

## DECISION

Number 1/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 55 of the Law of the Republic of Indonesia Number 5 Year 1986, as amended by the Law of the Republic of Indonesia Number 9 Year 2004 on the State Administrative Court against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

**Drs. H. ENDO SUHENDO.**, Indonesian citizen holding identity card number 32.05.07.041144. 0001, Moslem, Age 62 years (November 4, 1944), Retired Diplomat, Department of Foreign Affairs of the Republic of Indonesia, Head of Non-Governmental Organization Government Watch, Garut Regency, Head of Non-Governmental Organization *Yayasan Amal Al'Haj* in Garut Regency, with his address at Kampung Cangkuang Rt. 003/Rw. 015, Cangkuang Village, District of Leles, Garut Regency, Postal Code 44152, Telephone (0262) 455559.

Hereinafter referred to as ----- **The  
Petitioner;**

## 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 Constitutional Court (hereinafter referred to as Court) shall first take the following matters into account.

- I. the Court's authority to examine, hear and decide the petition of the Petitioner;
- II. the legal standing of the Petitioner;

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

### **I. Authority of the Court.**

Considering whereas based on the provision of Article 24C Paragraph (1) the 1945 Constitution of the State of the Republic of Indonesia (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 on 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) the Court has among other things the authority to conduct judicial review of laws against the 1945 Constitution;

Considering whereas the petition of the Petitioner is for the judicial review of Article 55 of the Law of the Republic of Indonesia Number 5 Year 1986 on the State Administrative Court (State Gazette of the Republic of Indonesia Year 1986 Number 77, Supplement to the State Gazette of the Republic of Indonesia Number 3344, hereinafter referred to as the Administrative Court Law), as amended by the Law of the Republic of Indonesia Number 9 Year 2004 on the Amendment of the Law of the Republic of Indonesia Number 5 Year 1986 (State Gazette of the Republic of Indonesia Year 2004 Number 35, Supplement to the State Gazette of the Republic of Indonesia Number 4380), and hence the petition of the Petitioner is within the scope of authority of the Court;

## **II. Legal standing of the Petitioner:**

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law with its elucidation states that Petitioners shall be the parties that deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

- a) individual Indonesian citizens, including groups of people having a common interest;
- b) customary law community units insofar as they are still in existence 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;

Whereas therefore, for a person or a party to qualify as Petitioner in a petition for judicial review of a law against the 1945 Constitution, the person or party must first explain:

1. his capacity in the petition, either as an individual Indonesian citizen, a customary law community unit, a public or private entity, or a state institution;
2. the impairment of his constitutional rights and/or authorities by the coming into effect of the law petitioned for judicial review;

Considering whereas following the Court's Decision Number 006/PUU-III/2005 and its subsequent decisions, the Court has determined five requirements of the constitutional rights and/or authorities impairment 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. Such constitutional rights are deemed to have been impaired by the coming into effect of the law petitioned for review;
- c. The impairment of constitutional rights and/or authority shall be specific and actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. There is a causal relationship (*causal verband*) between the impairment of constitutional rights/authority and the coming into effect of the law petitioned for judicial review;

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

Considering whereas based on the statement in the hearing and evidence of photocopy of Identity Card (Exhibit P-13) the Petitioner is an Indonesian citizen, hence the Court deems the Petitioner qualifies as an individual Indonesian citizen as intended in Article 51 Paragraph (1) of the Constitutional Court Law. Subsequently the Court will evaluate whether the Petitioner's constitutional rights and/or authorities regulated in the 1945 Constitution are impaired by the coming into effect of Article 55 of the Administrative Court Law;

Considering whereas Article 28D Paragraph (1) of the 1945 Constitution states that, *"All citizens shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before law"*, based on which the petitioner as an individual Indonesian citizen possesses the constitutional rights and/or authorities;

Considering whereas the Petitioner argues that his constitutional rights and/or authorities as guaranteed by Article 28D Paragraph (1) of the 1945 Constitution have been impaired by the coming into effect of Article 55 of the Administrative Court Law, based on the following grounds:

1. The Petitioner received a Retirement Decree based on Presidential Decree

Number 53/PENS Year 2001 dated November 22, 2001 (Exhibit P-3) at the end of December 2001;

2. According to the Petitioner, the Retirement Decree which was effective as of December 1, 2000, does not conform with the fact and is not in accordance with applicable laws and regulations, because the Petitioner has worked as a Diplomat with a First Secretary title, also held the position of Head of Finance Sub-Division, and concurrently served as Routine Spending Treasurer with the Embassy of the Republic of Indonesia in Dakkar, Senegal, West Africa, stopped working on April 3, 2001, and did not received the dedication rank promotion in accordance with Article 27 of the Government Regulation of the Republic of Indonesia Number 99 Year 2000 on the Civil Servant Rank Promotion;
3. The Petitioner has asked the State Personnel Agency (*Badan Kepegawaian Negara*) about such mistake/error, which was then answered by a Letter from the Head of the State Personnel Agency, and that according to the Petitioner, he has never received such letter from the State Personnel Agency;
4. Thereafter, on April 18, 2005, the Petitioner filed an action with the Jakarta State Administrative Court. Subsequently, the State Administrative Court rendered a decision on the Petitioner's action in Decision Number 061/G.TUN/2005/PTUN.JKT, dated September 29, 2005, declaring that the Petitioner's Claim could not be accepted;

5. Article 55 of the Administrative Court Law, reads, "*An action may be filed within the period of ninety days only as of the receipt or publication of the Decision of the State Administrative Agency or Official*". Such stipulation has harmed the Petitioner, because the action filed with the State Administrative Court was declared not to be accepted pursuant to Article 55 of the Administrative Court Law;
6. Thereafter, because the Petitioner's action could not be accepted by the Jakarta State Administrative Court, then on February 15, 2006, based on the same grounds and added with a claim for damages pursuant to Article 1365 of the Indonesian Civil Code (*Burgerlijk Wetboek*) the Petitioner filed an action with the East Jakarta District Court, and was decided by the East Jakarta District Court in its Decision Number 35/Pdt.G/2006/PN.Jkt.Tim dated September 20, 2006, declaring that the East Jakarta District Court did not have the authority to examine and hear the Petitioner's civil case because it was under the authority of the State's Administrative Court;
7. The Petitioner did not file an appeal against both the State Administrative Court's Decision and the East Jakarta District Court's Decision. The Petitioner believes that the two decisions did not obtain legal certainty and deems that his constitutional rights have been impaired because the Petitioner did not know about the 90 (ninety) days time limit as stipulated in Article 55 of the Administrative Court Law. Therefore, the Petitioner has filed a petition to the Court so that the *a quo* Article 55 be declared contrary to Article 28D

Paragraph (1) of the 1945 Constitution and that the *a quo* Article be declared as having no binding legal effect ;

Considering whereas based on the foregoing, according to the Court, it is evident that the Petitioner has been harmed by the coming into effect of Article 55 of the Administrative Court Law. Thereafter the Court shall determine whether the impairment has been a constitutional impairment as intended in Article 51 of the Constitutional Court Law;

Considering whereas that based on Article 122 of the Administrative Court Law and Article 188 of the New Indonesian Regulation (*'Reglemen Indonesia yang Diperbaharui /RIB'*), as amended by Article 6 of the Law Number 20 Year 1947 on the Rehearing Court, the Petitioner still has the right to submit an appeal with the Appellate Court in accordance with the time limit as stipulated by that law. Hence, the Petitioner's argument that he did not obtain certainty of just law due to the coming effect of Article 55 of the Administrative Court Law, in fact has not been right, since in accordance with Article 122 of the Administrative Court Law, the Petitioner still has the opportunity to file an appeal in order to get the certainty of just law, but the Petitioner did not do that;

Considering whereas with regard to the Petitioner's argument that he did not know about the time limit for filing an action with the State Administrative Court, the Court is of the opinion that any law involving state administrative decision/stipulation (*beschikking*), always determines the time



limit. This has been aimed at giving legal certainty (*rechtszekerheid*) on the time limit to file an action to the court regarding such decision/stipulation (*beschikking*). In comparison, in disputes regarding general election results at the Court, the time limit provision as contained in Article 74 Paragraph (3) of the Eleventh Section of the Constitutional Court Law, General Election Results Dispute that reads, "*The petition can only be filed within 3 X 24 (three times twenty four) hours at the latest as of the national announcement of general election results by the General Election Commission*". In fact, in the 1945 Constitution, a time limit is also recognized as stipulated in Article 7B Paragraph (6), which reads, "*The People's Consultative Assembly shall be required to hold a session to make decision on the aforementioned recommendation of the People's Legislative Assembly by no later than thirty days as from the time it receives such recommendation*";

Considering also the Petitioner's argument stating that he did not know about the applicable laws, and the fiction theory (*adagium*) that the Petitioner deemed unfair, the Court is of the opinion that the fiction theory (*adagium*) is in fact needed for legal certainty (*rechtszekerheid*). According to the fiction theory (*adagium*), every person shall be deemed to know the laws (*iedereen wordt geacht de wet te kennen*). The absence of knowledge of law by a person shall not be an excuse (*ignorantia iuris neminem excusat*). In addition, laws are made by the people through their representatives at the People's Legislative Assembly that have been jointly discussed and jointly approved with the Government. Because the laws have already been enacted, every person

shall be deemed to have known the laws. Whereas after the enactment, any and all laws shall need to be disseminated to the community, that matter shall not affect the applicability and binding force of such laws. Any and all laws and regulations in fact are always placed in the state gazette publication so that they can become official and can be recognized (*kenbaarheidsbeginsel*), hence such laws and regulations have binding effect on the people. In a constitutional state, the enactment of a law and regulation has been a good law making principle so that it can be recognized and understood for legal certainty purposes (*rechtszekerheid*) hence the general public whose freedom may be restricted by the law and regulation can have knowledge and understanding of it;

Considering whereas the matter concerning the enactment of laws and regulation has been regulated in the Law of the Republic of Indonesia Number 10 Year 2004 on the Formulation of Laws and Regulations. Article 45 of that Law reads, *"In order for any person to know the laws and regulations, they must be placed in:*

- a. *The State Gazette of the Republic of Indonesia;*
- b. ...
- c. ...
- d. ...";

Meanwhile, Article 46 Paragraph (1) of the same Law reads, *"The Laws and Regulations which are placed in the State Gazette of the Republic of Indonesia shall include;*

- a. *Laws /Government Regulation in Lieu of Law;*

- b. ...
- c. ...
- d. ...”;

Considering moreover, that apart from the reason that the limitation as stipulated in Article 55 of the Administrative Court Law has been a custom for legal certainty purposes (*rechtszekerheid*), from the time limit of more than three years as from the Petitioner’s receiving the retirement decree at the end of December 2001 and the Petitioner’s filing an objection or a claim to the Jakarta State Administrative Court on April 18, 2005 which was in his claim’s position, the time limit as stipulated in Article 55 of the Administrative Court Law has not been evident to the Court to be a matter that has caused the constitutional impairment to the Petitioner. Moreover, based on the Petitioner’s experience as a former diplomat, it is appropriate for the Petitioner should have reasonable been aware of the time limit as stipulated in the Administrative Court Law;

Considering, based on the foregoing considerations, the Court is of the opinion that the impairment suffered by the Petitioner is not a constitutional impairment by the coming into effect of laws as intended by Article 51 of the Constitutional Court Law. Therefore, the Petitioner did not meet the requirements on the legal standing as a Petitioner;

Considering, based on all the above considerations, even if the Court has the authority to examine, hear and decide the petition for judicial review of the law against the 1945 Constitution filed by the Petitioner,

nevertheless it must be declared that the Petitioner's petition **cannot be accepted** (*niet ontvankelijk verklaard*) because the Petitioner did not have the legal standing, and therefore it is not necessary for the Court to further consider the substance of the case;

In view of Article 56 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 Friday, March 9, 2007 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Monday, March 12, 2007 by us: **Jimly Asshiddiqie**, as the Chairperson and concurrent Member, and **Soedarsono, H.A.S. Natabaya, Maruarar Siahaan, H.M. Laica Marzuki, H. Achmad Roestandi, Abdul Mukthie Fadjar, Harjono** and **I Dewa Gede Palguna**, respectively as Members, assisted by **Alfius Ngatrin** as the Substitute Registrar, in the presence of the Petitioner, the Government or its representative and the People's Legislative Assembly or its representative.

**CHIEF JUSTICE,**

**Jimly Asshiddiqie**

**JUSTICES,**

**Soedarsono**

**H.A.S. Natabaya**

**Maruarar Siahaan**

**H.M. Laica Marzuki**

**H. Achmad Roestandi**

**Abdul Mukhtie Fadjar**

**Harjono**

**I Dewa Gede Palguna  
Substitute Registrar,**

**Alfius Ngatrin**