

**DECISION****Number 018/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 on the petition for judicial review of the Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection against the Constitution of the State of the Republic of Indonesia Year 1945 filed by:

Name : dr. Ruyandi. M. Hutasoit

Place and Date of Birth/Age : Bandung, January 28, 1950

Religion : Christian

Occupation : Doctor

Address : Jalan Imam Bonjol No. 18, RT. 003,  
RW. 005, Menteng Sub District,  
Menteng District, Central Jakarta

ID Card No : 09.5006.380150.0013

Mobile Number : 0816977025

In this matter granting the power of attorney to:

1. Hanan Soeharto, S.H.
2. Henri Rudiono Lie, S.H.
3. Wahyudin Ahmad Ali, S.H.

all of whom are Advocates and Lawyers, choosing domicile address at Jalan Hayam Wuruk Number 68 West Jakarta -11160, each by virtue of a special power of attorney dated September 12, 2005, hereinafter referred to as

**PETITIONER;**

Having read the petition of the Petitioner;

Having heard the testimony of the Petitioner;

Having heard the testimony of the Government;

Having read the affidavit of the Government;

Having read the affidavit of the Experts of the Petitioner;

Having examined the evidence and documents related to the petition 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 entering the principal case, the Constitutional Court (hereinafter referred to as Court) must first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide on the petition filed by the Petitioner;
2. Whether the Petitioner has the legal standing to file the *a quo* petition;

In respect of the above mentioned foregoing two issues, the Court is of the following opinion:

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

Considering whereas pursuant to Article 24C Paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) as 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 the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law) and Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 concerning Judicial Authority (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358, hereinafter referred to

as Judicial Authority Law), the Court shall have the authority to examine at the first and final level, the decision of which shall be final in conducting judicial review of a law against the 1945 Constitution;

Considering whereas the petition of the Petitioner is concerning judicial review of Article 86 of the Law of the Republic of Indonesia Number 23 Year 2002 concerning Child Protection (State Gazette of the Republic of Indonesia Year 2002 Number 109, Supplement to the State Gazette of the Republic of Indonesia Number 4235, hereinafter referred to as Child Protection Law) against the 1945 Constitution, hence the *a quo* petition is still within the scope of authority of the Court.

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

Considering whereas pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, Petitioners of judicial review of law against the 1945 Constitution must meet the following qualification:

- a. Petitioners shall be: (i) individual Indonesian citizens (including group of people having common interest); or (ii) customary law community units insofar as they are still in existence and in accordance with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated by law; or (iii) public or private legal entities; or (iv) state institutions;

- b. The Petitioners as intended in item a above deem that their constitutional rights and/or authorities are impaired by the coming into effect of the law petitioned for review.

Therefore, for a person or a party to be accepted as Petitioner in the review of a law against the 1945 Constitution, as in the *a quo* case, the person or party must first explain and prove:

- a. His/her qualification in the *a quo* petition as intended by Article 51 Paragraph (1) of the Constitutional Court Law;
- b. The constitutional rights and/or authorities of the Petitioner in such qualification as granted by the 1945 Constitution;
- c. The impairment of constitutional rights and/or authorities of the Petitioner as a result of the coming into effect of law being is petitioned for review.

Considering whereas in addition, as from the pronouncement of the Decision for Case Number 006/PUU-III/2005 and all decisions for subsequent cases, which can be said to have constituted the jurisprudence of the Court, the Court is of the opinion that such impairment of constitutional rights must meet the following 5 (five) criteria:

- 1) The Petitioner must have constitutional rights granted by the 1945 Constitution;

- 2) The constitutional rights are deemed to have been impaired by the coming into effect of a law;
- 3) Such impairment of constitutional rights shall be specific and actual in nature, or at least potential in nature which, based on logical reasoning, will surely occur;
- 4) There is a causal relationship (*causal verband*) between the impairment of the constitutional rights and the law petitioned for review;
- 5) If the petition is granted, it is expected that such impairment of the constitutional rights any longer.

Considering whereas the Petitioner in the case of petition of the review of Article 86 of the Child Protection Law against the 1945 Constitution is dr. Ruyandi M. Hutasoit, an Indonesian citizen whose profession is a doctor who is active in giving religious lessons, religious education, religious guidance, religious counseling and public service in the forms of lessons and/or sermons pursuant to the Petitioner's religion (a Christian) to adults and non adults or children in front of many people inside churches, places of worship, public meeting centers and educational places;

Considering whereas with respect to the issue of legal standing, the Petitioner has argued as follows:

a. Whereas the Petitioner has constitutional rights granted by Article 28, Article 28E Paragraphs (1) and (2) of the 1945 Constitution, each of which reads as follows:

- Article 28: *“The freedom of association and assembly, the freedom of the expression of thoughts, both orally and in written form and the like shall be stipulated by law”;*
- Article 28E paragraph (1) : *“Every person shall be free to adhere to a religion and to worship according to his/her religion, to choose education and teaching, to choose an occupation, to choose citizenship, to choose residence in the state territory and to leave it, and shall have the right to return”;*
- Article 28E paragraph (2) : *“Every person shall have the right to the freedom to hold a belief, to express his/her thought in accordance with his/her conscience”;*

b. Whereas the Petitioner deems that his constitutional rights as intended in item a have been impaired by the coming into effect of Article 86 of the Child Protection Law which reads: *“Every person who intentionally uses cunning tricks, a series of lies, or persuades a child to choose another religion not on the child’s own intention, while it is known or should be assumed that the child has not been mature or responsible in accordance with the child’s religion, shall be imposed with a*

*maximum imprisonment of 5 (five) years and/or a maximum penalty of a maximum Rp100,000,000.00 (one hundred million Rupiah)”;*

- c. Whereas the impairment of constitutional rights of the Petitioner as intended in item b is that the Petitioner worries about and is not free in disseminating his religion and also the consequence in reducing the freedom to adhere to a religion and a child’s right to obtain education. To support his argument, the Petitioner gave a case example which tell on his colleague who is a doctor in Indramayu who was sentenced with imprisonment of 3 (three) years , because of the application of Article 86 of the Child Protection Law, and hence the existence of a *quo* article will potentially impair the constitutional rights of the Petitioner;

Considering whereas with respect to the arguments presented by the Petitioner, the Court is of the following opinion:

- a. Whereas the Petitioner can indeed be qualified as a Petitioner of individual Indonesian citizen as intended in Article 51 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law;
- b. Whereas as an individual Indonesian citizen, the Petitioner has the constitutional right specified in Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution. Article 28 of the 1945 Constitution argued by the Petitioner has no correlation with



constitutional rights because the provision of the article contains an instruction to the Legislators;

- c. Whereas the constitutional rights of the Petitioner do not have any causal relationship (*causal verband*) to the provision of Article 86 of the Child Protection Law. The reason is that, the existence of Article 86 of the Child Protection Law does not at all reduce the constitutional rights of the Petitioner as guaranteed by Article 28E Paragraph (1) and Paragraph (2) of the 1945 Constitution. On the contrary, the provision set forth in Article 86 of the Child Protection Law is an affirmation that the state shall be responsible for protecting the right of every child who is immature and who has not been capable of being responsible from possible cunning tricks, lies, or persuasion that can cause the child to choose a certain religion not on his own awareness;
- d. Whereas the provision of Article 86 of the Child Protection Law is a penal provision for a person who **“intentionally uses cunning tricks, a series of lies, or who persuades a child to choose another religion not on his own intention while it is known or should be assumed that the child has not been mature or responsible in accordance with the child’s religion”**, and therefore, the Petitioner or anyone who does not meet the elements of criminal acts as intended in the *a quo* article, shall not need to be afraid of or to worry about preaching or disseminating his religion. The case example given

by the Petitioner in the hearing, cannot be considered by the Court because it has no correlation with the determination of the legal standing of the Petitioner;

- e. Whereas accordingly, since the elements of impairment of constitutional rights required by Article 51 Paragraph (1) of the Constitutional Court Law *juncto* jurisprudence of the Court are not fulfilled, the Petitioner has no legal standing to file the petition for judicial review of Article 86 of the Child Protection Law.

Considering whereas since the Petitioner has no legal standing to file the *a quo* petition, the principal issue of the case shall not need to be considered any further, and hence it shall be declared that the petition of Petitioner can not be accepted (*niet onvankelijk verklaard*);

Pursuant to 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 Petitioner can not be accepted (*niet onvankelijk verklaard*).

Hence the decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices on Monday, January 16, 2006 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day Tuesday, January 17, 2006, by us Prof. Dr. H. 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 Wiryanto, S.H., M.Hum. as Substitute Registrar, and in the presence of the Petitioner/his Attorneys-in-Fact, Government or representative.

**Chief Justice,**

Signed

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

**Justices,**

**Signed**

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

**Signed**

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

**Signed**

**Signed**

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

**Signed**

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

**Signed**

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

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

**Signed**

**Signed**

**Maruarar Siahaan, S.H.**

**Soedarsono, S.H.**

**Substitute Registrar,**

**Signed**

**Wiryanto, S.H., M.Hum.**