



## **DECISION**

**Number 010/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 30 Year 2002 concerning the Commission for the Eradication of Criminal Acts of Corruption (hereinafter referred to as the Corruption Eradication Commission Law) against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution), filed by:

**Indonesian Law Community (MHI)**, having its office address at Jalan. Bunga Number 21 Matraman, East Jakarta 13140 in this matter represented by its Executive Director named A.H. WAKIL KAMAL, S.H., Place and date of birth: Sumenep, June 7, 1971, Religion: Islam, Occupation: Advocate, Indonesian Citizen, with his address at Jalan Bunga No. 21, Matraman, East Jakarta 13140, Tel. (021) 8583033, Mobile: 08179876669, e-mail infomhi@yahoo.com;  
Hereinafter referred to as **PETITIONER**;

Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having examined the evidence;

### **LEGAL CONSIDERATIONS**

Considering whereas the purpose and objective of the *a quo* petition are as described above;

Considering whereas prior to further considering the substance or principal issue of the *a quo* petition, 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 be accepted as Petitioner before the Court in 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 the *a quo* petition is a petition for judicial review of law, *in casu* Law Number 30 Year 2002 concerning the Commission for the Eradication of Criminal Acts of Corruption (the Corruption Eradication

Commission Law) against the Constitution of the State of the Republic of Indonesia Year 1945 (the 1945 Constitution);

Considering whereas with respect to the authorities of the Court, Article 24C Paragraph (1) of the 1945 Constitution, among other things, states that 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 Law against the Constitution. Such provision is reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of Law Number 24 Year 2003 concerning the Constitutional Court (hereinafter referred to as the Constitutional Court Law);

Considering whereas with the aforementioned consideration, the Court shall have the authority to examine, hear, and decide upon the *a quo* petition.

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

Considering whereas, in a petition for judicial review of a Law against the 1945 Constitution, for a person or a party to be accepted as Petitioner having the legal standing before the Court, Article 51 Paragraph (1) of the Constitutional Court Law provides that, "Petitioners shall be parties who deem that their constitutional rights 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 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.”

Meanwhile, Elucidation of Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law reaffirms that “individual” in Article 51 Paragraph (1) Sub-Paragraph a shall also include a group of people having a common interest;

Considering whereas accordingly, for a person or a party to qualify as Petitioner in the petition for judicial review of a law against the 1945 Constitution, pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, the person or party concerned must:

- (a) explain his qualification in the petition, whether as an individual Indonesian citizen, a customary law community unit, a legal entity, or a state institution;
- (b) explain the impairment of constitutional rights and/or authorities, in the qualification as intended in item (a), due to the coming into effect of law petitioned for review;

Considering also whereas since the pronouncement of Decision Court Number 006/PUU-III/2005 up to the present, it has been decided by the Court

that impairment of constitutional rights and/or authorities must meet the following criteria:

- (1) The Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;
- (2) The Petitioners believe that such constitutional rights and/or authorities have been impaired by the coming into effect of a law petitioned for review;
- (3) The impairment of such 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 such impairment and the law petitioned for review;
- (5) If the petition is granted, it is expected that such impairment of constitutional rights and/or authorities argued will not or does not occur any longer.

Considering whereas based on the above description of the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the criteria of impairment of constitutional rights and/or authorities concerned, the Court will further consider the legal standing of the Petitioner in accordance with the Petitioner's description in the petition as well as relevant evidence;

Considering whereas Petitioner is the Indonesian Law Community (MHI), in this matter, based on Article 18 Paragraph (1) of Articles of Association of MHI,

represented by its Executive Director namely AH. Wakil Kamal. In its petition the Petitioner claimed to be an organization whose deed of establishment has been registered at the Registry Office of the District Court of East Jakarta (Exhibit P-1b) while its legal entity status remains unclear. Thus, pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, as described above, the Petitioner does not meet the criteria to qualify as a public or private legal entity but only qualify as a group of people having a common interest. Hence, the question is whether in such qualification the Petitioner's constitutional rights have been impaired by the coming into effect of the "Considering" part of the Corruption Eradication Commission Law namely in Sub-Paragraph c, Article 1 Paragraph (3), Article 2, Article 3, Article 4, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 14, Article 20, Article 21 Paragraph (4), Article 26, Article 38, Article 39, Article 41, Article 42, Article 43, Article 44, Article 45, Article 46, Article 47, Article 48, Article 49, Article 50, Article 51, Article 52, Article 53, Article 54, Article 55, Article 56, Article 57, Article 58, Article 59, Article 60, Article 61, Article 62, and Article 63 of the Corruption Eradication Commission Law;

Considering whereas, pursuant to the Elucidation of Article 51 Paragraph (1) of the Constitutional Court Law, "constitutional rights" shall refer to the rights regulated in the 1945 Constitution, and hence, in deciding whether or not the Petitioner has constitutional rights, as required in determining the legal standing of the Petitioner, must be decided based on the definition intended in the elucidation of Article 51 Paragraph (1) of the Constitutional Court Law;

Considering whereas in its petition the Petitioner does not clearly explain its constitutional rights impaired by the coming into effect of the provisions in the Corruption Eradication Commission Law as described above, but only presents arguments basically concerning the following matters:

- a. According to the Petitioner, there is a contradiction between the Corruption Eradication Commission Law and the principles of people's sovereignty, constitutional law, justice, and principles of separation of powers, as well as the principle of balance of power in accordance with the 1945 Constitution, which complicates the state structure system and governance system, so as to disturb the living as a nation and state due to the absence of legal certainty and guarantee of justice, while Article 28D Paragraph (1) of the 1945 Constitution has guaranteed the legal certainty and justice as well as equality before the law;
- b. Absence of legal certainty and constitutional guarantee of the policies issued by the state administrators, according to the Petitioner, will greatly influence the Petitioner and will impair the Petitioner's involvement in government in participating in the development of legal system and in providing advocacy for the people in Indonesia;
- c. The Corruption Eradication Commission Law, according to the Petitioner, impairs the constitutional rights and/or authorities of the Petitioner, namely the common interest of the Petitioner as reflected in the purpose and objective in its Articles of Association;

- d. The Corruption Eradication Commission Law, according to the Petitioner, is paradoxical and not in line with the spirit of reform, because the Corruption Eradication Commission Law creates an absolute state institution which allows new authoritarianism to happen in living as a nation and state;
- e. Whereas the Petitioner is a citizen that pays tax compliantly, while the tax collected has been spent uselessly for an institution called the Corruption Eradication Commission (KPK) which is proved ineffective and inefficient in eradicating corruption;
- f. Whereas the Corruption Eradication Commission Law does not reflect constitutional rights of the Petitioner because of the accountability which is not in accordance with the 1945 Constitution and the acknowledgement as a new government with unlimited (absolute) power has greatly influenced and harmed the Petitioner as a gathering place of people who care about the nation and state based on law;
- g. Whereas the Petitioner deemed to have not obtained the legal certainty or protection with respect to the Petitioner's active role in eradicating criminal acts of corruption, which according to the Petitioner, are guaranteed by Article 41 of the Corruption Eradication Commission Law, namely in the form of report on an alleged criminal act of corruption, such as among others, the Petitioner's report to the Corruption Eradication Commission (KPK) Number 10637/PIMP/KPK/2/2006, dated February 20, 2006, in the case known as



“SUDIGATE”, which was not followed up at all by the Corruption Eradication Commission (KPK);

- h. Whereas, according to the Petitioner, currently there are 11,000 cases of criminal acts of corruption reported by the people to the Corruption Eradication Commission (KPK) but without real progress, and only around 30 cases were brought to the court. They were in fact only small-scale corruption cases, according to the Petitioner. According to the Petitioner, this proves that the Corruption Eradication Commission (KPK) is ineffective and inefficient, and hence KPK is deemed discriminatory and unfairly selective;
- i. Whereas, according to the Petitioner, the Corruption Eradication Commission Law has closed the opportunity for Indonesian citizens other than the police and those from the public prosecutor’s office to become investigators and prosecutors in the Corruption Eradication Commission (KPK). According to the Petitioner, this is contradictory to Article 28D Paragraph (1) of the 1945 Constitution.

Considering, after carefully evaluating the Petitioner’s arguments in explaining the impairment of constitutional rights as described above, it has been evident to the Court that:

- (1) The Petitioner could not explain the impairment of constitutional rights and/or authorities in its qualification as individual Indonesian citizen, *in casu* a group of people having a common interest, due to the coming into effect of the

provisions in the Corruption Eradication Commission Law petitioned for review;

- (2) The Petitioner's arguments concerning impairment of constitutional rights and/or authorities shall be viewed more as criticism of the existence or performance of KPK, rather than an issue of constitutionality of the Corruption Eradication Commission Law in the context of judicial review of Law;
- (3) Even if all assumptions and evaluation of the Petitioner towards the Corruption Eradication Commission Law and the Corruption Eradication Commission (KPK) as an institution are true, which requires further substantiation, as they are the purpose of the *a quo* petition, it would be more appropriate to file this petition to the People's Legislative Assembly, as a state institution having the authority to formulate laws, as an input in the context of review by the legislators (*legislative review*);
- (4) The Petitioner's unclear qualification and constitutional rights and/or authorities which are deemed by the Petitioner to have been impaired in such qualification have rendered this petitioned obscure (*obscur*) due to confusion between the reasons for *judicial review* and *legislative review* which can be mutually supportive while both have differences. Hence, the *a quo* petition does not meet the criteria as intended in Article 51 Paragraph (1) of the Constitutional Court Law, neither does the petition meet the criteria as intended in Article 51 Paragraph (3) of the Constitutional Court Law;

Considering whereas the Panel of Justices examining the *a quo* petition during the Preliminary Examination, pursuant to Article 39 of the Constitutional Court Law, in the hearing on May 30, 2006, advised the Petitioner that the reasons for such petition would be more appropriate in filing a proposal for *legislative review* to the legislators (the People's Legislative Assembly) rather than a petition for judicial review of Law in the Constitutional Court. However, since the Petitioner remained consistent with its opinion (*vide* Minutes of Preliminary Examination Hearing dated June 20, 2006 after petition correction), pursuant to the provision of Article 28 Paragraph (4) of the Constitutional Court Law, the Panel of Justices then reported it in the Plenary Meeting of Justices Plenary Meeting of Justices (RPH) on June 28, 2006. Upon hearing the report from the Panel of Justices, the Plenary Meeting of Justices (RPH) concluded and decided that since it was evident that the *a quo* petition did not meet the criteria as intended in Article 51 Paragraph (1), the Court did not deem it necessary to invite the People's Legislative Assembly or the President (the Government) to hear their statements before the Court;

Considering, based on all the above considerations, the Court came to the conclusion that with the inability to meet the criteria as intended in Article 51 Paragraph (1) of the Constitutional Court Law, the Petitioner did not meet the criteria of legal standing as Petitioner in the *a quo* petition, and therefore the Court did not need to consider the substance or principal issue of this petition any further;

In view of Article 56 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 concerning 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 this decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices on Wednesday, July 25, 2006, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday, July 25, 2006, by us: Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, Prof. Dr. H.M. Laica Marzuki, S.H., I Dewa Gede Palguna, S.H., M.H., Soedarsono, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., Prof. H. A. Mukthie Fadjar, S.H. M.S., H. Achmad Roestand, S.H., Dr. Harjono, S.H., M.C.L, and Maruarar Siahaan, S.H., respectively as Members, assisted by Alfius Ngatrin, S.H. as Substitute Registrar and in the presence of the Petitioner/Petitioner's attorney, the People's Legislative Assembly, the Government, Directly Related Parties, and Indirectly Related Parties.

**CHIEF JUSTICE**

**SIGNED**

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

**JUSTICES**

**SIGNED**

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

**SIGNED**

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

**SIGNED**

**Soedarsono, 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**

**Maruarar Siahaan, S.H.**

**SUBSTITUTE REGISTRAR**

**SIGNED**

**Alfius Ngatrin, S.H.**