



DECISION

Number 030/SKLN-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 a case of petition with respect to the Dispute on the Authority of State Institutions, the authorities of which are granted by the 1945 Constitution of the State of the Republic of Indonesia, filed by:

THE INDONESIAN BROADCASTING COMMISSION, in this matter

represented by Dr. S. Sinansari Ecip; Sasa Djuarsa Sendjaja, Ph.D; Dr. H. Andrik Purwasito, D.E.A; Dr. Ilya Revianti Sunarwinadi; Dr. Ade Armando, MS; Amelia Hezkasari Day, SS; Bimo Nugroho Sekundatmo, SE, M.Si; Drs. Dedi Iskandar Muda, MA; having their address at the State Secretariat Building, Fourth Floor, Gajah Mada Street Number 8, Jakarta;

Respectively as Deputy Head and Members of the Indonesian Broadcasting Commission, acting for and on behalf of the Indonesian Broadcasting Commission;

Hereinafter referred to as **THE PETITIONERS;**

Against

THE PRESIDENT OF THE REPUBLIC OF INDONESIA QQ. THE MINISTER OF

COMMUNICATION AND INFORMATICS, in this matter represented by the Minister of Law and Human Rights, the Minister of Communication and Informatics, either individually or jointly for and on behalf of the President of the Republic of Indonesia by virtue of a Special Power of Attorney dated February 13, 2007;

Hereinafter referred to as **THE RESPONDENT**;

Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having read the statement of the Respondent;

Having heard the statement of the Respondent;

Having read the statement of Indirect Related Party, the Indonesian Media Law and Policy Centre;

Having heard the statement of the Witness and Experts presented by the Petitioners;

Having heard the statement of the Witness and Experts presented by the Respondent;

Having read the written conclusions presented respectively by the Petitioners and the Respondent;

Having examine the evidence presented by the Petitioners and the Respondent;

LEGAL CONSIDERATIONS

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

Considering whereas prior to entering into the Principal 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 filed by the Petitioners;
2. Whether the Petitioners have the legal standing to file a petition to the Court to decide a Dispute on the Authority of State Institutions, the authorities of which are granted by the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), as intended by Article 61 of the Law of the Republic of Indonesia Number 24 Year 2003 concerning the Constitutional Court Law (hereinafter referred to as the Constitutional Court Law);

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

1.AUTHORITY OF THE COURT

Considering whereas pursuant to Article 24C Paragraph (1) of the 1945 Constitution in conjunction with Article 10 Paragraph (1) of the Constitutional Court Law, the Court has the authority to hear at the first and final level, the decision of which shall be final, among others in deciding disputes of authorities of state institutions, the authorities of which are granted by the Constitution;

Considering whereas in their petition the Petitioners have acted on behalf of the Indonesian Broadcasting Commission (hereinafter referred to as KPI), and deemed KPI as a state institution that has a direct interest upon the authority **granted** by the 1945 Constitution, and that such authority, according to the Petitioners has been impaired or taken over by the Respondent, namely the President *qq.* the Minister of Communication and Informatics;

Considering whereas the Court's authority to examine, hear, and decide upon the Petitioners' petition shall remain subject to the legal standing of the Petitioners, then the Court will further consider the matter in the Legal Standing section of this Decision;

2.LEGAL STANDING OF THE PETITIONERS

Considering whereas based on Article 61 Paragraph (1) of the Constitutional Court Law, the Petitioner in a dispute concerning state institutions' authorities which are granted by the 1945 Constitution, is **“a state institution the authorities of which are granted by the 1945 Constitution which has direct interest upon the disputed authority”**;

Considering whereas the Petitioners have in principle presented the following arguments in their petition:

- whereas the Petitioners as Members of KPI, claim to have the right to act for and on behalf of KPI;
- whereas KPI as stipulated in Article 1 Number 13 and Article 7 Paragraph (2) of the Law of the Republic of Indonesia Number 32 Year 2002 concerning Broadcasting (hereinafter referred to as the Broadcasting Law) is a state institution;
- whereas although KPI is not explicitly referred to in the 1945 Constitution, but it is derivatively granted with authority by the 1945 Constitution based on Article 28F of the 1945 Constitution, which is stated in the “In View of part of the Consideration Section“ of the Broadcasting Law;

Considering whereas the Petitioners in their response in principle explain the following matters:

- whereas there is not sufficient reason to indicate the presence of dispute of authorities of state institutions whose authorities are granted by the 1945 Constitution *in casu* in the field of broadcasting, as intended by Article 61 of the Constitutional Court Law, because the presence of constitutional authority of the Petitioners granted by the 1945 Constitution which is disputed with the Respondent is unproven;
- whereas the regulatory authority in the field of broadcasting should be referred to the provision of Article 7 Paragraph (2) of the Broadcasting Law, which provides that, “KPI as an independent state institution regulates broadcasting matters”, however on the understanding that such regulatory authority through KPI regulations shall be within the framework of implementation of Government Regulations as the implementation of the Broadcasting Law;
- whereas the independent nature of KPI as stipulated in Article 7 Paragraph (2), cannot be separated from KPI’s authority pursuant to Article 8 Paragraph (2) Sub-Paragraph a through Sub-Paragraph d of the Broadcasting Law, **which only covers the authority concerning the broadcasting content;**

Considering whereas due to the simultaneous examination of this case Number 030/SKLN-IV/2006 concerning Dispute of Authorities of State Institutions with the case Number 031/PUU-IV/2006 concerning Judicial

Review of the Broadcasting Law, then the Court shall only consider the statements of the witnesses and experts related to the Dispute of Authorities of State Institutions;

Considering whereas at the hearing, the Court has heard the statements of the witnesses and experts presented by the Petitioners and the Respondent under oath and also has read statement of the expert of the Petitioners submitted at the Court's Registry Office, the complete version of which has been set forth in the principal case section, basically as follows:

1. **Witness H. A. Effendy Choirie, M.Ag, M.H.**, has given a statement that did not directly touch upon whether KPI's authority is granted by the 1945 Constitution;
2. **Expert presented by the Petitioners, Prof. M. Alwi Dahlan, Ph.D.**,
 - Whereas the 1945 Constitution along with its amendments in fact do not specifically stated the basis of the regulating authority on broadcasting media and to which institution such authority shall be delegated, meanwhile there are many independent state institutions which have authorities substantially affecting the life of the country which in fact can

also be established without referring to the 1945 Constitution and exist in the Constitutional Court's Decision;

- Whereas the relation between independent state institutions with the 1945 Constitution from the communication perspective, can be seen from the constitutional reference of communication where the source of communication authority including broadcasting, actually can be traced back to the core of the 1945 Constitution that is the fourth paragraph of the preamble stating that one of the main objectives of the establishment of the State of the Republic of Indonesia is to develop the intellectual life of the nation within the state with sovereignty of the people;

3. Expert presented by the Petitioners, Effendy Ghazali, Ph.D.,

- Whereas Article 28F and Article 33 of the 1945 Constitution, which are intended to avoid conflicts between investors and interests of the public, have given birth to the Broadcasting Law, which ultimately gives birth to KPI. Article 7 Paragraph (2) of the broadcasting Law stipulates that KPI is an independent state institution and regulates broadcasting issues;

**4. Expert presented by the Petitioners, Hinca IP Panjaitan, S.H.,
M.H., ACCS.**

- Whereas in fact the Broadcasting Law was born from Law Number 36 Year 1999 on Telecommunication (the Telecommunication Law). Although their position is equal, both are laws, Article 24 of the Telecommunication Law clearly provides that telecommunication is any transmission, sending and or receiving of any information in the form of signs, signals, writings, pictures, voices and sounds through telegraphic, optic, radio, or other electromagnetic system. Everything related to the frequency spectrum is in the Telecommunication Law. Article 4 of the Telecommunication Law clearly stipulates that the telecommunication is controlled by the state and that its development is carried out by the Government. The telecommunication development regulates matters concerning determination of policies, regulation, supervision, and control. In the Broadcasting Law, only the policy determination is represented by the Government, while the functions of regulation, supervision, and control are carried out by independent institution;
- Whereas its frequency spectrum is the state's domain represented by the Government as included in Article 33 of the 1945 Constitution namely the earth, the sky and the space. Up to now, the Directorate General of Post and Telecommunication,

which formerly was under the Ministry of Transportation, currently within a directorate under the Ministry of Communication and Informatics, has carried out the day to day implementation with regard to frequency, telecommunication, and that things are getting better;

- Whereas the regulations function is clearly with the Government or the state to determine policies, while KPI regulates allocation to distribute broadcasting. Therefore, to guarantee democratization, is the domain of the regulator and to control and to supervise is the domain of KPI, while policies determination is the state's affairs;

5. Expert presented by the Petitioners, Denny Indrayana, SH., LL.M., Ph.D (Written Statement),

- Constitutional authority disputes can be classified into three categories: (1) constitutional authority which is textually specified in the 1945 Constitution, (2) implicit authority derived from the principal authority, and (3) necessary and proper authority to exercise the principal authority. The Court firmly states that “**such authorities may be set forth in a law**” (refer to the Constitutional Court Decision Number 004/SKLN-IV/2006 page. 90);

- The Petitioners argue that the disputed constitutional authorities are: (1) **authority to grant approval to broadcast**, and (2) **authority to stipulate regulations concerning broadcasting**. Both authorities are not specifically mentioned in the text of the 1945 Constitution. However, those two authorities can be deemed as being derived from the state's authority to protect human rights as guaranteed in Article 28F of the 1945 Constitution;

The Constitutional Court's Regulation Number 08/PMK/2006 Article 2 Paragraph (1) Sub-Paragraph g stipulates that, *"To become a Petitioner or Respondent in cases of disputes of constitutional authority of state institutions, a state institution shall be ...g. Another state institution whose authority is granted by the 1945 Constitution"*.

From the formulation of Article 2 Paragraph (1) Sub-Paragraph g, it is clear that state institutions that can be party to the dispute before the Court **are not limited in nature**, so that wider interpretation remains open;

- The Petitioners (KPI), whose authority is granted by the Broadcasting Law which has been derived from the 1945 Constitution, should be given an opportunity to be a party in a dispute concerning constitutional authority before the Court;

- Moreover, an independent state institution such as KPI, is a modern state organization phenomena that must be given a constitutional position, so that its role will be more obvious in the state organization system of Indonesia in the future;

6. **Witness presented by the Respondent, Jonggi Humala Tua Hamonangan Manalu**, has given a statement that did not directly touch upon whether KPI's authority is granted by the 1945 Constitution;

7. **Expert presented by the Respondent, Prof. Dr. I Gde Pantja Astawa, S.H., M.H.,**

- Whereas although based on the Broadcasting Law, KPI is referred to as a state institution, the constitutional authority is not mentioned in the 1945 Constitution. Therefore, in connection with this dispute, in this case, KPI does not have a legal standing on the basis of authority, because Article 61 of the Constitutional Court Law clearly provides the matter *to the extent that such authority is granted by the 1945 Constitution*;
- Whereas KPI's presence before the Court that has been linked to Article 28D of the 1945 Constitution is not relevant, meaning that it does not touch upon the constitutional right of KPI as an institution, because that article clearly and explicitly provides for

individual, every person, recognition guarantee for every person. Quoting the definition as mentioned in Law Number 39 Year 1999 on Human Rights, human rights are a set of rights attached to a human as a gift from God;

With regard to all of the foregoing statements, the Court shall consider the followings:

Considering whereas in the Decision Number 004/SKLN-IV/2006 dated July 12, 2006, the Court has decided *objectum litis* and *subjectum litis* concerning a disputed authority and state institution that has a direct interest upon the disputed authority as intended in Article 24C Paragraph (1) of the 1945 Constitution in conjunction with Article 61 Paragraph (1) of the Constitutional Court Law, as follows:

a. The disputed authority must be the authority granted by the 1945 Constitution;

b. The intended state institution shall be the state institution that disputes its authority granted by the 1945 Constitution;

Considering whereas in exercising the Court's authority to hear and decide upon disputes of authorities of state institutions whose authorities are granted by the 1945 Constitution, the Court has stated its opinion as form the Court's Decision Number 004/SKLN-IV/2006;

The legal considerations of that Court's Decision among other things are, *"In examining, hearing, and deciding upon a petition on authority dispute of state institutions, the Court must consider the close relationship between authorities and the implementing institutions. Hence, in stipulating whether the Court has the authority to examine the petition of authority dispute of state institutions, the Court must relate directly the disputed principal case (**objectum litis**) to the position of state institutions filing the petition, namely whether the authorities are given to such state institutions. Therefore, the matter of authority concerned is closely related to the legal standing of the Petitioners and determines whether or not the Court has the authority to examine, hear, and decide upon the **a quo** petition; The placement of "authority dispute" before "state institutions" has a very important meaning, because basically what is intended by Article 24C Paragraph (1) of the 1945 Constitution is indeed "authority dispute" or concerning "what is disputed" and not "who disputes". The definition will be different if the formulation of Article 24C Paragraph (1) of the 1945 Constitution reads, "...dispute of state institutions whose authorities are granted by the Constitution". In the latter formulation, the main problem is the disputing parties, namely state institutions and the object of dispute becomes unimportant. Hence, in such formulation, the Constitutional Court will consequently become a forum for dispute settlement of state institutions without considering the subject matter disputed by the state institutions, and such matter according to the Court is not the purpose of Article 24C Paragraph (1) of the 1945 Constitution. Because, if the formulation is "...disputes of state institutions*

whose authorities are granted by the Constitution”, the Constitutional Court will have the authority to decide upon any disputes that are not relevant at all to the matter of constitutionality of authorities of state institutions, insofar as the disputing parties are state institutions ...;

*Considering whereas the phrase “state institutions” is found in Article 24C Paragraph (1) of the 1945 Constitution, and hence the Court must stipulate which institutions are intended by Article 24C Paragraph (1). In deciding what are referred to as state institutions by Article 24C Paragraph (1) of the 1945 Constitution, the Court refers to the aforementioned description that the authority of the Court is to decide upon disputes on authority granted by 1945 Constitution, so that to decide whether an institution is a state institution as intended by Article 24C Paragraph (1) of the 1945 Constitution, the first thing to consider is the existence of certain authorities in the Constitution and then to which institutions those authorities are given. Since authority is limited in nature and is for a certain purpose, the nature of state institution cannot be decided in general, but is related to the authorities given or in other words an institution referred to by any name shall have the status as a state institution according to the definition of Article 24C Paragraph (1) of the 1945 Constitution if such institution questions, or is questioned about, its authorities granted by the 1945 Constitution.....Considering whereas the formulation of “authority disputes of state institutions whose authorities are granted by the Constitution,” has a purpose that only the authorities granted by the Constitution shall become the **objectum litis** of the dispute and the Court has the authority to decide upon*

*such dispute. The provision that becomes the basis for such authority of the Court also limits the authority of the Court, which means that if there is an authority dispute without the **objectum litis** “being the authorities granted by the Constitution”, the Court shall not have the authority to examine, hear, and decide. The Court is of the opinion that it is what is intended by the 1945 Constitution. Authority dispute, with the authority being granted by Law, is not under the authority of the Court..*

Considering whereas from the point of view of *subjectum litis* in this petition, the Petitioner is KPI and the Respondent is the President *qq.* the Minister of Communication and Informatics. Pursuant to the provisions in Article 4 Paragraph (1), Article (5), and Article (7) of the 1945 Constitution, the President *qq.* the Minister of Communication and Informatics is a state institution whose authorities are granted by the 1945 Constitution.

Therefore, the Respondent is a *subjectum litis* in the *a quo* petition. Meanwhile, the 1945 Constitution does not mention, let alone grants constitutional rights to KPI. Therefore, KPI exists is not as a state institution as intended by Article 24C Paragraph (1) of the 1945 Constitution in conjunction with Article 61 Paragraph (1) of the Constitutional Court Law;

Considering whereas in regard to the Petitioners' argument that KPI's constitutional authority is derived from Article 28F of the 1945 Constitution, the Court is of the following opinion:

Whereas Article 28F of the 1945 Constitution, reads, “ *Every person shall have the right to communicate and to obtain information to develop themselves and their social environment, and shall have the right to seek, obtain, possess, store, process and convey information using all kinds of channels available*”;

The aforementioned Article 28F of the 1945 Constitution provides for **the right of every person** to communicate and obtain information, and does not provide for the rights and/or authorities of state institutions, let alone to grant authority to the state institution related to broadcasting;

From the foregoing explanations, it can be concluded that KPI is a state institution which has been established under and whose authority has been granted by the law and not by the 1945 Constitution. Therefore, because KPI is not a state institution whose authority is granted by the 1945 Constitution, KPI does not meet the requirement of *legal standing* as stipulated by Article 61 Paragraph (1) of the Constitutional Court Law to file the *a quo* petition;

Considering whereas based on the aforementioned consideration, the Court is of the opinion that KPI as the Petitioners do

not have the *legal standing* so that it must declare that the Petitioners' petition cannot be accepted (*niet ontvankelijk verklaard*), and therefore it is not necessary for the Court to further consider the Substance of the Petition;

In view of Article 64 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).

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 9 (nine) Constitutional Court Justices on Monday, April 16, 2007 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday, April 17, 2007 that was attended by 9 (nine) Constitutional Court Justices, Jimly Asshiddiqie as the Chairperson and concurrent Member, H. Achmad Roestand, Maruarar Siahaan, H.M. Laica Marzuki, H.A.S. Natabaya, H. Abdul Mukthie Fadjar, H. Harjono, I Dewa Gede Palguna, and Soedarsono, respectively as Members, assisted by Triyono Edy Budhiarto as Substitute Registrar and in the presence of the

Petitioners, the Respondent or its representative, and the Indirect Related Party, Indonesia Media Law and Policy Centre.

Chief Justice,
signed
Jimly Asshiddiqie

Justices,

signed	signed
H. Achmad Roestandi signed	Maruarar Siahaan signed
H.M. Laica Marzuki signed	H.A.S. Natabaya signed
H. Abdul Mukthie Fadjar signed	H. Harjono signed
I Dewa Gede Palguna Substitute Registrar, signed	Soedarsono
Triyono Edy Budhiarto	