



## DECISION

Number 19/PUU-V/2007

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] 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 Law Number 30 Year 2002 regarding the Commission for the Eradication of Criminal Acts of Corruption against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **RAVAVI WILSON**, occupation: General Chairperson of the State Assets Recovery Agency (BPKN) having his address in Jalan Sumur Batu Neighborhood Unit 002/Neighborhood Ward 008. Cempaka Barat, Kemayoran, Central Jakarta. Telephone: (021) 2304858, (021) 3100478, (021) 39166121, (021) 2304858, hereinafter referred to as **the Petitioner**;

[1.3] Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having read the written statement of the Government;

Having heard and read the written statement of the People's Legislative Assembly of the Republic of Indonesia;

Having examined the evidence;

### **3. LEGAL CONSIDERATIONS**

**[3.1]** Considering whereas the purpose and objective of the *a quo* petition are to review Article 29 Sub-Article d of Law Number 30 Year 2002 regarding the Commission for the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia Year 2002 Number 137, Supplement to the State Gazette of the Republic of Indonesia Number 4250, hereinafter referred to as the CEC Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

**[3.2]** Considering whereas prior to further considering the substance of the *a quo* petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;
2. Whether the Petitioner has the legal standing to qualify as a Petitioner before the Court in the *a quo* petition;

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

## **AUTHORITY OF THE COURT**

**[3.3]** Considering whereas in respect of authority of the Court, Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states, among other things, that the Court has the authority to hear at the first and final level, the decision of which shall be final, among other things to review a law against the 1945 Constitution. The provision is reaffirmed in Article 10 Paragraph (1) of the Law of the Republic of Indonesia 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), *juncto* Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358);

**[3.4]** Considering whereas the object of the petition filed by the Petitioner is the judicial review of a law, *in casu* Article 29 Sub-Article d of the CEC Law enacted on December 27, 2002 against the 1945 Constitution, and hence based on the abovementioned considerations, the Court declares to have the authority to examine, hear, and decide upon the *a quo* petition;

## **LEGAL STANDING OF THE PETITIONER**

**[3.5]** Considering whereas based on Article 51 Paragraph (1) of the Constitutional Court Law, parties qualified to file a petition for judicial review of a law against the 1945 Constitution are, among others, individual Indonesian citizens who deem that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a law. Meanwhile, until the present, it has been the opinion of the Court that in respect of the impairment of the aforementioned constitutional rights and/or authority, five requirements must be fulfilled, namely:

- a. The Petitioner must have constitutional rights and/or authority granted by the 1945 Constitution;
- b. the Petitioner's 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 must be specific and actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. the existence of a causal relationship (*causal verband*) between the impairment of constitutional rights and/or 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.

**[3.6]** Considering whereas therefore, for an individual or a party to qualify as a Petitioner in a case of judicial review of a law against the 1945

Constitution, in accordance with the provision of Article 51 Paragraph (1) of the Constitutional Court Law, the intended individual or party must:

- a. explain his/her qualification whether as individual Indonesian citizen, customary law community unit, legal entity, or state institution;
- b. explain the impairment of his/her constitutional rights and/or authority, in the qualification as intended in item a, as a result of the coming into effect of the law petitioned for review;

**[3.7]** Considering whereas based on the description of the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the requirements of the abovementioned impaired constitutional rights and/or authority, the Court will then consider the legal standing of the Petitioner in accordance with the Petitioner's description in his petition and relevant evidence;

**[3.8]** Considering whereas the Petitioner, in principal, explains his qualification in the *a quo* petition as an individual person. Although the Petitioner does not further elaborate on the intended qualification, based on the Petitioner's description in his petition, it is evident that the Petitioner intends to qualify himself as an individual Indonesian citizen who deems that his constitutional rights have been impaired by the coming into effect of Article 29 Sub-Article d the CEC Law, which reads, "*In order to qualify as the Leader of the Commission for the Eradication of Criminal Acts of Corruption, the following requirements must be fulfilled:*

- a. ....

*d. A graduate in law or other majors with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance, or banking;*

.....”

In the Petitioner's opinion, the aforementioned Article 29 Sub-Article d of the CEC Law is contradictory to Article 28D Paragraph (3), Article 28H Paragraph (2), Article 28I Paragraph (5), and Article 28J Paragraph (1) of the 1945 Constitution.

**[3.9]** Considering whereas as an individual Indonesian citizen, it is true that the Petitioner has constitutional rights as argued, namely in this case, the right to obtain equal opportunity in government and the right to obtain facility and special treatments for equal opportunity and benefit in order to reach equality and justice, as respectively regulated in Article 28D Paragraph (3) and Article 28H Paragraph (2) of the 1945 Constitution. Meanwhile, Article 28I Paragraph (5) and Article 28J Paragraph (1) of the 1945 Constitution, which are argued by the Petitioner as his constitutional rights, are not relevant to be considered in the context of potential impairment of the constitutional rights of an Indonesian citizen. This is because Article 28I Paragraph (5) is a provision containing an affirmation that, in order to uphold and protect human rights in accordance with the principle of a democratic constitutional state, the implementation of human rights is guaranteed, regulated, and spelled out in laws and regulations. On the other hand, Article 28J Paragraph (1) of the 1945 Constitution provides for each person's responsibility

to respect the human rights of another person in the orderly life of the community, nation and state;

**[3.10]** Considering whereas in accordance with the Petitioner's statement during the hearing, the Petitioner was already rejected by the Admission Selection Committee for Leadership Candidates of the Commission for the Eradication of Criminal Acts of Corruption when the Petitioner applied to participate in the admission selection for leadership candidates of the Commission for the Eradication of Criminal Acts of Corruption for the reason that the Petitioner did not fulfill the requirements as intended in Article 29 Sub-Article d of the CEC Law. Therefore, the element of assumption regarding the impairment of the Petitioner's constitutional rights, as intended in Article 51 of the Constitutional Court Law, which are guaranteed by Article 28D Paragraph (3) and Article 28H Paragraph (2) of the 1945 Constitution, has been sufficiently fulfilled;

**[3.11]** Considering, with the reference of Article 29 Sub-Article d of the CEC Law by the Admission Selection Committee for Leadership Candidates of the Commission for the Eradication of Criminal Acts of Corruption as its ground for rejection, as explained by the Petitioner during the hearing on July 24, 2007, it has been evident that there is a causal relationship between the coming into effect of Article 29 Sub-Article d of the CEC Law and the Petitioner's assumption regarding his suffering from the impairment of constitutional rights, and at the same time, it has been evident that if the aforementioned Article 29 Sub-Article d

of the CEC Law does not exist, and the impairment of constitutional rights as argued by the Petitioner, will not occur;

**[3.12]** Considering whereas with the description above, the Court is of the opinion that the Petitioner *prima facie* has fulfilled the requirements of legal standing to act as a Petitioner in the *a quo* petition. Therefore, the Court shall be obligated to consider the Principal of the Petition;

### **PRINCIPAL ISSUE OF THE PETITION**

**[3.13]** Considering whereas the legal issue which must be considered by the Court in the *a quo* petition is whether the requirement of being “A graduate in law or other majors with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance, or banking”, as provided for in Article 29 Sub-Article d of the CEC Law, is contradictory to the 1945 Constitution. In the Petitioner’s opinion, the aforementioned provision is argued as being contradictory to Article 28D Paragraph (3), Article 28H Paragraph (2), Article 28I Paragraph (5), and Article 28J Paragraph (1) of the 1945 Constitution, by presenting exhibits marked P-1 through P-7, as completely set out in the Facts of the Case part of this decision;

**[3.14]** Considering whereas during the hearing on August 22, 2007, the Court granted the opportunity to the Petitioner to present an expert and/or a witness, but through his letter dated September 27, 2007 and received in the Registry



Office of the Court, the Petitioner stated that he would not use the opportunity (*vide* Letter of the Petitioner Number 3/JKT/2007, September 27, 2007);

**[3.15]** Considering whereas the Court has given the opportunity to the Petitioner to submit a written conclusion (*vide* Letter of the Registrar Number 343.19/PAN.MK/X/2007 dated October 25, 2007 which was received by the Petitioner on the same day), but until the elapse of the set deadline, the Petitioner did not exercise his right appropriately. Thus, the Court considers that the Petitioner is consistent with his position as described in his petition;

**[3.16]** Considering whereas the Panel of Justices, in accordance with the provision of Article 28 Paragraph (4) of the Constitutional Court Law, have reported the result of preliminary examination on the *a quo* petition to the plenary session of the panel of justices (RPH). Furthermore, since the purpose of the petition has been clear and the Petitioner did not exercise his right to present a witness or an expert, the Court has accordingly decided that it is not necessary to summon the People's Legislative Assembly (DPR) or the President (the Government) for their statements to be heard in the hearing; a request for a written statement will suffice;

**[3.17]** Considering whereas the DPR, in its written statement received in the Registry Office of the Court on October 5, 2007, as completely described in the Facts of the Case part of this decision, principally describes as follows:

- Article 29 Sub-Article d of the CEC Law does not eliminate the constitutional rights of a person to become a candidate for the Leadership of the Commission for the Eradication of Criminal Acts of Corruption, but rather provides a requirement which must be fulfilled and that it is constitutionally justifiable;
- In order to qualify as a Leader of the Commission for the Eradication of Criminal Acts of Corruption who will carry out duties to eradicate criminal acts of corruption which are extraordinary crimes, certain expertise is extremely necessary, which can only be obtained if a person has received education at the level of a Graduate in Law or other majors with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance or banking;
- The provision of an educational level requirement of a Graduate in Law or other majors with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance or banking as a standard to evaluate the capacity/capability/professionalism of a person in holding and implementing a position as the Leader of the Commission for the Eradication of Criminal Acts of Corruption cannot be considered as a provision which restricts the right of a person to nominate himself/herself for the aforementioned position insofar as such requirement does not contain any discrimination on the basis of nationality, religion, race, ethnicity, group, sex, social status, economic status, language, and

political belief, as provided for in Article 1 Sub-Article 3 *juncto* Article 73 of Law Number 39 Year 1999 regarding Human Rights;

**[3.18]** Considering whereas the President (the Government), in a written statement delivered through his proxy, namely the Minister of Law and Human Rights, which was received in the Registry Office of the Court on October 9, 2007, as completely set out in the Facts of the Case part herein, principally describes as follows:

- According to the Government, the provision of the requirements to qualify as the Leader of the Commission for the Eradication of Criminal Acts of Corruption (CEC) is a legal policy of legislators which cannot be reviewed, unless it is beyond the authority granted. Such requirements are logical and reasonable as the criteria to ensure effectiveness in the selection process of candidates for the CEC Leadership;
- Both the requirements and the time-consuming and competitive selection process of candidates for CEC Leadership pertain to the duty and authority of CEC to carry out the eradication of criminal acts of corruption which involves: (a) law enforcers, state administrators, and other parties with any connection to the criminal acts of corruption committed by legal enforcers or state administrators; (b) receiving attention which creates social unrest; and/or (c) involving state loss in the minimum amount of Rp1,000,000,000.00 (one billion Rupiah);

- With a recruitment model to qualify as a candidate for CEC Leadership, by fulfilling the requirements as regulated in Article 29 of the CEC Law, it is expected to find a Leader of CEC who is sufficiently competent in order to perform examination, investigation, and other actions in the context of preventing and eradicating corruption. Therefore, knowledge, expertise, and competence in the fields of law, economics, or banking are indispensable demands;

### **OPINION OF THE COURT**

**[3.19]** Considering whereas upon carefully examining the description of the petition and the arguments presented by the Petitioner, evidence presented, written statements of the People's Legislative Assembly and the Government, the Court shall therefore proceed by stating its opinion or stand on the Principal Issue of the *a quo* Petition. However, prior to stating its specific opinions on the Petitioner, the Court deems it necessary to consider the following matters:

- a) Whereas the requirements provided by law to occupy a public position or even a certain occupation cannot be immediately considered as a violation of human rights or constitutional rights of a citizen, let alone to occupy a position or occupation which, due to its nature, demands certain expertise and/or skills. What is prohibited is devising requirements which are discriminatory and have no relationship whatsoever with the required necessity of filling a position or occupation. The definition of discrimination, in accordance with Article 1 Sub-Article 3 of Law Number

39 Year 1999 regarding Human Rights is as follows: *“Discrimination is every restriction, harassment, or expulsion which is directly or indirectly based on the distinction of human beings on the basis of religion, nationality, race, ethnicity, group, level, social status, economic status, sex, language, political belief, which causes the reduction, deviation, or the elimination, recognition, implementation or utilization of human rights and basic freedom in life both individually and collectively in the fields of politics, economy, law, social, culture, and other aspects of life”*;

- b) Whereas, as described by the People’s Legislative Assembly and the Government, the systematically rampant criminal acts of corruption which have been committed in such a way that they dearly cost the state’s finance, the state’s economy, and hinder the national development, which therefore actually have violated the people’s social and economic rights, can no longer be categorized as ordinary crimes, but they have become extraordinary crimes. In fact, the international community implicitly admits the extraordinary nature of criminal acts of corruption, as evident in the Preamble to the United Nations Convention against Corruption which states, among other things,
- “Concerned about the seriousness of problems and threats posed by corruption to stability and security of societies, undermining the institutions and values of democracy and the rule of law,*

*Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,*

*Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,*

*Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential....”*

The extraordinary nature of corruption has made legislators aware and admit that the existing institutions (prior to the establishment of the Commission for the Eradication of Criminal Acts of Corruption) have not been optimal in implementing their functions to eradicate criminal acts of corruption (*vide* Consideration Section item a and General Elucidation of the CEC Law). Therefore, the legislators deemed it necessary to establish a separate institution, namely the Commission for the Eradication of Criminal Acts of Corruption (CEC), which has been granted with a great authority and extensive duties in the context of preventing and eradicating criminal acts of corruption. By considering the extent of the intended authority and duties of CEC, the requirement of expertise and/or skills as well as professionalism is an absolute for any person to be granted with such authority and duties. Therefore, if the legislators then provided

considerably strict requirements for filling the position as the Leader of CEC, such requirements can be accepted by logical reasoning;

- c) Whereas human rights are not absolute; certain limitations may be imposed insofar as such limitations are rationally acceptable and they are stipulated by law with the sole purpose of guaranteeing acknowledgement and respect of the rights and freedom of other people and of fulfilling just requirements in accordance with considerations of morality, religious values, public safety and order in a democratic society, as stated in Article 28J Paragraph (2) of the 1945 Constitution. Such restrictions have also been acceptable to the international community, as evident in the provision of Article 29 Paragraph (2) of the Universal Declaration of Human Rights which states, *“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”*;

**[3.20]** Considering, upon taking into account the matters described in Items a) through c) above, with respect to the Petitioner’s arguments, the Court is of the following opinion:

- i. The Petitioner argues that the provision of Article 29 Sub-Article d of the CEC Law is contradictory to Article 28D Paragraph (3) of the 1945

Constitution which reads, *“Every citizen shall have the right to obtain equal opportunities in government”*.

In respect of this argument of the Petitioner, the Court is of the opinion that the definition of “government” constitutes wide-ranging, various fields of activities. Each field has its own unique nature or characteristic and therefore, it creates the need for certain requirements to be involved in such field. Thus, the right to obtain equal opportunities in government does not mean that the state is not allowed to formulate regulation and requirements for the fulfillment of such rights in laws and regulations, as affirmed in Article 28H Paragraph (5) of the 1945 Constitution which states, *“To enforce and protect human rights in accordance with the principle of a democratic constitutional state, the exercise of human rights shall be guaranteed, regulated and set forth in laws and regulations”*. What the state is not allowed to do is to devise regulation and/or requirements which are discriminatory and have no connection whatsoever with the need demanded by the intended field of governmental activity, but rather devised on the basis of race, ethnicity, religion, skin color, sex, economic status, social status, or certain political belief, as described in the consideration in item a above. Such prohibition from devising a discriminatory provision not only exists in the 1945 Constitution, namely Article 28I Paragraph (2), but it has also become a universal provision, as evident in the provision of Article 2 Paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) which



states, *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status”*. A similar matter is also affirmed in the Universal Declaration of Human Rights, which states in its Article 2, *“Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty”*. Such prohibition from formulating a discriminatory provision has also been affirmed in a number of decisions of the Court (*vide* Decision Number 070/PUU-II/2004).

Thus, the question in relation to the *a quo* petition is whether the requirements to qualify as the Leader of the Commission for the Eradication of Criminal Acts of Corruption, as regulated in Article 29 Sub-Article d of the CEC Law, are discriminatory. This will depend on the answer to the question whether the intended requirements are relevant to the institutional nature of the Commission for the Eradication of Criminal Acts of Corruption (CEC) as evident in its authority and duties.

The authorities of Corruption Eradication Commission (CEC), as provided for in Article 7 of the CEC Law, are:

- a. to coordinate examination, investigation, and prosecution of criminal acts of corruption;
- b. to establish a reporting system in the activity of eradicating criminal acts of corruption;
- c. to request information on the activities of eradicating criminal acts of corruption from the relevant agencies;
- d. to held hearings or meetings with agencies competent in eradicating criminal acts of corruption; and
- e. to request reports from the relevant agencies regarding the prevention of criminal acts of corruption.

Meanwhile, the duties of CEC, as stated in Article 6 of the CEC Law, are:

- a. to establish coordination with agencies competent in eradicating criminal acts of corruption;
- b. to supervise agencies competent in eradicating criminal acts of corruption;
- c. to perform examination, investigation, and prosecution of criminal acts of corruption;
- d. to take actions in preventing criminal acts of corruption;
- e. to monitor the implementation of state government.

By observing the abovementioned authorities and duties of CEC, it can be said that the institutional nature of CEC is a law enforcement institution in the field of criminal acts of corruption. Meanwhile, as recognized both by the CEC Law and the United Nations Convention against Corruption, the crime or criminal acts of corruption are so complex that in order to eradicate them, skills and experience required are not only in the field of law, but also in other fields, mainly in the fields of economics, finance, and banking. Thus, the provision of Article 29 Sub-Article d of the CEC Law which requires a candidate of the Leader of CEC to be “a Graduate in law or other major with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance, or banking” is a required necessity in accordance with the institutional nature of CEC as evident in its authority and duties. It is true indeed that a person’s skills are not always reflected in his/her educational qualifications, but certain academic requirements have been generally accepted as an objective standard of skills required to perform duties in governmental positions. Therefore, it is groundless to state that the provision of Article 29 Sub-Article d of the CEC Law is contrary to Article 28D Paragraph (3) of the 1945 Constitution, as argued by the Petitioner.

- i. The Petitioner argues that the provision of Article 29 Sub-Article d of the CEC Law is contradictory to Article 28H Paragraph (2) of the 1945 Constitution which reads, *“Every person shall have the right to obtain*

*facilities and special treatment in obtaining equal opportunities and benefits for achieving equality and justice”.*

In respect of this argument of the Petitioner, the Court is of the opinion, as described in point i above, that the regulation and establishment of objective requirements are indeed demanded by a certain field of governmental activity in accordance with the nature or character of such field of governmental activity and such provision cannot be regarded as a hindrance to the right to obtain equal opportunities in government. Such requirements cannot be said as hindrances to a person's right to obtain equal opportunities and benefits for achieving equality and justice either, unless such requirements are clearly discriminatory in accordance with the definition of discrimination described above.

Moreover, equality and justice cannot be immediately construed in such a way that each person must be treated equally in all situations whatsoever. Justice, as Aristotle put it, is divided into distributive justice, namely to grant something to someone as his/her due according to his/her achievement or service, and commutative justice, namely to grant everything equally to all people irrespective of their achievements or services. There are certain times and situations where commutative justice applies. There are other times and other situations where distributive justice applies. The Court has also affirmed that one of the

meanings of justice is “treating similar things the same way and treating different things differently” (*vide* Court Decision Number 070/PUU-II/2004);

The phrase “facilities and special treatment” in Article 28H Paragraph (2) of the 1945 Constitution above cannot be construed separately from the context of the entire definition contained in the aforementioned Article 28H Paragraph (2) of the 1945 Constitution, namely the achievement of equality and justice. Thus, in its relationship with the *a quo* petition, the meaning of the phrase is that if a person has fulfilled the objective requirements to qualify as the Leader of CEC, the state will not be allowed to formulate other provisions or requirements which hinder the person’s right, *in casu* the right to participate in the selection of the Leader of CEC. In other words, a person’s circumstances or weaknesses should not hinder the person’s right to run for the Leadership of CEC, insofar as the objective requirements have been fulfilled. Therefore, the Petitioner’s argument, insofar as it relates to the unconstitutionality of Article 29 Sub-Article d of the CEC Law against Article 28H Paragraph (2) of the 1945 Constitution, is evidently groundless.

- ii. The Petitioner argues that the provision of Article 29 Sub-Article d of the CEC Law is contradictory to Article 28I Paragraph (5) of the 1945 Constitution which reads, “*To enforce and protect human rights in accordance with the principle of a democratic constitutional state, the*

*exercise of human rights shall be guaranteed, regulated and set forth in laws and regulations”.*

In respect of this argument of the Petitioner, the Court is of the opinion that Article 29 Sub-Article d of the CEC Law has no relationship whatsoever with Article 28I Paragraph (5) of the 1945 Constitution. As mentioned in the description on the Petitioner’s legal standing above, Article 28I Paragraph (5) of the 1945 Constitution does not regulate the substance of certain constitutional rights of the citizens which have the potential to be impaired by the coming into effect of a law. The provision of Article 28I Paragraph (5) of the 1945 Constitution is in relation to and constitutes a logical consequence of the provision of Article 1 Paragraph (3) of the 1945 Constitution which states, “Indonesia is a constitutional state”. One element or requirement of a constitutional state is the guaranteed protection of human rights. Therefore, it is necessary to affirm that as a constitutional state, human rights are guaranteed, regulated, and set forth in laws and regulations.

Thus, it is irrelevant to relate the requirements to qualify for the Leader of CEC with the provision of Article 28I Paragraph (5) of the 1945 Constitution. Therefore, the Petitioner’s argument which states that Article 29 Sub-Article d of the CEC Law is contradictory to Article 28I Paragraph (5) the 1945 Constitution is groundless.

- iii. The Petitioner argues that the provision of Article 29 Sub-Article d of the CEC Law is contradictory to Article 28J Paragraph (1) of the 1945 Constitution which reads, *“Every person shall be obligated to respect the human rights of another person in the orderly life of community, nation and state”*.

In respect of this argument of the Petitioner, the Court is of the opinion that it is irrelevant to review the constitutionality of Article 29 Sub-Article d against Article 28J Paragraph (1) of the 1945 Constitution, because it is already clear and evident that Article 28J Paragraph (1) of the 1945 Constitution does not regulate constitutional rights, but rather the obligation of every person to respect the human rights of other people. The essence of the provision of Article 28J Paragraph (1) of the 1945 Constitution is an affirmation that in every right lays an obligation, at least an obligation not to abuse such right. In other words, Article 28J Paragraph (1) of the 1945 Constitution affirms that, in addition to the limitations as mentioned in Article 28J Paragraph (2) of the 1945 Constitution, limitations on human rights are also manifest in the form of an obligation to respect the same human rights possessed by other people. This is the consequence of the nature of humans as social beings. The exercise of a person's human rights which disregards similar rights possessed by other people will certainly create such chaos in the social life of human beings that it becomes impossible to restore order in such social life. Therefore, limitations apply to the human rights of a person,

because the same human rights are inherent in other people and thus, the obligation to respect the same human rights inherent in other people also applies.

It therefore is evident that the Petitioner's argument, insofar as it relates to the unconstitutionality of Article 29 Sub-Article d of the CEC Law against Article 28J Paragraph (1) of the 1945 Constitution, is groundless.

**[3.21]** Based on all considerations above, it is evident that Article 29 Sub-Article d of the CEC Law is not contradictory to the 1945 Constitution. Therefore, it is evident that the Petitioner's petition is groundless;

#### **4. CONCLUDING OPINION**

Based on all descriptions above, the Court has come to the following conclusion:

**[4.1]** whereas Article 29 Sub-Article d of the CEC Law which sets forth a requirement to qualify as the Leader of CEC as having to be "*A graduate in law or other majors with expertise and a minimum experience of 15 (fifteen) years in the fields of law, economics, finance, or banking*", is not contradictory to Article 28D Paragraph (3), Article 28H Paragraph (2), Article 28I Paragraph (5) and Article 28J Paragraph (1) of the 1945 Constitution.

**[4.2]** whereas therefore, the petition for judicial review of the *a quo* provision is groundless and the Petitioner' petition must accordingly be declared rejected;



## **5. RULINGS**

In view of Article 56 Paragraph (5) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the State of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the State of the Republic of Indonesia Number 4316);

### **PASSING THE DECISION:**

**To declare that the Petitioner's petition is rejected in its entirety;**

Hence the decision was made in the Consultative Meeting of Constitutional Court Justices on Monday, November 12, 2007, by nine Constitutional Court Justices, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday, November 13, 2007, by us Jimly Asshiddiqie, as the Chairperson and concurrent Member, I Dewa Gede Palguna, H. Achmad Roestandi, Maruarar Siahaan, H.M. Laica Marzuki, Abdul Mukthie Fadjar, H. Harjono, and Soedarsono, respectively as Members, assisted by Alfius Ngatrin as the Substitute Registrar, and 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,**

**I Dewa Gede Palguna**

**H. Achmad Roestandi**

**Maruarar Siahaan**

**H. M. Laica Marzuki**

**Abdul Mukthie Fadjar**

**H.A.S. Natabaya**

**H. Harjono**

**Soedarsono**

**SUBSTITUTE REGISTRAR,**

**Alfius Ngatrin**