



DECISION

Number 013/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 at the first and final level, has passed a decision in the case of the petition for judicial review of Law Number 41 Year 1999 regarding Forestry against the 1945 Constitution of the State of the Republic of Indonesia filed by:

CENTRAL EXECUTIVE BOARD OF THE ASSOCIATION OF PEOPLE'S SHIPPING ENTREPRENEURS (DPP PELRA) having its address at Jalan Raya Pinisi No.6, Sunda Kelapa, North Jakarta represented by its administrators as follows:

1. Name : H.M. Yunus
Occupation : Chairperson of DPP PELRA of 2004-2009 period,
Address : Jalan Lodan Dalam I Rt.09/08, Ancol, Pademangan, North Jakarta;

2. Name : Drs. H. Abd.Rasyid Gani
Occupation : Secretary General of DPP PELRA of 2004-2009 period,
Address : Kampung Japat Rt.006/008, Ancol Sub District, Pademangan District, North Jakarta;

In this case granting a power of attorney to : 1. Dedi M. Lawe, S.H.;

2. Victor Sitanggang, S.H.;

3. Herry Poerwanto, S.H., M.H.;

4. IG Ayu Santi Pujiati, S.H.;

5. Reno Iskandarsyah, S.H.

Advocates from the Legal Protection and Aid Agency for People's Shipping (LPBH PELRA) with their domicile at the Law Office of *Massudilawe, Diantika & Associates* at Wisma Aria Building 2nd fl, Jalan HOS Cokroaminoto No. 81 Menteng, Central Jakarta, by virtue of a special power of attorney dated January 22, 2005, both jointly and individually, acting for and on behalf of and for the interest of DPP PELRA, hereinafter referred to as Petitioners;

Having read the petition of the petitioners;

Having heard the statements of the petitioners;

Having heard the oral statements of experts and witnesses of the Petitioners;

Having examined the evidence;

Having read the written conclusion of the Petitioners;

Having read the written statements of experts of the Petitioners;

LEGAL CONSIDERATIONS

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

Considering whereas before entering the principal issue of the case, the Court needs to first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the petition for judicial review of the Law of the Republic of Indonesia Number 41 Year 1999 regarding Forestry (hereinafter referred to as the Forestry Law) as amended by Law Number 19 Year 2004 regarding the Stipulation of Government Regulation In Lieu of Law Number 1 Year 2004 regarding the Amendment to Law Number 41 Year 1999 into law;
2. Whether the *a quo* Petitioners have the legal standing to file the petition for judicial review of the Forestry Law against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

With regard to the aforementioned two issues, 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 1945 Constitution and Article 10 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law), the Court has the authority to hear at the first and final level, the decision of which shall be final, in conducting judicial review on law against the 1945 Constitution;

Considering whereas since the petition of the Petitioners pertains to judicial review of the Law of the Republic of Indonesia Number 41 Year 1999 regarding Forestry, the Court is of the opinion that the judicial review is within the jurisdiction of the Constitutional Court, so that the Court has the authority to examine, hear and decide upon the petition of the Petitioners;

2. LEGAL STANDING OF THE PETITIONERS.

Considering whereas Article 51 Paragraph (1) of the Constitutional Law stipulates 2 (two) criteria that must be met by a Petitioners to have the legal standing, as follows:

- a. The qualification of the Petitioner whether as an Indonesian citizen individual (including group of people having a common interest), unit of customary law community insofar as it is still in existence and in accordance with the development of the community and the principle of Unitary State of the Republic of Indonesia as regulated in law, public or private legal entity, or a state institution;
- b. The claim that in such qualification, there are constitutional rights and/or authorities of the Petitioner that are impaired by the coming into effect of a law;

Considering whereas with reference to Decision of the Constitutional Court Number 006/PUU-III/2005 dated May 31, 2005, the impairment of constitutional rights that occurs due to the coming into effect of a law in accordance with Article 51 Paragraph (1) of the Constitutional Court Law shall meet 5 (five) requirements, as follows:

- a. the Petitioners must have constitutional rights granted by the 1945 Constitution ;
- b. the Petitioners believe that their constitutional rights have been impaired by the coming into effect of a law;
- c. the impairment of such constitutional rights shall be specific and actual in nature or at least potential in nature which, pursuant to logical reasoning, will surely occur;

- d. there is a causal relationship (*causal verband*) between the impairment of such constitutional right and the law petitioned for review;
- e. if the petition is granted, it is expected that such impairment of the constitutional rights argued will not or do not occur any longer;

Considering whereas pursuant to the criteria as set forth in Article 51 of the Constitutional Law in examining the legal standing of the Petitioners, the Court will take the following matters into account:

1. Whereas the principal issue of the petition of the Petitioners is the mention of the words "**transportation**" or "**to transport**" or "**transporting vehicles**" in Forestry Law as follows:
 - a. Article 50 Paragraph (3) Sub-Paragraph h reads: **To transport, to control, or to own forest products that are not completed together with the Certificate of Legality of Forest Products;** and Elucidation of Article 50 Paragraph (3) Sub-Paragraph h reads: *"Completed together" shall mean that every **transportation, control or ownership of forest products, at the same time and place, must be accompanied by and completed with legal documents as evidence. If the content of the certificate of legality of forest products is not in conformity with the physical condition namely the type, quantity, or volume, such forest products shall be declared as not having legal documents as evidence;***

- b. Article 50 Paragraph (3) Sub-Paragraph j reads; “Taking heavy-duty equipments and/or other devices which are commonly or presumably used to transport forest products in the forest area without permission from competent authorities”, and Elucidation of Article 50 Paragraph (3) Sub-Paragraph j reads, “Heavy-duty equipment to transport, *among others shall be tractors, bulldozers, trucks, logging trucks, trailers, cranes, barges, motor boats, helicopters, jeeps, and vessels*; and
- c. Article 78 Paragraph (15) reads; “*All forest products as a result of criminal acts and violations and or equipment including **transporting vehicles** thereof used to commit such criminal acts and or violations as intended in this article shall be confiscated for the State*”, and Elucidation of Article 78 Paragraph (15), “**Transporting vehicles**, shall include vessels, barges, trucks, trailers, pontoons, tugboats, sailboats, helicopters, and so forth”;

to the extent that such terms are not found in the
previous Forestry Law;

2. Whereas the mention of the words "transportation", "to transport" and "transporting vehicles" in the above mentioned articles of the Forestry Law, and the confirmation regarding prohibition and penal sanctions for the operation of **transporting vehicles** within the

forest are where the provisions are automatically applicable to the vessels of people's shipping (Pelra), and therefore, according to the Petitioners Forestry Law, such provisions have limited and hampered the Petitioners' activities in conducting the transportation particularly the transportation of processed timber that has been the main and reliable support in the transportation whereby the Petitioners' business has been able to compete with various transportation fleets that are more sophisticated and modern. According to the Petitioners this is the point where the Petitioners are harmed and the main issue for which the *a quo* petition has been filed;

3. Whereas the Petitioners as citizens having business in people's shipping (Pelra) sector argue that they have constitutional rights and authorities granted by the 1945 Constitution, as follows:

a. Article 27 Paragraph (2) of the 1945 Constitution which reads, " *Every citizen shall have the right to work and living befitting human beings*";

Whereas the Petitioners have the right to work and therefore the right to obtain proper living in this motherland. The manifestation of such rights, according to the Petitioners, shall be that the business activities conducted by the Petitioners must not be hampered by a law or its

implementing agents insofar as the activities of the Petitioners are conducted in compliance with prevailing laws and regulations. Law enforcement officers as law implementing agents cannot underestimate the Petitioners because the objective of the Petitioners' efforts has been clearly provided for in Law Number 21 Year 1992 regarding Shipping (hereinafter referred to as the Shipping Law) in which Article 78 Paragraph (1) thereof reads; *"People's shipping development shall be implemented for the purpose of preserving its business life and important role as a part of water transportation system;* while Paragraph (2) reads: *"People's shipping development shall be implemented: a. to improve its capacity as a business opportunity and job opportunity; b. to realize the development of human resources and entrepreneurship in shipping business";*

If Article 78 of the Shipping Law is studied, it is clearly illustrated that Maritime Law has implemented Article 27 Paragraph (2) of the 1945 Constitution, meaning that the rights and authorities of the Petitioners have been protected by Article 27 Paragraph (2) of the 1945 Constitution, insofar as, however, Article 78 Paragraph (1) and Paragraph (2) of the Shipping Law are complied with and implemented properly and consistently;

Whereas Article 78 Paragraph (1) and Paragraph (2) of the Shipping Law contains not only the protection of constitutional rights regulated in Article 27 Paragraph (2) of the 1945 Constitution, but also the protection of the improvement of status and dignity of the Indonesian nation to raise and save the national image as a maritime nation. It is clear that the Government's intention by issuing the Shipping Law is to sincerely attempt to the maximum extent to save shipping business sector particularly people's shipping as a link of the national shipping sector which is impossible without involving people's shipping sector. It is different from the Forestry Law which, according to the Petitioners, has marginalized public maritime business and harmed the Petitioners, by hampering the Petitioners' efforts to obtain adequate work and living and by incapacitating the Petitioners' to preserve their life and living particularly by conducting arrests, so that this matter, in the Petitioners' opinion, it is contradictory to Article 27 Paragraph (2) of the 1945 Constitution;

- b. Article 28A the 1945 Constitution which reads, "*Every person shall have the right to live and the right to maintain his/her life and living* ";

Whereas the constitutional rights and authorities of the Petitioners are also protected, as provided for in Article 28A the 1945 Constitution, to live and maintain their life by defending themselves from systematic destruction (*character assassination*) conducted by the implementing agents of the Forestry Law towards the life of the Petitioners on the basis of the aforementioned law;

- c. Article 28C Paragraph (2) of the 1945 Constitution which reads, “*Every person shall have the right to develop himself in striving for his rights collectively to develop his society, nation, and country*”;

According to the Petitioners, the facts have revealed that the implementing agents of the Forestry Law have rashly conducted arrests of vessels, ship’s captains and ship-owners although the Petitioners already had the Certificate of Legality of Forest Products (SKSHH) and Shipping License (SIB) where the Petitioners have been accused as the actor of *illegal logging*, while the Petitioners are only transporters having no access to forests and forest products, so that according to the Petitioners, pursuant to Article 28C Paragraph (2) of the 1945 Constitution, the Petitioners are given the rights and authorities to defend themselves and to

strive for their rights for achieving a better life and for preserving the inherited cultural tradition as a national asset;

- d. Article 28D Paragraph (1) of the 1945 Constitution which reads, *“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law”*;

Whereas the Petitioners are protected by Article 28D Paragraph (1) of the 1945 Constitution in striving for a fair and equal treatment before the law. The Petitioners argue that officers often treat them as the instigator of forest destruction while Petitioners are only transporters having no direct access to the forest, who transport processed timber from transporting boat after the sale and purchase transaction is closed and upon the issuance of SKSHH by the Forestry Service Office based on the application of the Timber Owner and therefore according to the Petitioners it is legally reasonable that the Forestry Law is contradictory to Article 28D Paragraph (1) of the 1945 Constitution;

- e. Article 28G Paragraph (1) of the 1945 Constitution which reads, *“Every person shall have the right to protect himself/herself, his/her family, honor, dignity, and property under his/her control, and shall have the right to feel secure*

and be protected from the threat of fear to do, or not to do something which constitute human right”;

According to the Petitioners, on-site practices of for the implementation of the Forestry Law have truly placed the Petitioners in a very difficult situation especially after the Petitioners have been accused as the actors of *illegal logging*, and that such practices are unacceptable and legally groundless to the Petitioners. Such difficult situation encountered by the Petitioners is worsened by the conduct of implementing agents of the Forestry Law such as Forest Police, Water and Air Police, and the Navy Force, who inconsiderately arrested, stopped, and even put the Petitioners’ boats in custody and then declared the Petitioners as suspect while the Petitioners are only timber transporter having SKSHH based on the application of the Timber Owner, so that according to the Petitioners it should have been the timber owners and not the Petitioners that should be held responsible. Therefore in the Petitioners’ opinion it has been proved that the Forestry Law is contradictory to Article 28G Paragraph (1) of the 1945 Constitution;

- f. Article 28I Paragraph (3) of the 1945 Constitution which reads, *”The rights of traditional communities shall be*

respected in conformity with the development of true and civilization”;

Whereas Article 77 Paragraph (1) of the Shipping Law reads, *”People’s shipping as the people’s traditional business shall be a part of water transportation business, having important roles and its own characteristic”*. The characteristic of people’s shipping boats is that most of them are made in the model of Indonesian traditional cargo boat (*Phinisi* boat) so that according to the Petitioners, preserving people’s shipping boats means preserving the culture of our ancestors. With the arrests conducted based on the Forestry Law particularly Article 50 Paragraph (3) Sub-Paragraph h while disregarding the principle of responsibility on the part of the owners of goods, in the Petitioners are of the opinion that the Forestry Law has slowly dampened the maritime spirit of the sailors that should be protected pursuant to Article 28I Paragraph (3) of the 1945 Constitution;

- g. Article 33 Paragraph (4) of the 1945 Constitution which reads, *”The national economy shall be organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental in-lights, independence, as well as by keeping a balance between progress and unity of the national economy”;*

- h. Article 28H Paragraph (1) of the 1945 Constitution which reads, *"Every person shall have the right to live a physically and mentally prosperous life"*;

Whereas the state guarantees a prosperous life for its citizens. Such obligation to guarantee the prosperity and welfare can only be achieved if the state performs the principles of the economy regulated in Article 33 of the 1945 Constitution, and therefore, according to the Petitioners, the Petitioners' boats that have been accompanied by legal documents and clearance in the port of origin must be protected in the voyage and must not be arrested. Such actions by the officers, in the Petitioners' opinion, are clearly contradictory to Article 28H Paragraph (1) of the 1945 Constitution;

4. Whereas the existence of the Forestry Law, particularly Elucidation of Article 50 Paragraph (3) Sub-Paragraph h, Elucidation of Article 50 Paragraph (3) Sub-Paragraph j, Article 78 Paragraph (15), and Elucidation of Article 78 Paragraph (15) according to the Petitioners, do not bring about the implementation of the principles of the economy as intended in Article 33 Paragraph (4) of the 1945 Constitution by respecting the principle of justice for the Petitioners. The duty of the implementing agents of the Forestry Law should be

protecting the forests by arresting timber financiers or timber owners and not the Petitioners' boats that have no connection with forest matters;

Considering whereas based on the statements of experts and witnesses in the hearing on July 27, 2005, the Petitioners state have encountered impairment of their constitutional rights as described in the Principal Issue of the Case;

Considering whereas pursuant to the conclusion of the Petitioners received at the Registry Office of the Constitutional Court on Wednesday August 3, 2005, the Petitioners state principally to stand on their opinion that the articles petitioned by the Petitioners are contradictory to the 1945 Constitution;

Considering whereas the written statement of the Government dated August 16, 2005, declares that the Forestry Law is not contradictory to the 1945 Constitution as described in the Principal Issue of the Case;

Considering whereas the response of the Petitioners to the statement of the Government dated August 16, 2005 received at the Registry Office of the Constitutional Court on Friday August 26, 2005, principally declares that the statement of the Government is unacceptable, as described in the Principal Issue of the Case;

Considering whereas based on the aforementioned arguments/opinions of the Petitioners and statements of experts and witnesses, the Court will further consider whether the Petitioners have their constitutional rights impaired by the coming into effect of the Forestry Law, particularly Elucidation of Article 50 Paragraph (3) Sub-Paragraph h, particularly the clause " *the forest products shall be declared as not having legal documents as evidence*"; Elucidation of Article 50 Paragraph (3) Sub-Paragraph j, particularly the word "vessel"; and Article 78 Paragraph (15) and its Elucidation, particularly the explanation of the phrase "including transporting vehicles" and the word "vessel";

Considering whereas with respect to the Petitioners' arguments related to the clause and terms " *the forest products shall be declared as not having legal documents as evidence*", "*including transporting vehicles*", and the word "vessel" mentioned in Elucidation of Article 50 Paragraph (3) Sub-Paragraph j; and Article 78 Paragraph (15) of the Forestry Law and its Elucidation, the Court is of the following opinion:

1. The phrase and clause " *the forest products shall be declared as not having legal documents as evidence*", "*including transporting vehicles*", and the word "vessel" are dictions in formulating primary norms (Article 50) as well as secondary norms (Article 78) in the regime of the Forestry Law and have no connection with human rights at all as regulated in Article 27 Paragraph (2), Article 28A,

Article 28C Paragraph (2), Article 28D Paragraph (1), Article 28G Paragraph (1), Article 28I Paragraph (3), and Article 28H Paragraph (1), as well as Article 33 Paragraph (4) of the 1945 Constitution, which by the Petitioners are argued as constitutional rights/authorities of the Petitioners that have been violated by the clause and phrases mentioned in Article 50 Paragraph (3) Sub-Paragraph h and Sub-Paragraph j and Article 78 Paragraph (15) and its Elucidation of the Forestry Law;

2. The Petitioners' arguments that relate the phrases and clause in Article 50 Paragraph (3) Sub-Paragraph h and Sub-Paragraph j and Article 78 Paragraph (15) of the Forestry Law and its elucidation to the Shipping Law pertain to the harmonization of 2 (two) Laws which is not within the jurisdiction of the Court to hear insofar as it is not relevant to the issue of the constitutionality;
1. The losses encountered by the Petitioners since the issuance of Forestry Law have not been, in general, caused by the contradiction between the provisions of Article 50 Paragraph (3) Sub-Paragraph h and Sub-Paragraph j and its Elucidation and Article 78 Paragraph (15) and its Elucidation of the Forestry Law, and the 1945 Constitution. Based on the description of the Petitioners and statements obtained in the hearing, the losses have occurred due to the on-site implementation of law enforcement

conducted by the law enforcement officers (Forestry Police, the national Police (POLRI), the National Navy Force (TNI-AL). Even if it were true that in the on-site implementation of law enforcement there have been excesses harmful or assumed to have impaired the Petitioners' rights, it would not be relevant to the issue of constitutionality of the law being petitioned for judicial review . Thus, the Court is of the opinion that the impairment of constitutional rights argued by the Petitioners is not substantiated;

2. The Petitioners argue that the Forestry Law is conservative in nature so as to harm the Petitioners, while in fact the forestry legal policy of Indonesia through the Forestry Law is adopted in the context of implementing human rights of Indonesian people in the present and the next generation to obtain healthy environment and in the context of implementing sustainable national development in accordance with the provision of Article 33 Paragraph (4) of the 1945 Constitution, particularly in forestry and environmental development sector.

Considering whereas based on the above mentioned considerations, the Court is of the opinion that there has been no such impairment of constitutional rights of the Petitioners due to the coming into effect of the *a quo* Law, so that the Petitioners must be declared as not having the legal standing, and hence it must be declared that the petition

of the Petitioners can not be accepted. Accordingly, the substance of petition does not need to be considered any further;

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

PASSING THE DECISION:

To declare that the petition of the Petitioners cannot be accepted (*niet ontvankelijk verklaard*);

Hence this decision was made in the consultative meeting of 9 (nine) Constitutional Court Justices Prof. DR. Jimly Asshiddiqie, S.H., as the Chairperson and concurrent Member, accompanied by 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., DR. Harjono, S.H., MCL., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H.,M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H., on Monday, September 12, 2005 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day Tuesday, September 13, 2005, by 8 (eight) Constitutional Court Justices assisted by Eddy Purwanto,SH as the Substitute Registrar, and in the presence of the Petitioners, the Government, and the People's Legislative Assembly.

CHIEF JUSTICE,

signed

PROF. DR. JIMLY ASSHIDDIQIE, S.H.

JUSTICES

signed

signed

**PROF.H.A. MUKTHIE FADJAR, S.H.,MS. PROF. H.A.S. NATABAYA, S.H,
LL.M.**

signed

signed

DR. HARJONO, S.H., MCL.

H. ACHMAD ROESTANDI, S.H.

signed

signed

SOEDARSONO, S.H.

MARUARAR SIAHAAN,S.H

I DEWA GEDE PALGUNA, S.H., MH.

SUBSTITUTE REGISTRAR,

signed

EDDY PURWANTO, S.H.

