the authority to file a petition for judicial review before the Court. Therefore, notwithstanding the capacity of Petitioner as an advocate who may have experienced impairment in the occurrence of the situation in a general sense as described in the petition *a quo* and notwithstanding also the Court is opinion that the issue argued by the Petitioner is related to the execution of a Court decision which already has permanent legal force, the Court is of the opinion that what was argued by the

Petitioner in his petition is not related to the constitutionality of Article 36 Paragraphs (1), (2), and (3) of Law Number 1 Year 2004, and therefore the Court does not have the authority to examine it;

Considering whereas based on the above considerations, the Court is of the opinion that there is no evidence of any personal constitutional interest of the Petitioner which has been impaired as argued. Therefore, the Petitioner has not been personally impaired in any way by the coming into effect of Law Number 4 Year 2004, thus the Petitioner is regarded not to have any legal standing as required by Article 51 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court;

Considering whereas due to the fact that the Petitioner has no legal standing as described in the above mentioned consideration, the Court has drawn a conclusion that, without needing to examine the substance or the principle issue of the case, the petition of the Petitioner cannot be accepted (*niet ontvankelijk verklaard*);

In view of Article 56 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court.

#### **PASSING THE DECISION:**

Declaring the petition of the Petitioner cannot be accepted (*niet ontvankelijk verklaard*).

Hence the decision was made in the Plenary Consultative Meeting of nine (9) Constitutional Court Justices on Wednesday, on April 13, 2005 and was read out in a Plenary Session of the Constitutional Court open for the public on this day of Thursday, April 14, 2005, by us: Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairman and concurrent member and Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L., Prof. H. A. Mukthie Fadjar, S.H., M.S., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., serta Soedarsono, S.H., respectively as Members, and assisted by Widi Astuti, S.H. as Substitute Registrar, and attended by the Petitioner, the Government, and the People's Legislative Council;

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.,LL.M.

signed

H.Achmad Roestandi, S.H.

signed

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

signed

Dr. Harjono, S.H., M.C.L.

signed

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

signed

Maruarar Siahaan, S.H.

signed

Soedarsono, S.H.

SUBSTITUTE REGISTRAR,

signed

Widi Astuti, S.H.