

## **DECISION**

**Case Number: 054 /PUU-II/2004**

**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 for judicial review of the Law of the Republic of Indonesia Number 23 Year 2003 regarding the General Elections of President and Vice President against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

1. Name : Yislam Alwini  
Occupation : Private Person  
Address : Jl. Skip Gg. Dalem No.3 Rt.04/05  
Lawanggintung Sub-district, South Bogor
2. Name : Mrs. Berar Fathia  
Occupation : Housewife  
Address : Jl. Chairil Anwar A/15 Rt.001/004  
Margahayu Sub-district, East Bekasi
3. Name : Tatang Isalhansyah WD  
Occupation : Entrepreneur  
Address : Kp Kebon Kelapa Rt.05/07  
Batu Tulis Sub-district, South Bogor

4. Name : H. Encep Rukmana  
Occupation : Entrepreneur  
Address : Jl. Wanasari Rt.002/002  
Cibitung Sub-district, Bekasi Regency.
5. Name : Ridwan Mursid  
Occupation : Entrepreneur  
Address : Jl. Palem Raya No.28 Rt. 05/08  
Cibodasari Sub-District, Tangerang City
6. Name : Sucipto, SH  
Occupation : Consultant  
Address : Desa Klidang Lor Rt.01/02 Batang Sub-district,  
Batang Regency Central Java.
7. Name : Suta Widhya  
Occupation : Private Employee  
Address : Jl. Mangga No.52 A Rt.004/005  
Utan Kayu Utara Sub-District  
Matraman Sub-district - East Jakarta.
8. Name : R. Endang. M. Aryakusuma  
Occupation : Entrepreneur  
Address : Jl Kp. Sukatani Rt.06/04, Tugu Utara Village  
Cisarua Sub-District, Bogor Regency.

In this matter granting the power of attorney to the following person:

Name : Yislam Alwini  
Place/Date of Birth : Jakarta, March 30, 1952  
Occupation : Private Person  
Address : Jl. Skip Gg. Dalem No.3 Rt.04/05  
Lawanggintung Sub-District, South Bogor.

By virtue of a Power of Attorney dated May 4, 2004; May 11, 2004; May 13, 2004  
hereinafter referred to as **Petitioners**

Having read the petition of Petitioners;

Having heard the testimony of Petitioners;

Having examined the evidence;

### **LEGAL CONSIDERATIONS**

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

Considering whereas that prior to examining the principal issue of the  
case, the Constitutional Court must first take the following matters into account:

1. Whether the Court has the authority to hear and decide the *a quo* petition;

2. Whether the Petitioners have the legal standing to act as Petitioners before the Court in the *a quo* petition;

1. **AUTHORITIES OF THE CONSTITUTIONAL COURT**

Whereas Article 24C Paragraph (1) of the 1945 Constitution states among other things that the Constitutional Court shall have the authority to hear cases at the first and final level the decisions of which shall be final, in conducting judicial review on laws against the Constitution, such provision being reaffirmed in Article 10 of Law Number 24 Year 2003 on the Constitutional Court.

Whereas Law Number 23 Year 2003 was enacted on July 31, 2003. therefore, notwithstanding any difference of opinion among the justices regarding the provision Article 50 of Law Number 24 Year 2003, the Court shall have the authority to hear and decide the *a quo* petition;\_\_\_

2. **LEGAL STANDING**

Considering whereas Article 51 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court states that Petitioners shall be parties who believes that their constitutional rights and/or authorities have been impaired by the enactment of a law, who may be an individual Indonesian citizens, customary law community units insofar as they are in existence according to the social development and principles of the

Unitary State of the Republic of Indonesia as regulated by law, public or private legal entities; or state institutions;

Therefore, for a person or a party to be considered as having a legal standing before the Court in a petition for review of a law, the person or party concerned must first explain:

1. The person's capacity in the *a quo* petition, be it as an Indonesian citizen, customary law community unit with the requirements as set forth in Article 51 Paragraph (1) above, a public or private legal entity; or a state institution;
2. The impairment towards the person's constitutional right and/or authority, suffered in the capacity concerned;

Considering whereas in their petition, the Petitioners expressly stated that: the Petitioners are candidates for the President and Vice President from a non-political party, some of which have registered themselves at the General Election Commission (hereinafter referred to as KPU), but do not specify which of the Petitioners has nominated himself to be President and who has nominated himself to be Vice President, nor have they clarified who among the Petitioners concerned have registered themselves at KPU, and in this way obscuring some of the Petitioners' statements relating to the Petitioners' identities;

Considering whereas pursuant to Article 6A Paragraph (2) of the 1945 Constitution, the Presidential and Vice Presidential Candidate pair is nominated by a Political Party or coalition of political parties that take part in the general

election prior to the implementation of the general election; which therefore means that the right to nominate a Presidential and Vice Presidential Candidate pair is the constitutional right of a political party;

Considering whereas the provision of Article 5 Paragraph (1) of Law Number 23 Year 2003 merely repeats the substance of Article 6A Paragraph (2) of the 1945 Constitution, and accordingly, there is no contradiction to the 1945 Constitution;

Considering whereas the granting of a constitutional right to nominate a Presidential and Vice Presidential Candidate pair to a political party under the 1945 Constitution does not mean the loss of a citizen's constitutional right, *in casu* the Petitioners', to become a Candidate for President or Vice President since the right is guaranteed by the 1945 Constitution, as affirmed by Article 27 Paragraph (1) and Article 28 Paragraph (3) of the 1945 Constitution if the citizen concerned has met the requirements referred in Article 6 and has complied with the procedure as referred to in Article 6A Paragraph (2) of the 1945 Constitution, such requirements being the binding procedure or mechanism for anybody who desires to be a Candidate for President the Republic of Indonesia.

Considering whereas based on the foregoing, and with due appreciation of the Petitioners' concern to implement the 1945 Constitution which protects human rights, no constitutional impairment has been evidently found against the Petitioners as referred to in Article 51 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court, and therefore, the Court is of the opinion that the Petitioners have no legal standing in the *a quo* petition;\_

Considering whereas in addition to the above, the Petitioners in the petition of their petition have evidently requested the Court to declare that “The creation of Law Number 23 Year 2003 does not comply with the provisions for the creation of a law under the Constitution of the State of the Republic of Indonesia” without explaining the law creation procedure being violated or the specific non-compliance with the provisions of the 1945 Constitution, as required by Article 51 Paragraph (3) Sub-Paragraph a of Law Number 24 Year 2003 on the Constitutional Court, and although the Court had in the hearing on June 28, 2004 advised the Petitioners to revise their petition, the Petitioners turned out to have disagreed with the advice concerned as evident in the revised petition of the Petitioners, which was received at the Court Registry on July 6 and 7, 2004 and the Petitioners’ statement at the Court hearing on August 12, 2004, due to which the Petitioners’ petition has become ambiguous and obscure or unclear;

Considering whereas with the considerations as elaborated in the foregoing, the Court is of the opinion that the Petitioners’ petition must be declared unacceptable (*niet ontvankelijk verklaard*), and therefore the substance of the petition shall not need to be considered any further;

Considering Article 56 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court;

### **PASSING THE DECISION**

To declare that the Petitioner’s petition can not be accepted (*niet onvankelijk verklaard*);

Hence, this Decision was made in the Plenary Consultative Meeting of Justices on September 24, 2004 and pronounced in a hearing open for the public on this Wednesday, October 6, 2004 by us: Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent member and accompanied by Prof. Dr. H. M. Laica Marzuki, S.H., Prof. H. A. S. Natabaya S.H., LL.M., Prof. H. Abdul Mukthie Fadjar, S.H., M.S., H. Achmad Roestandi, S.H., Dr. H. Harjono, S.H., M.C.L., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H. respectively as member justices, assisted by Ida Ria Tambunan, S.H as Substitute Registrar without the presence of the Petitioners/their Attorney-in-Fact.

**CHAIRPERSON,**

**Signed**

**Prof. Dr. Jimly Asshiddiqie, SH**

**Members**

**Signed**

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

**Signed**

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

**Signed**

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

**Signed**

**H. Achmad Roestandi, SH**

**Signed**

**Dr. H. Harjono, SH, M.CL**

**Signed**

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

**Signed**

**Signed**



**Maruarar Siahaan, SH**

**Soedarsono, SH**

**Substitute Registrar**

**Signed**

**Ida Ria Tambunan, SH**