



DECISION

Number 8/PUU-V/2007

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 the case of petition for judicial review of Article 77A of the Law of the Republic of Indonesia Number 3 Year 2004 on the Amendment to Law Number 23 Year 1999 regarding Bank Indonesia against Article 23B and Article 23D of the Constitution of the State of the Republic of Indonesia Year 1945, filed by:

Koperasi Proyek Ruang Hidup 100 Juta Generasi Muda [Cooperative for the Project for the Living Space for 100 Million Young Generation] (Koperasi Proyek 'RH-100-GM'), with its address at Jalan Mesjid Bendungan Number 26 Cawang, East Jakarta and its former address at Jalan Taman Kimia Number 9 Central Jakarta, Telephone (021) 808871231, Fax (021) 80887168, e-mail: [proyek_rh100gm@yahoo.co.id.](mailto:proyek_rh100gm@yahoo.co.id) represented by the Management of *Koperasi Proyek 'RH-100-GM'* under the Deed of Establishment and Stipulation Letter Number 3 dated April 10, 2007, the

Management and Legal Team of *Koperasi Proyek* 'RH-100-GM' act for and on behalf of *Koperasi Proyek* 'RH-100-GM' consisting of:

1. **D. SJAFRI**, Chairperson/Person in Charge of Planning and Strategy, place/date of birth: Payakumbuh/May 28, 1928, Moslem;
2. **DESI NATALIA, S. Sos.**, General Secretary, place/date of birth: Bogor/December 25, 1978, Moslem;
3. **ANDI YULIANI, S.H.**, Legal Team, place/date of birth: Makassar/April 13, 1983, Moslem;
4. **TAY MEYER, S.H.**, Legal Team, place/date of birth: Jakarta/May 4, 1985, Buddhist;
5. **FARAH DIBA, S.H.**, Legal Team, place/date of birth: Jakarta/August 19, 1983, Moslem;

Hereinafter referred to as **the Petitioner**;

Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having read and examined the evidence;

LEGAL CONSIDERATIONS

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

Considering whereas prior to further considering the substance of the petition of the Petitioner, the following matters shall first be taken into account:

1. The authority of the Constitutional Court (hereinafter referred to as the Court) to examine, hear, and decide upon the petition of the Petitioner
2. The legal standing of the Petitioner to file the petition;

1. Authority of the Court

Considering whereas one of the authorities of the Constitutional Court in accordance with Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as 1945 Constitution) is to hear at the first and final level, the decision of which shall be final in conducting judicial review of laws against the Constitution. The constitutional authority is also stated in Article 10 Paragraph (1) Sub-Paragraph a of Law Number 24 Year 2003 regarding 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);

Considering whereas the petition of the Petitioner is regarding the review of Law Number 3 Year 2004 regarding Amendment to Law Number 23 Year

1999 regarding Bank Indonesia (State Gazette of the Republic of Indonesia Year 2004 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 4357, hereinafter referred to as the BI Law) against the 1945 Constitution;

Considering whereas therefore, the Court has the authority in examining, hearing and deciding upon the *a quo* petition;

2. Legal Standing of the Petitioner

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law states that petitioners in examining constitutions against 1945 Constitution shall be the parties which deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

- a. individual Indonesian citizens;
- b. customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law;
- c. public or private legal entities; or
- d. state institutions;

Considering whereas the Petitioner in the *a quo* petition is *Koperasi Proyek RH-100-GM (Koperasi Proyek Ruang Hidup 100 Juta Generasi Mudaor Cooperative for the Project for the Living Space for 100 Million Young*

Generation) represented by its Management namely D. Sjafrli cs. Based on Exhibit P-1 presented, the Petitioner is a legal institution according to the Cooperative Law, and hence it fulfills the required qualifications as a Petitioner which is a private legal institution as intended in Article 51 Paragraph (1) of the Constitutional Court Law;

Considering whereas meanwhile, in its Decision Number 006/PUU-III/2005 and subsequent decisions the Court has determined five requirements for the impairment of rights and/or constitutional authority as intended in Article 51 Paragraph (1) of the Constitutional Court Law as follows:

- a. the Petitioner must have constitutional rights and/or authority granted by the 1945 Constitution;
- b. the constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;
- c. the impairment of such constitutional rights and/or authority is actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. the existence of causal relationship (*causal verband*) between the impairment of rights and/or constitutional authority and the coming into effect of the law petitioned for review;

- e. if the petition is granted, it is expected that such impairment of constitutional rights and/or authority will not or does not occur any longer;

Considering whereas the Petitioner claims to have constitutional rights granted by the 1945 Constitution as follows:

- Article 28A, *“Every individual has the right to live and the right to defend their lives and living”*;
- Article 28C Paragraph (1), *“Every individual has the right to develop themselves through the fulfillment of their basic needs, the right to obtain education and to gain benefits from knowledge and technology, arts and culture, in the interest of improving their quality of life and in the interest of the prosperity of human race”*;
- Article 28C Paragraph (2), *“Every individual has the right to promote themselves collectively in the interest of building their society, nation and state”*;
- Article 28H Paragraph (2), *“Every individual has the right to receive privileges and special treatments in the interest of obtaining equal chances and benefits in order to aim for equality and justice”*;

Considering whereas with respect to the Petitioner’s claimed constitutional rights granted by the 1945 Constitution, the Court is of the opinion that the abovementioned articles are regarding human rights in which the phrase “Every

individual” is originally intended to refer to people as natural person (*natuurlijke persoon*). However, the Court is of the opinion that certain articles on human rights may also apply to legal entities (*rechtspersoon*), *in casu* Article 28H Paragraph (2) of the 1945 Constitution which reads: “*Every individual has the right to receive privileges and special treatments in the interest of obtaining equal chances and benefits in order to aim for equality and justice.*” Hence, the argument of the Petitioner declaring the Petitioner as a legal entity having constitutional rights is sufficiently grounded.

Considering whereas although the Petitioner qualifies as a private legal entity having the constitutional rights granted by the 1945 Constitution, it remains to be proven whether the abovementioned constitutional rights claimed by the Petitioner have been impaired by the coming into effect of several provisions in the BI Law petitioned for review, namely:

- The “In View of” considerations of the BI Law does not contain Article 23B of the 1945 Constitution which reads, “*Types and value of currency are determined by law*”, whereas, according to the Petitioner, Article 77A of the BI Law does contain such regulations on types and value of currency which states, “*The provision regarding currency as intended in Article 2, Article 19, Article 20, Article 21, Article 22, and Article 23 of this law shall be declared applicable until it is regulated by a separate law*”;
- Article 4 Paragraph (1) of the BI Law reads, “*Bank Indonesia is the Central Bank of the Republic of Indonesia*”. According to the Petitioner, the article

does not reflect the mandate stated in the 1945 Constitution and is therefore contrary to Article 23 of the 1945 Constitution which states, "*The state has a central bank the arrangement, position, authority, responsibility and independence of which are regulated by law,*"

- Article 4 Paragraph (2) of the BI Law reads, "*Bank Indonesia is a state institution which in executing its duties and authority is independent, free of interference from the Government and/or other parties, except in matters which are expressly regulated by this law*". According to the Petitioner, the Article is contrary to Article 33 Paragraph (2) of the 1945 Constitution because Bank Indonesia as a production branch which is vital and which controls the livelihood of the people at large should be controlled by the state which is represented by the Government, hence BI should not be independent;
- Article 11 Paragraph (4) of the BI Law reads, "*In the event that a bank experiences financial difficulties with systemic impact and which and potentially bring about a crisis that harms the financial system, Bank Indonesia may grant urgent financing facility the financing of which shall be borne by the Government*" and Article 62 Paragraph (3) of the BI Law reads, "*In the event that after effort stated in Paragraph (2) the total capital of Bank Indonesia is less than Rp.2000000000000,00 (two trillion Rupiah), the Government must cover the shortfall, to be implemented upon obtaining the approval from the People's Legislative Assembly*". According to the Petitioner,

this matter disables the efforts of the Government in realizing the provision of Article 27 Paragraph (2) of the 1945 Constitution.

Considering whereas regardless of the truth contained in the substance of the Petitioner's petition as described above, although the argued rights of the Petitioner are truly constitutional rights, the intended constitutional rights are neither impaired by the coming into effect of articles in the BI Law petitioned for review nor in fact relevant to the qualifications of the Petitioner as a cooperative legal entity. This is due to the fact that the articles petitioned for review by the Petitioner, namely: article regarding the responsibility of the Government to cover the capital shortfall of Bank Indonesia, articles regarding the independence of a central bank, articles regarding currency, articles regarding the status of Bank Indonesia as a central bank, have no relationship whatsoever with the legal interest and the constitutional rights of the Petitioner *in casu Koperasi Proyek RH-100-GM (Koperasi Proyek Ruang Hidup 100 Juta Generasi Muda)* assured by the 1945 Constitution.

Considering whereas therefore, the articles of the BI Law argued by the Petitioner to have impaired their constitutional rights, both in the presented argumentation and the evidence, it is evident to the Court that:

- a. there is no such impairment of the Petitioner's constitutional rights by the coming into effect of the BI Law, *in casu* the articles petitioned for review, either actual or potential which pursuant to logical reasoning, will take place for sure.

- b. there is no causal relationship (*causal verband*) between the constitutional rights of the Petitioner and the articles of the BI Law petitioned for review.
- c. if the petition is granted, it will not affect the constitutional rights of the Petitioner.

Considering whereas due to the inexistent impairment of the constitutional rights of the Petitioner by the coming into effect of the articles of the BI Law petitioned for review, hence the Petitioner does not fulfill the requirements of legal standing to file the petition for the review of the *a quo* articles, and therefore it must be declared that the Petitioner's petition cannot be accepted (*niet ontvankelijk verklaard*);

In view of Article 56 Paragraph (1) of Law Number 24 Year 2003 regarding 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 Constitutional Court Justices on Monday, May 28, 2007 by 9 (nine) Constitutional Court Justices, and was pronounced in the Plenary Session of the Constitutional

Court open for public on this day, Tuesday, May 29, 2007 attended by 9 (nine) Constitutional Court Justices, Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, Prof. H. Abdul Mukhtie Fadjar, S.H., M.S., Prof. H.A.S. Natabaya, S.H., LL.M., Soedarsono, S.H., Prof. Dr. H.M. Laica Marzuki, S.H., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L, I Dewa Gede Palguna, S.H., M.H., and Maruarar Siahaan, S.H., respectively as Members, assisted by Alfius Ngatrin, S.H. as the Substitute Registrar, in the presence of the Petitioner, the Government or its representative, and the People's Legislative Assembly or its representative, and Bank Indonesia or its representative.

CHIEF JUSTICE,

SGD.

Prof. Dr. Jimly Asshiddiqie, S.H.

JUSTICES

Prof. H. Abdul Mukhtie Fadjar, S.H., M.S.

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

Soedarsono, S.H.

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

H. Achmad Roestandi, S.H.

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

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

Maruarar Siahaan, S.H.

SUBSTITUTE REGISTRAR

Alfius Ngatrin, S.H.