

DECISION

Number: 016/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 the following decision upon the petition for judicial review of Law Number: 12 Year 2001 regarding the Formation of Singkawang City (hereinafter referred to as Law No. 12 Year 2001) against the 1945 Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution), filed by:

MINHAD RYAD, 53 years of age, Muslim, Indonesian Citizen, Private Person, having his address at RT.04/RW.II Dusun Parit Lintang, Sungai Pangkalan I Village, Sungai Raya District, Bengkayang Regency, West Kalimantan, acting for and on his own behalf, hereinafter referred to as **PETITIONER**;

Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having heard the statements of the Regent of Sambas Regency, Regent of Bengkayang Regency, and Mayor of Singkawang City;

Having heard the statements of the Regional People's Legislative Assembly of Sambas Regency, the Regional People's Legislative Assembly of Bengkayang Regency, and the Regional People's Legislative Assembly of Singkawang City;

Having heard the statements of Witnesses and Experts of the Petitioner;

Having examined the evidence;

LEGAL CONSIDERATION

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

Considering whereas before entering the principal issue of the case, the Constitutional Court (hereinafter referred to as 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 12 Year 2001 regarding the Formation of Singkawang City (hereinafter referred to as Law No. 12 Year 2001);
2. Whether the *a quo* Petitioner has the legal standing for filing the petition for judicial review of Law No. 12 Year 2001 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. THE AUTHORITY OF THE COURT

Considering whereas pursuant to the provision of Article 24C Paragraph (1) of the 1945 Constitution, Article 10 Paragraph (1) of Law of the Republic of Indonesia 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 to conduct judicial review of laws against the 1945 Constitution;

Considering whereas since the petition of the Petitioner pertains to the judicial review of Law No. 12 Year 2001, the Court is of the opinion that such judicial review is within the jurisdiction of the Court, and hence the Court has the authority to examine, hear and decide upon the petition of the Petitioner;

2. LEGAL STANDING OF THE PETITIONER

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law has stipulated 2 (two) criteria that must be fulfilled for the Petitioner to have the legal standing, namely:

- a. The qualification of the Petitioner whether as an individual Indonesian citizen (including group of people having a common interest), customary law community unit in-so-far as it is still in existence and in accordance with the principles of the Unitary State of the Republic of Indonesia as regulated in Law, a 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 in the legal consideration of Decision on Case No. 006/PUU-III/2005 and Case No. 010/PUU-III/2005, the Court has determined 5 (five) requirements for the existence of constitutional right impairment due to the coming into effect of a law as intended in Article 51 Paragraph (1) of the Constitutional Court Law, namely:

- a. the Petitioner must have constitutional rights granted by the 1945 Constitution;
- b. the Petitioner believes that such constitutional rights have been impaired by the law being reviewed;

- c. that the impairment of the Petitioner's right constitutional is specific and actual in nature or at least potential in nature which, pursuant to a 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 petitioned for review;
- e. there is a possibility that upon the granting of a petition, the impairment of the constitutional rights claimed will not or do not occur any longer;

Considering whereas based on the above considerations, and after the Court has examined the petition, revised petition, and evidence presented, and the testimony of the Petitioner in the hearing, the Court will give the following considerations:

Considering whereas in his petition the Petitioner has explained his qualification as an individual Indonesian citizen who deemed to have been harmed by the coming into effect of Law No. 12 Year 2001, particularly Article 3 and Article 6, based on the following reasons:

1. Whereas with the addition of Sungai Raya District into the territory of Bengkayang Regency the Petitioner was born and grew up in Sungai Raya District, and, the Petitioner has lost many facilities and amenities previously obtained for generations from Singkawang during the period when Sungai Raya District and Singkawang were within the territory of Sambas Regency, namely among others: (1) the distance from Sungai Raya District to the Capital of Bengkayang Regency in Bengkayang is

127 km, while the distance from Sungai Raya District to Singkawang City is only 45 km; (2) Singkawang is the second biggest center of business and offices in West Kalimantan, while Bengkayang is only a district city which has been upgraded to the status of capital of Bengkayang Regency; (3) dealing with affairs in Singkawang are easier, cheaper, and faster than in Bengkayang; (4) the risk, costs, and energy to Singkawang are less than those to Bengkayang;

2. That the hard struggle of the Petitioner, together with local inhabitants of Sungai Raya District, in expressing their aspiration through the efforts of audience, lobby, oration, demonstration, and so forth to the Regional People's Legislative Assembly (DPRD), Provincial Government to the Minister of Home Affairs for the inclusion of Sungai Raya District into the administrative territory of Singkawang City, argued by the Petitioner as the struggle for justice to enjoy the essence of regional division, which has not been accommodated as it is proved by the fact that Law No. 12 Year 2001 does not include Sungai Raya District into the administrative territory of Singkawang City, as evident in the provisions of Article 3 and Article 6 of Law No. 12 Year 2001 concerning the boundaries of Singkawang City Administration;
3. That, with the exclusion of Sungai Raya District from the territory of Singkawang City by Law No. 12 Year 2001, the Petitioner claims that a number of his constitutional rights have been violated, namely: the

right to equal in law and government; the right to obtain equal amenities, opportunities and benefits to achieve justice; the right to be free from discriminatory treatment; and the right to obtain protection from such discriminatory treatment;

Considering whereas, pursuant to the Elucidation of Article 51 Paragraph (1) of the Constitutional Court Law, “constitutional rights” shall be the rights regulated in the 1945 Constitution of the State of the Republic of Indonesia. Thus, not all matters described by the Petitioner, as described above, constitute impairment of constitutional rights;

Considering whereas that the Court must further consider whether Article 3 and Article 6 of Law No. 12 Year 2001 have truly impaired the constitutional rights of the Petitioner namely, the right to equal status in law and government, the right to obtain equal amenities, opportunities and benefits to achieve justice, the right to be free from discriminatory treatment, and the right to obtain protection from such discriminatory treatment;

Considering whereas the provisions of Article 3 and Article 6 of Law No. 12 Year 2001 respectively read as follows:

Article 3, *“Singkawang City shall derive from some parts of Bengkayang Regency which consist of:*

a. Pasiran District;

- b. *Roban District; and*
- c. *Tujuhbelas District”;*

Article 6,

“(1) Singkawang City shall have the following regional boundaries:

- a. *to the north with Selakau District of Sambas Regency;*
 - b. *to the east with Semalantan District of Bengkayang Regency;*
 - c. *to the south with Sungai Raya District of Bengkayang Regency;*
and
 - d. *to the west with Natuna Sea;*
- (2) The regional boundaries as intended in Paragraph (1) shall be set out in a map which constitutes an inseparable part of this law,*
- (3) The fixed determination of regional boundaries of Singkawang City and Bengkayang Regency on site, as intended in Paragraph (1), shall be stipulated by the Minister of Home Affairs and Regional Autonomy”;*

Considering whereas to support his arguments regarding constitutional rights impairment he encountered, the Petitioner has presented witnesses and experts whose statements and opinions were heard in the hearing on September 1, 2005, which principally state as follows:

1. Witness Toto, Secretary of Public Concern Group of Sungai Raya District (KPM).

The witness stated that the witness collected public aspiration in the context of struggling for what is desired by the Petitioner, by establishing a Public Concern Group (KPM) on September 26, 1999 and once sent the aspiration of the people of Sungai Raya District in a letter to the government with a copy to the Regional People's Legislative Assembly of Bengkayang Regency, and also during an official visit of the People's Legislative Assembly to Sungai Raya District. Such aspiration was also once sent to the Regional People's Legislative Assembly and the Governor of West Kalimantan Province, even to the Minister of Home Affairs as well;

2. Witness Ibrahim D. Saing.

The witness stated that with the inclusion of Sungai Raya District into the territory of Bengkayang Regency, the process of applying for something such as Drivers' License, yellow card for job application, and so forth would take a long distance and would be so costly and as such, it is deemed as burdening for the people who are mostly farmers;

3. Witness Zainuddin B. Yana (Head of Sungai Pangkalan I Village of Sungai Raya District of Bengkayang Regency and Secretary of KPM).

The witness stated that the Petitioner's occupation is a kind of service bureau with respect to which the inclusion of Sungai Raya District into the territory of Bengkayang Regency has caused the people to no longer ask for his services to administer something so that the Petitioner is economically harmed;

The witness also explained that as a Village Head, the witness also wished that his region be included in Singkawang because it would be closer and cheaper to administer something;

4. Expert Drs. Heriyandi Roni, M.Si.

The expert principally stated that regional division was initially motivated by a spirit of improvement in public service system. In connection therewith, the geographical location factor should be taken into account. Long distance would harm not only the people but also the government because it would require higher costs;

The expert also stated that, psychologically it would be difficult to ask for the people's cooperation if they already had an *a priori* attitude against the Government of Bengkayang Regency if something had been unsuitable to their aspiration;

5. Expert Drs. Achyar Asmu'ie, M.Si.

The expert stated that pursuant to the principles of regional formation or division, the inclusion of Sungai Raya District into Bengkayang Regency was a big mistake considering the cost, time, efforts, and resources to provide services, and hence its inclusion into Singkawang City would be less costly;

West Kalimantan is a conflict-prone area having multi-ethnic communities with the majority of Malay and Dayak ethnics are majorities, and hence creating a kind of competition for political power;

The expert also said from the view point of political integration and governmental effectiveness as well as public security, subjective aspects such as communal culture and others must be considered in the formation of a region in order to prevent resistance;

Considering whereas that in the hearing on September 1, 2005 the Court also heard the statements of parties representing the elements of Regional Government of Sambas Regency, parties representing the elements of Regional Government of Bengkayang Regency, and parties representing the elements of Regional Government of Singkawang City who basically stated as follows:

1. **Drs. H. Jamiat Akadol, Regional Secretary of Sambas Regency, and Mas'ud Sulaiman, Vice Chairperson of the Regional People's Legislative Assembly of Sambas Regency,** explained that the proposal for the Formation of Singkawang City had become the Decision of the People's Legislative Council of Sambas in 1997 together with the proposal for the division expansion of Sambas Regency into three, namely Sambas Regency, Bengkayang Regency, and status upgrading of (at that time) Singkawang Administrative City to Singkawang Municipality. It was based on Law Number 5 Year 1974. It was quite a long process and there was not any problem;

2. **Yohanes Pasti, S.H., Chairperson of the Regional People's Legislative Assembly Bengkayang Regency,** explained that Bengkayang Regency was formed by the Law of the Republic of Indonesia Number 10 Year 1999 (which includes Sungai Raya District into the territory of Bengkayang Regency). Law No. 12 Year 2001 was then enacted (including the regions of Pasiran, Roban, and Tjujuhbelas Districts) which was questioned by the Petitioner who wished that Sungai Raya District were included in Singkawang;

Referring to a geographical factor or distance is made as a reason to refuse the inclusion of Sungai Raya District into Bengkayang Regency is not appropriate. The reason is that there are districts from which it takes two nights and three days through mountainous

areas to the capital of Bengkayang Regency, namely Jagoi Babang and Siding Districts which are geographically bordered with East Malaysia. It does not mean that, due to the long distance, services in such regions are ignored;

3. **Drs. H. Jusni Busri, Regional Secretary of Bengkayang Regency**, gave his statement that principally supported the statement of the People's Legislative Council of Bengkayang Regency by describing examples showing that services and development in Sungai Raya District are in fact going on properly;
4. **Drs. Awang Ishak, M.Si., Mayor of Singkawang City**, explained that he does not have any objection as to whether Sungai Raya District becomes a part of Bengkayang Regency or a part of Singkawang;
5. **H. Zaini Nur, Chairperson of the Regional People's Legislative Assembly of Singkawang City**, explained that in line with the statement of the Mayor of Singkawang City, he will accept whether Sungai Raya District becomes a part of Bengkayang Regency or a part of Singkawang. He admitted that the Petitioner truly filed his aspiration to make Sungai Raya District a part of Singkawang City, namely when the members of Commission II of the People's Legislative Assembly visited Singkawang City;

Considering, based on the statements of the witnesses, experts, and parties as described above, it is evident to the Court that there is not any problem of constitutionality either in the process of formation of Government of Singkawang City (by Law No. 12 Year 2001) or in the substance of the articles of Law No. 12 Year 2001 claimed to have impaired the constitutional rights of the Petitioner;

Considering whereas the arguments of the Petitioner regarding the impairment of constitutional rights with the coming into effect of the *a quo* Law, particularly Article 3 and Article 6, that the distance to the regency capital city becomes longer, that Singkawang is a center of business while Bengkayang is only a district city upgraded to the status of regency capital city, and so forth, as described above, although it has actually happened, are logical consequences of a regional division. Such consequences are constitutional right impairment as intended in Article 51 Paragraph (1) of the Constitutional Court Law nor violations of the 1945 Constitution causing the Petitioner to lose his position and his right to equal status in law and government, or right to obtain equal opportunities and benefits to achieve justice, or right to be free from discriminatory treatment and the right to obtain protection from such discriminatory treatment;

Considering whereas based on the above description, although pursuant to Article 51 Paragraph (1) of the Constitutional Court Law the Petitioner in his qualification as an individual Indonesian citizen is

acknowledged to have the right to file a petition for judicial review of the *a quo* Law against the 1945 Constitution, it transpires that in such qualification there is not any of the constitutional rights of the Petitioner which have been impaired by the coming into effect of the *a quo* Law, particularly Article 3 and Article 6 as argued, and hence the Petitioner cannot be declared as having the legal standing to act as the Petitioner in the *a quo* petition;

Considering whereas based on the statements of the parties in the hearing as described above and the evidence presented by the Petitioner, as related to the provisions of Article 3 and Article 6 of Law Number 12 Year 2001 petitioned for review is, none of the two Articles can be interpreted as having impaired the constitutional rights of the Petitioner as argued, namely the right to obtain equal status in law and government; the right to obtain equal amenities, opportunities and benefits to achieve justice; the right to be free from discriminatory treatment and the right to obtain protection from such discriminatory treatment;

Considering whereas based on the aforementioned considerations, the Court is of the opinion that the Petitioner does not have the legal standing, and hence pursuant to Article 56 Paragraph (1) of the Constitutional Court Law, it must be declared that the petition of the Petitioner can not be accepted (*niet ontvankelijk verklaard*), so that Court does not need to consider the substance of the petition 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 Petitioner cannot be accepted (*niet ontvankelijk verklaard*);

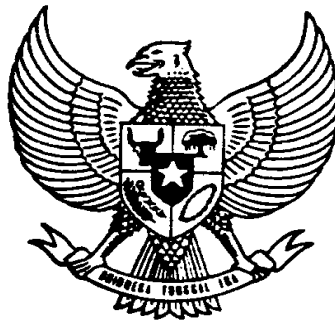
Hence the decision was made in the consultative meeting of judges attended by 9 (nine) Constitutional Court Justices on Wednesday, October 12, 2005 and pronounced out in the Plenary Session of the Constitutional Court open for public on this day Wednesday, October 19, 2005, by us Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, 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., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H., respectively as Members, assisted by Cholidin Nasir, S.H., as the Substitute Registrar and in the presence of the Petitioner, the People's Legislative Assembly of the Republic of Indonesia, the Central Government, and the Regional Government.

CHIEF JUSTICE,

signed

Prof. Dr. Jimly Asshiddiqie S.H.

JUSTICES



**THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

DECISION

Case Number: **016/PUU-III/2005**

Regarding

**Judicial Review of Law Number: 12 Year 2001 Regarding
Formation of Singkawang City
(Hereinafter referred to as Law No. 12 Year 2001)**

Against

The 1945 Constitution

Wednesday, October 19, 2005

JAKARTA

2005