

**DECISION**

**Number 007/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 5 Year 2004 on the Amendment to Law Number 14 Year 1985 regarding the Supreme Court and Law of the Republic of Indonesia Number 22 Year 2004 on Judicial Commission against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

**F.X. CAHYO BAROTO**, with his address at Jl. Kemang Utama VIII Number 46 XB South Jakarta; by virtue of special power of a attorney dated February 15, 2006 has granted the power of attorney to Dominggus Maurits Luitnan, S.H., H. Azi Ali Tjasa, S.H., M.H., Toro Mendrofa, S.H., as advocates under the Dominika Association of Advocates/Solicitors, domiciled at Jl. Stasiun Sawah Besar 1st Floor Block A Number 1-2 Central Jakarta; who are acting both individually and jointly for and on behalf of **F.X. CAHYO BAROTO**, hereinafter referred to as **THE PETITIONER**;

Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having read and examined the written evidence of the Petitioner;

### **LEGAL CONSIDERATIONS**

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

Considering whereas prior to further considering the substance of the petition of the Petitioner, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;
2. whether the Petitioner has the legal standing to act as Petitioner in 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 regarding the authority of the Court, Article 24C Paragraph (1) of the 1945 Constitution states that the Constitutional Court has the authority to hear at the first and final level, the decision of which shall be final,

in conducting judicial review of laws against the Constitution. The provision is reaffirmed in Article 10 Paragraph (1) of the Constitutional Court Law;

Considering whereas the *a quo* petition is the petition for judicial review of the Supreme Court Law and the Judicial Commission Law against the 1945 Constitution, and hence the Court has the authority in examining, hearing and deciding upon the *a quo* petition;

## **2. Legal Standing of the Petitioner**

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law states, *“Petitioners shall be the parties that deem 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 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”.*

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

- a. his capacity in the *a quo* petition, either as an individual Indonesian citizen, a customary law community unit (fulfilling the criteria as intended in Article 51 Paragraph (1) Sub-Paragraph b), a legal entity (either public or private), or a state institution;
- b. his constitutional rights and/or authorities in such qualification intended in Sub-Paragraph a which are deemed by the Petitioner to have been impaired by the coming into effect of a law;

Considering whereas based on the foregoing two standards in evaluating whether or not the Petitioner has the legal standing in judicial review of laws against the 1945 Constitution, it is the jurisprudence of the Court that the Petitioner must clearly describe the requirements of constitutional impairment in the petition, namely:

- a. the Petitioner must have constitutional rights granted by the 1945 Constitution;
- b. the Petitioner believes that his constitutional rights have been impaired by the law petitioned for review;
- c. the impairment of constitutional rights of the Petitioner shall be specific and actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;

- d. there is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law being petitioned for judicial review;
- e. if 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 Petitioner, F.X. Cahyo Baroto, in his petition has not explicitly described his qualification as intended in Article 51 Paragraph (1) of the Constitutional Court Law but merely described that he is an Indonesian citizen and an heir to an individual named Drs. R.J. Kaptin Adisumarta. However, pursuant to the above mentioned description of the petition as well as the Petitioner's statement in the hearing, it can be concluded that the Petitioner means to qualify himself as an individual Indonesian citizen;

Considering whereas in his above mentioned qualification the Petitioner believes that his rights and authorities have been impaired by the attitude and action of the Head of the District Court of South Jakarta who twice executed the same object of dispute, by the same court, with the same party and by the same bailiff. In response to the events, the Petitioner has filed a report Number SUM.1/009/LAPD/I/03 to the Supreme Court dated January 29, 2003 for the Court to give warning or sanction to its subordinate concerned. However, according to the Petitioner, up to the present no action has been taken by the Supreme Court. On the contrary, the Head of District Court of South Jakarta was promoted to the High Court of East Java;

Considering whereas the Petitioner has also filed a report to Regional Police of Metro Jaya, as contained in the Police report Number Pol. 926/K/III/2002/SATGA OPS "B" dated March 28, 2002, due to the fact that the Petitioner believed that the stipulation of the abovementioned second execution "contained a strong element of criminal act". However, the police issued SP-3 Number B/7694/XII/2002/ Datro, dated December 3, 2002 regarding Notification to Stop the Investigation. According to the Petitioner, the issuance of SP-3 by the investigator was due to the release of the Circular Letter of the Supreme Court Number 4 Year 2002, which, according to the Petitioner, contained interdiction for the judges, bailiffs and registrars to answer the summons from the police;

Considering whereas due to the foregoing event, the Petitioner believes that the causes of all the above mentioned events are the provisions in Article 32 Paragraphs (1), (2), (3), (4), (5), Article 11 Paragraph (1), Article 12 Paragraphs (1), (2), Article 13 Paragraph (1) of the Supreme Court Law, especially the phrase "on the motion of the Chairperson of the Supreme Court" which, according to the Petitioner, creates multi-interpretation. On the basis of this judgment, the Petitioner unexpectedly linked it to the ineffectiveness of the supervision on judges which, pursuant to Law Number 4 Year 2004 on Judicial Power, is the authority of Judicial Commission. This, in the Petitioner's argument, is due to the provisions of Article 21, Article 22 Paragraph (1) Sub-Paragraph e of the Judicial Commission Law, which state that the motion for sanction imposition on judges shall be returned to the Chairperson of the Supreme Court. According to the Petitioner, such provisions are not in line with the message in Article 24D

Paragraph (1) of the 1945 Constitution. As a result, they have impaired the rights/authorities of the Petitioner to complain about or to file a report on the case of crime committed by the judge;

Considering whereas, with the foregoing chronology of events, the Petitioner deems that his constitutional rights have been impaired as regulated in the 1945 Constitution which defines the right that all citizens shall have equal status in law and in the government and must uphold the law and the government without exception [Article 27 Paragraph (1)], the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before law [Article 28D Paragraph (1)], the right to be free from discriminatory treatment on any basis whatsoever and the right to obtain protection from any such discriminatory treatment [Article 28I Paragraph (1)], the right to possess personal property rights [Article 28H Paragraph (4)];

Considering whereas the Court does not deny that the Petitioner possesses the abovementioned constitutional rights but the Court questions whether the foregoing constitutional rights have indeed been impaired by the coming into effect of the provisions of Article 32 Paragraphs (1), (2), (3), (4), (5), Article 11 Paragraph (1), Article 12 Paragraphs (1), (2), Article 13 Paragraph (1) of the Supreme Court Law and Article 21, Article 22 Paragraph (1) Sub-Paragraph e of the Judicial Commission Law as argued by the Petitioner;

Considering whereas Article 32 Paragraphs (1), (2), (3), (4), and (5) of the Supreme Court Law states as follows:

- Paragraph (1) : *“The Supreme Court shall perform the highest supervision on judiciary arrangement in all jurisdictions in exercising the judicial power”;*
- Paragraph (2) : *“The Supreme Court shall monitor the conduct and actions of the judges in all jurisdictions in performing their duties”;*
- Paragraph (3) : *“The Supreme Court shall have the authority to request explanations on the matters in connection with judicial technicalities of all Jurisdictions”;*
- Paragraph (4) : *“The Supreme Court shall have the authority to give directives, warnings or caveats deemed important to the Courts in all Jurisdictions”;*
- Paragraph (5) : *“The supervision and authority as intended in Paragraph (1) through Paragraph (4) shall not deprive the Judges of their freedom in examining and deciding upon cases”.*

Meanwhile, Article 11 Paragraph (1) of the Supreme Court Law states,

*“The Chairperson, Vice Chairperson, Junior Chairperson, and Member Justices of the Supreme Court shall be dismissed with honor from their positions by the President on the motion of the Chairperson of the Supreme Court for the following reasons:*

*a. passing away;*



- b. *reaching the age of 65 (sixty five);*
- c. *tendering their own resignations;*
- d. *being in a continued state of physical or mental illness; or*
- e. *turning out to be incapable of performing their duties”.*

Article 12 Paragraphs (1) and (2) of the Supreme Court Law states as follows,

Paragraph (1) : *“The Chairperson, Vice Chairperson, Junior Chairperson, and Member Justices of the Supreme Court shall be dishonorably dismissed from their positions by the President on the motion of the Chairperson of the Supreme Court for the following reasons:*

- a. *being sentenced to imprisonment under a court decision which is final and conclusive for committing any criminal act which is subject to imprisonment of 5 (five) years or more ;*
- b. *committing a disgraceful act;*
- c. *continuously neglecting their obligations in performing their duties;*
- d. *breaking the oath or the pledge of their office; or*
- e. *violating the interdiction as intended in Article 10”.*

Paragraph (2) : *“The motion for dishonorable dismissal for the reasons referred to in Paragraph (1) Sub-Paragraph b, Sub-Paragraph c, Sub-Paragraph d, and Sub-*

*Paragraph e shall be executed after the persons concerned have been given enough opportunity to defend themselves before the Honorable Assembly of the Supreme Court”.*

Whereas Article 13 Paragraph (1) of the Supreme Court Law states as follows,  
*“The Chairperson, Vice Chairperson, Junior Chairperson, and Member Justices of the Supreme Court, prior to their dishonorable dismissal as intended in Article 12 Paragraph (1), may be provisionally discharged from their positions by the President on the motion of the Chairperson of the Supreme Court”.*

Meanwhile Article 21 of the Judicial Commission Law states as follows,  
*“For the interest of exercising the authority as intended in Article 13 Sub-Article b, the Judicial Commission shall have the duty to propose a motion for sanction imposition on judges to the Chairperson of the Supreme Court and/or the Constitutional Court”;*

Whereas Article 22 Paragraph (1) Sub-Paragraph e of the Judicial Commission Law includes the provision which reads,

*“In implementing the supervision as intended in Article 20, the Judicial Commission:*

- a. ...*
- b. ...*
- c. ...*
- d. ...*

- e. *shall make a report of inspection result in the form of a recommendation and shall submit it to the Supreme Court and/or the Constitutional Court and with copies thereof being forwarded to the President and the People's Legislative Assembly”.*

Considering whereas upon carefully examining the Petitioner's arguments regarding the impairment of his constitutional rights which by the Petitioner is linked to the provisions of the foregoing two laws (the Supreme Court Law and the Judicial Commission Law), as well as the attached evidence to support the Petitioner's arguments, it has been evident to the Court that:

- a. Even if the Petitioner has indeed suffered the impairment during the Judicial process in the court under the supervision of the Supreme Court, such impairment would not in any way be related to the provisions of the two laws argued by the petitioner to be contradictory to Article 27 Paragraph (1), Article 28D Paragraph (1), Article 28I Paragraph (2), Article 28H Paragraph (4) of the 1945 Constitution;
- b. The Petitioner's constitutional rights as intended in Article 27 Paragraph (1), Article 28D Paragraph (1), Article 28I Paragraph (2), Article 28H Paragraph (4) of the 1945 Constitution, which are the bases of the petition, are not in any way impaired by the coming into effect of the provisions of the Supreme Court Law and the Judicial Commission Law as described above, because there is no causal relationship (*causal verband*) between the intended

constitutional rights and the provisions of the law being petitioned for judicial review;

- c. Even if the Petitioner has indeed suffered the impairment, the causes thereof are not the provisions in the *a quo* laws (the Supreme Court Law and the Judicial Commission Law) but the Judicial practices, with respect to which the Court can not conduct examination;
- d. the issuance of SP-3 by the Police, is deemed by the Petitioner to have impaired his constitutional rights due to the release of the Circular Letter of the Supreme Court Number 4 Year 2002, which contains the interdiction for the judges, bailiffs and registrars to answer the summons from the police, while, according to the Police, the SP-3 was issued because the event reported by the Petitioner was not a criminal act, as intended in Article 7 Paragraph (1) Sub-Paragraph i and Article 109 Paragraph (2) of Criminal Procedure Code (Exhibit P-16);
- e. the Petitioner, in particular his legal counsels or attorneys-in-fact, should have understood well that the authority of the Court has been determined by the 1945 Constitution and the Constitutional Court Law, and hence the Court shall not automatically and unreasonably declare to have the authority to hear a case, *in case* the Circular Letter of the Supreme Court Number 4 Year 2002 which the Petitioner deems to have been the cause of the impairment argued by the Petitioner. In addition, according to general principle of judicature in which the judges are basically expected to be passive, it is impossible for the

Court to actively “teach” the Petitioner to construct his arguments in the petition in such a way that it exceeds the limit of duty to advise as provided for by Article 39 Paragraph (2) of the Constitutional Court Law;

Considering whereas, in compliance with Article 39 Paragraph (2) of the Constitutional Court Law *juncto* Article 11 Paragraph (2) of Constitutional Court Regulation Number 06/PMK/2005 (hereinafter referred to as Constitutional Court Regulation 06/2005), in the hearing dated 20 April 2006 the Petitioner was advised to revise his petition so that it would meet the conditions as intended in Article 51 Paragraph (1) of the Constitutional Court Law as well as the conditions for constitutional impairment as the jurisprudence of the Court. Nevertheless, up to the time limit given for the revision, the Petitioner had not managed to fulfill such conditions. Hence, in accordance with the provisions of Article 28 Paragraph (4) of the Constitutional Court Law *juncto* Article 11 Paragraph (5) of Constitutional Court Regulation 06/2005, in the hearing dated 9 May 2006 the Panel of Justices informed the Petitioner that the Panel of Justices would report the examination result regarding the *a quo* petition to the Plenary Consultative Meeting (hereinafter referred to as RPH) for the following process (see Minutes of Hearing dated May 9, 2006);

Considering whereas on that day May 9, 2006 at 14.00 Western Indonesia Time, the Panel of Justices reported the examination result of the *a quo* petition to the RPH. At the same time, the Panel of Justices also reported to the RPH that a petition of similar substance with the *a quo* petition had been filed

to the Court by petitioners Dominggus Maurits Luitnan, S.H., A. Azi Ali Tjasa, S.H., and Toro Mendrofa, S.H. – who in the *a quo* petition acted as the attorneys-in-fact of the Petitioner – and had been decided upon by the Court as contained in Decision Number 017/PUU-III/2005, dated January 6, 2005, with the verdict declaring “the petition can not be accepted” (*niet ontvankelijk verklaard*). Hence, all relevant evidence, statements, and legal considerations in the aforementioned decision of the Court shall also apply to the *a quo* petition, such that on May 30, 2006 the RPH was of the opinion that the *a quo* petition did not qualify as intended in Article 51 Paragraph (1) of the Constitutional Court Law. Due to the fact that the conditions were not met, the RPH decided that it was not necessary for the Court to hear the statements of the People’s Legislative Assembly and the President (Government);

Considering whereas with respect to the examination on the petition for judicial review of a law against the 1945 Constitution, Article 54 of the Constitutional Court Law states, “The Constitutional Court **may** request explanations and/or minutes of meetings in relation to the petition under examination to the People’s Consultative Assembly, the People’s Legislative Assembly, the People Representative Council, and/or the President”. Due to the fact that the *a quo* petition does not meet the conditions intended in Article 51 of the Constitutional Court Law, the Court is of the opinion that there is no such urgency as intended in Article 54 of the Constitutional Court Law to summon the People’s Legislative Assembly or the President to request the minutes of

meetings in relation to the *a quo* petition, and hence it is not necessary to hold another hearing for a further examination;

Considering whereas owing to the fact that the Petitioner does not meet the impairment criteria as intended in Article 51 Paragraph (1) of the Constitutional Court Law, it is not necessary for the Court to further examine or consider the principal issue of case or the substance of the *a quo* petition, and hence it must be declared that the petition of the Petitioner 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 Petitioner **can not be accepted (*niet ontvankelijk verklaard*)**.

Hence the decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices on Monday, June 19, 2006, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday June 20, 2006, by us: Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, and I Dewa Gede Palguna, S.H., M.H., Prof. H.A.S. Natabaya, S.H., LL.M, H. Achmad Roestandi, S.H., Prof. Dr. H.M.

Laica Marzuki, S.H., Dr. Harjono, S.H., M.C.L, Prof. H. Abdul Mukthie Fadjar, S.H., M.S., Maruarar Siahaan, S.H., and Soedarsono, S.H., respectively as Members, assisted by Sunardi, S.H. as the Substitute Registrar, in the presence of the Government and the People's Legislative Assembly, and without the presence of the Petitioner/the Petitioner's Attorneys-in-fact.

**CHIEF JUSTICE**

**Prof. Dr. Jimly Asshiddiqie, S.H.**

**JUSTICES,**

**I Dewa Gede Palguna, S.H., M.H.      Prof. H.A.S. Natabaya, S.H., LL.M.**

**H. Achmad Roestandi, S.H.      Prof. Dr. H.M. Laica Marzuki, S.H.**

**Prof. H.A. Mukthie Fadjar, S.H., M.S.      Dr. Harjono, S.H., M.C.L.**

**Maruarar Siahaan, S.H.**

**Soedarsono, S.H.**

**SUBSTITUTE REGISTRAR,**

**Sunardi, S.H.**