



## **DECISION**

**Number 011/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 14 Year 2002 concerning Tax Court (State Gazette of the Republic of Indonesia Year 2002 Number 27, Supplement to State Gazette of the Republic of Indonesia Number 4189, hereinafter referred to as the Tax Court Law) against the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) filed by:

1. Name : Amirudin  
Title : Director of CV. Cipta Optima Abadi  
Address : Jl. Pleburan Barat Number 36 Semarang
  
  2. Name : Putut Aji Pusara, S.Kom.  
Occupation : Private  
Address : Jl. Kelapa Kopyor 2 / BN No. 7 Tembalang, Semarang.
- hereinafter referred to as **Petitioners**;

In this matter granting power of attorney to GPW (*Government Policy Watch*) NGO, with its address at Jalan Tentara Pelajar No. 39 Semarang, based on a special power of attorney dated May 5, 2006, having the following members:

1. Name : Syamsoer Kono, S.H.  
Title : Director  
Address : Jl. Tentara Pelajar No. 39 Semarang
2. Name : Kushardi Tri Kamandoko, S.E.  
Title : Secretary  
Address : Jl. Bukit Kemuning VIII/550 Semarang
3. Name : Dra. Cicik Harini, M.M.  
Title : Treasurer  
Address : Jl. Sri Rejeki III/37 Semarang
4. Name : R. Istiyono Sutoyo Putro, B.Sc., Bc.Hk.  
Title : Supervisor  
Address : Jl. Lumbung Sari V/6 Semarang
5. Name : Ariati Anomsari, S.E., M.M.  
Title : Supervisor  
Address : Jl. Nakula I/31 Semarang

Having read the petition of the Petitioners;

Having heard the statements of the Petitioners/their Attorney,

Having examined the evidence of the Petitioners;

### **LEGAL CONSIDERATIONS**

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

Considering whereas prior to examining the principal issue of the petition of the Petitioners, the Constitutional Court (hereinafter referred to as the Court), shall first take the following matters into account:

1. The authorities of the Court to examine, hear, and decide upon the petition filed by the Petitioners;
2. The legal standing of the Petitioners to file the *a quo* petition;

With respect to the foregoing two matters, the Court is of the following opinion:

#### **1. Authority of the Court**

Considering whereas pursuant to the provision of Article 24C Paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) the Court among other things shall have the authority to hear at the first and final level the decision of which shall be final to conduct judicial review of a law against the Constitution. Such provision is reaffirmed in Article 10 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, hereinafter referred to as the Constitutional Court Law);

Considering whereas the petition of the Petitioners is concerning judicial review of the Law of the Republic of Indonesia Number 14 Year 2002 concerning Tax Court (State Gazette of the Republic of Indonesia Year 2002 Number 27, Supplement to State Gazette of the Republic of Indonesia Number 4189, hereinafter referred to as the Tax Court Law), hence *prima facie* the Court has the authority to examine, hear, and decide upon the petition for judicial review of the *a quo* law against the 1945 Constitution. However, since a petition for judicial review of Article 36 Paragraph (4) of the Tax Court Law was once filed and decided in case Number 004/PUU-II/2004, pursuant to Article 60 of the Constitutional Court Law, Article 36 Paragraph (4) of the Tax Court Law can no longer be petitioned for another judicial review. However, Article 42 Paragraph (2) of the Regulation of Constitutional Court Number 06/PMK/2005 concerning Procedural Guidelines for Judicial Review Cases (hereinafter referred to as PMK 06/PMK/2005) states that *"...a petition for judicial review of a law against the same substance of paragraphs, articles, and/or parts as the case that has been decided by the Court can be petitioned for another judicial review with different constitutionality criteria as the basis of the petition"*. Thus, to decide whether the Court has the

authority to examine, hear, and decide upon the *a quo* petition, the Court will give further consideration on the principal issue of the petition;

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

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law provides that Petitioners in the judicial review of a law against the 1945 Constitution shall be those who deem that their constitutional rights and/or authorities are impaired by the enactment of a law, namely:

- a. individual Indonesian citizens (including group of people having a common interest);
- 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 Unitary State of the Republic of Indonesia regulated in law;
- c. public or private legal entities; or
- d. state institutions.

Considering whereas as from the pronouncement of Decision Number 006/PUU-III/2005, the Court has determined 5 (five) criteria for the impairment of constitutional rights as intended in Article 51 Paragraph (1) of the Constitutional Court Law, namely:

- a. The Petitioners must have constitutional rights and/or authorities granted by the 1945 Constitution;

- b. Such constitutional rights and/or authorities are deemed to have been impaired by the coming into effect of a law petitioned for review;
- c. 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;
- d. There is a causal relationship (*causal verband*) between the impairment of constitutional rights and/or authorities and the law petitioned for review;
- e. if the petition is granted, it is expected that, the impairment of such constitutional rights and/or authorities argued will not or does not occur any longer.

Considering whereas the Petitioners are individual Indonesian citizens as Taxpayers (Exhibit P-1 and attachment thereof) who have an interest relationship to the petition for judicial review of the *a quo* Tax Court Law, and hence the Petitioners meet the qualifications as intended in Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law;

Considering whereas with respect to the *legal standing* of the Petitioners the Court is of the following opinion:

- a. The Petitioners meet the qualifications as individual Indonesian citizens,
- b. The Petitioners as Taxpayers deem that their constitutional rights granted by the 1945 Constitution have been impaired by Article 36 Paragraph (4) of the Tax Court Law;

Therefore, the Court is of the opinion that the Petitioners have met the provisions concerning criteria of *legal standing* to file the *a quo* petition.

### **3. Principal Issue of the Petition**

Considering whereas Petitioners filed the petition on May 18, 2006 received in the Registrar's Office of the Constitutional Court on July 5, 2006, revised on July 28, 2006, concerning judicial review of Article 36 Paragraph (4) of the Tax Court Law which reads "*In addition to the requirements as intended in Paragraph (1), Paragraph (2), and Paragraph (3) and Article 35, in the event that an Appeal is filed against the amount of indebted Tax, the Appeal can only be filed if 50% (fifty percent) of such indebted amount has been paid*", based on the principal reasons as follows:

1. Petitioners as Taxpayers deemed that their constitutional rights have been impaired by Article 36 Paragraph (4) of the Tax Court Law that does not reflect the sense of justice, which limits the rights of Taxpayers, impedes Taxpayers from taking legal actions in the Tax Court. According to the

Petitioners, this is clearly and evidently in violation of the provisions of Article 1 Paragraph (3) and Article 28D Paragraph (1) of the 1945 Constitution;

2. The impairment due to the provision that an appeal can only be filed if 50% (fifty percent) of the indebted amount concerned has been paid is not only in the form of rupiah, but also constitutes injustice because it limits the rights of Taxpayers to take legal actions to obtain justice;
3. The Petitioners deem that Article 36 Paragraph (4) of the Tax Court Law is not only contradictory to the 1945 Constitution as intended in items 1 and 2 above, but also contradictory to Law Number 6 Year 1983 concerning General Taxation Provisions and Procedures referred in the consideration part of the Tax Court Law;

Considering, with respect to the Petitioners' arguments in item 1 and item 2 above, the Court has considered and decide upon the petition for judicial review of Article 36 Paragraph (4) of the Tax Court Law against the 1945 Constitution as set forth in Decision Number 004/PUU-II/2004 which was pronounced in the Plenary Session open for public on December 13, 2004 which reads, "***To declare that the petition of the Petitioner is rejected***";

Considering whereas Article 60 of the Constitutional Court Law reads, "*With respect to the substance of paragraphs, articles, and/or parts in a law that have been reviewed, the petition for another judicial review cannot be filed*". Meanwhile, Article 42 Paragraph (2) of PMK 06/PMK/2005 states, "...a



*petition for judicial review of a Law against the same substance of paragraphs, articles, and/or parts as the case that has been decided by the Court can be petitioned for another judicial review with different constitutionality criteria as the basis for the petition”;*

Considering whereas with respect to the Petitioner’s description in items 1 and 2 above there are no criteria of constitutionality as the basis for the petition of the Petitioners which are different from the criteria of constitutionality as the basis for the petition in Case Number 004/PUU-II/2004 the consideration of which mentioned “*the obligation to pay 50% shall not be based on the verdict of criminal mistake or penalty punishment, but **as the payment of part of the debts of the taxpayers** as well as the requirement for the right to file an appeal. If the Tax Court’s decision later stipulates that the disputed amount of debts of the Taxpayer is smaller, the state shall be obligated to return the difference, and if it is bigger, the Taxpayer shall only add the shortfall. If the state must return the payment difference it is even required by law to pay 2% interest every month as regulated in Article 87 of the a quo law”;*

Considering whereas since the reasons of the Petitioners are not different from the reasons filed by the Petitioner in Case Number 004/PUU-II/2004, by referring to the reasons and considerations as mentioned in the foregoing Decision, the Court is the opinion that the petition for judicial review of Article 36 Paragraph (4) of the Tax Court Law

against the 1945 Constitution filed by the Petitioners does not meet the criteria of constitutionality as the basis for a different petition as intended in Article 42 Paragraph (2) of PMK 06/PMK/2005;

Considering, with respect to the Petitioners' arguments in item 3, the Court is of the opinion that the substance of the petition of the Petitioners is judicial review a law against another law, namely the Tax Court Law against the Law on General Taxation Provisions and Procedures, not against the 1945 Constitution. In fact, the Law compared or made as the basis for review is Law Number 6 Year 1983 that has been amended on several occasions and most recently with Law Number 16 Year 2000. Moreover, the texts of Article 16 and Article 19 Paragraph (1) of Law Number 16 Year 2000 are different from those quoted by the Petitioners. Article 16 of Law Number 16 Year 2000 reads,

(1) *The Director General of Taxation due to his office or upon the request from Taxpayers can correct Tax Assessment Letter, Tax Collection Letter, Objection Decision Letter, Letter of Decision on Reduction or Cancellation of Incorrect Tax Assessment, or Initial Tax Restitution Statement, which contain **typographic errors, miscalculation, and or misapplication** of certain provisions in taxation laws and regulations.*

(2) *The Director General of Taxation within the time frame of 12 (twelve) months as from the receipt date of the request, must give a decision on the requested correction.*

(3) *If the time frame as intended in Paragraph (2) has elapsed, while the Director General of Taxation does not give a decision, the request for correction shall be deemed accepted”.*

Article 19 of Law Number 16 Year 2000 reads,

(1) *If the indebted tax according to Tax Underpayment Assessment Letter, or Additional Tax Underpayment Assessment Letter, and additional tax amount that must be paid based on Correction Decision, Objection Decision, or Appeal Decision, at the maturity date of the payment, is not paid or is underpaid, the amount of tax which is not paid or underpaid shall be subject to **administrative sanction in the form of interest** of 2% (two percent) a month for the whole period, calculated from the maturity date up to the payment date or issue date of Tax Collection Letter, and a part of month shall be counted as 1 (one) full month.*

(2) *In the event that Taxpayers are allowed to pay in installment or to suspend tax payment, an interest of 2% (two percent) per month is charged, and a part of month shall be counted as 1 (one) full month”.*

Considering whereas Article 16 of the Law on General Taxation Provisions and Procedures is concerning a condition of typographic errors, miscalculation and/or misapplication of certain provisions in taxation laws and regulations in stipulating tax amount, while Article 19 Paragraphs (1) and (2) of the foregoing Law is concerning the imposition of administrative sanction in the

form of interest if the tax is not paid or is underpaid by the maturity date. Therefore, it is obvious that the matters regulated in the articles of the two *a quo* laws are different, and cannot be made as the reason for the existence of the criteria of constitutionality which shall be different as intended in Article 42 Paragraph (2) of PMK 06/PMK/2005;

Considering, based on all the above considerations, since the petition of the Petitioners does not meet the criteria of constitutionality with different reason as intended in Article 42 Paragraph (2) of PMK 06/PMK/2005, in accordance with the provision of Article 60 of the Constitutional Court Law, the Court does not have the authority to examine, hear, and decide upon the substance of a *quo* petition, and therefore it must be declared that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*);

In view of Article 56 Paragraph (1) *juncto* Article 60 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 Petitioners can not accepted (*niet ontvankelijk verklaard*).

Hence this decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices on Monday, October 2, 2006 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day Wednesday, October 4, 2006, by us Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, Soedarsono, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., Dr. Harjono, S.H., M.C.L., Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A. Mukthie Fadjar, S.H., M.S., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H., M.H., and Maruarar Siahaan, S.H., respectively as Members, assisted by Fadzlun Budi S.N., S.H., M.Hum. as Substitute Registrar without the presence of the Petitioners/their Attorneys, in the presence of the Government/its Attorney and the People's Legislative Assembly/its Attorney.

**Chief Justice,**

SIGNED

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

**Justices,**

SIGNED

**Soedarsono, S.H.**

SIGNED

SIGNED

**Prof. H.A.S. Natabaya, S.H., LL.M**

SIGNED

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

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

SIGNED

SIGNED

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

**H. Achmad Roestandi, S.H.**

SIGNED

SIGNED

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

**Maruarar Siahaan, S.H.**

**Substitute Registrar,**

SIGNED

**Fadzlun Budi S.N., S.H., M.Hum.**