



## DECISION

Number 28/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 a case of the Petition for Judicial Review of the Law of the Republic of Indonesia Number 16 Year 2004 regarding Public Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia Number 67 Year 2004 and Supplement to State Gazette of the Republic of Indonesia Number 4401) against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] 1. **NY. A. NURAINI**, Indonesian citizen, born in Bandung, on August 3, 1944, Moslem, housewife, having her address at Komplek TNI AD Blok G/38 Rt. 03/008 Cipayung, Cipayung Sub-District, East Jakarta.

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

2. **SUBARDA MIDJAJA**, Indonesian citizen, born in Sukabumi, on January 6, 1939, Moslem, retired Indonesian Army, having his address at Komplek TNI AD Blok G/38 Rt. 03/008 Cipayung, Cipayung Sub-District, East Jakarta.

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

Based on the Special Power of Attorney dated November 5, 2007 authorize Ahmad Bay Lubis, S.H., AH., Wakil Kamal, S.H., and Yanrino H.B. Sibuea, S.H., Advocates and Legal Consultants joined in **TEAM OF ADVOCATES FOR PUBLIC RIGHTS (TAHAP)**, having their office address at Law Office of Bay Lubis & Partners, Jalan Tebet Timur Dalam I Number 19 N Tebet South Jakarta. Both individually and jointly;

In this matter, Petitioner I and Petitioner II have chosen a permanent legal domicile at the aforementioned office of their Attorney-at-law.

Hereinafter referred to as ----- **Petitioners**;

**[1.3]** Having heard the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having heard and read the written statements of the Government;

Having heard and read the written statements of the People's Legislative Assembly (DPR);

Having heard and read the written statements of the Direct Related Parties of the Police Force;

Having heard and read the written statements of the Direct Related Parties of the Attorney's General Office;

Having examined the evidence;

Having heard and read the written statements of the experts presented by the Petitioners;

Having heard and read the written statements of the experts presented by the Government;

Having heard and read the written statements of the experts presented by the Direct Related Parties of the Police Force;

Having read the written conclusions of the Petitioners;

Having read the written conclusions of the Government;

Having read the written conclusions of the Direct Related Parties of the Police Force;

### 3. LEGAL CONSIDERATIONS

**[3.1]** Considering whereas in this case, the Petitioners consist of:

1. Petitioner I, namely Ny. A. Nuraini, Indonesian citizen, having her address at Komplek TNI AD Blok G/38 RT 03/008, Cipayung, East Jakarta;
2. Petitioner II, namely Mayor General of Indonesian Armed Forces (Retired) Subarda Midjaja, having his address at Komplek TNI AD Blok G/38 RT 03/008, Cipayung, East Jakarta;

**[3.1.1]** Whereas the Petitioners file Judicial Review of the Law of the Republic of Indonesia Number 16 Year 2004 regarding Public Prosecutor's Office of the Republic of Indonesia (State Gazette of the Republic of Indonesia Number 67 Year 2004 and Supplement to State Gazette of the Republic of Indonesia Number 4401, hereinafter referred to as the Public Prosecutor's Office Law) against the 1945 Constitution of the State of the Republic of Indonesia hereinafter referred to as the 1945 Constitution. According to the Petitioners, Article 30 of the Public Prosecutor's Office Law has impaired the Petitioners' constitutional rights guaranteed by Article 28D Paragraph (1) and Article 28G Paragraph (1) of the 1945 Constitution;

**[3.1.2]** Whereas in their petition's *petitum*, the Petitioners request that the entire Article 30 of the Public Prosecutor's Office Law is declared contradictory to the 1945 Constitution and therefore does not have binding force. However, based on the statements of the Petitioners in the court hearing, it is revealed that the matters requested by the Petitioners are actually only related to Article (1) Sub-paragraph d of Article 30 of the *a quo* law. Hence, the matters to be further taken into consideration shall be the matters related to Article (1) Sub-paragraph d of Article 30 of the Public Prosecutor's Office Law which reads, "*with regard to crime, public prosecutor's office has duties and authorities:*

a. ...

b. ...

c. ...

- d. *conducting investigation of particular criminal acts based on the law;*
- e. ...”.

**[3.2]** Considering whereas prior to examining the Principal Issue of the Petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

1. Whether or not the Court has the authority to examine, hear, and decide upon the *a quo* petition;
2. Whether or not the Petitioners have the legal standing to file judicial review of Article 30 Paragraph (1) Sub-paragraph d of the Public Prosecutor’s Office Law;

### **THE AUTHORITY OF THE COURT**

**[3.3]** Considering whereas based on Article 24C Paragraph (1) of the 1945 Constitution restated in Article 10 Paragraph (1) of Law Number 24 Year 2003 regarding Constitutional Court, hereinafter referred to as the Constitutional Court Law, *juncto* Article 12 Paragraph (1) of Law Number 4 Year 2004 regarding Judicial Authorities, State Gazette of the Republic of Indonesia Number 8 Year 2004, Supplement to State Gazette of the Republic of Indonesia Number 4358, the Court has the authority to hear at the first and final level the decision of which shall be final, among other things, to conduct Judicial Review of the law against the 1945 Constitution;

**[3.4]** Considering whereas the *a quo* Petition is the Petition for Judicial Review, in this case (*in casu*) Judicial Review of Paragraph (1) Sub-Paragraph d of Article 30 UU of the Public Prosecutor’s Office Law. Hence, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

## **LEGAL STANDING) OF THE PETITIONERS**

**[3.5]** Considering whereas based on Article 51 Paragraph (1) of the Constitutional Court Law (UUMK), those who may file the Petition for Judicial Review of the law against the 1945 Constitution are the parties who deem that their constitutional rights and/or authorities are impaired by the coming into effect of the law, namely:

- a) Indonesian Citizen individuals (including group of people having the same interest);
- b) units of customary law communities insofar as still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia regulated in a law;
- c) public or private legal entities; or
- d) state institutions.

**[3.6]** Considering whereas based on the exhibit [P-1] in the form of photocopy of Resident's Identity Card, it is clear that both Petitioner I and Petitioner II are the Indonesian Citizens. Therefore, both of them are categorized as Indonesian Citizen individuals so that they have met one of the qualification's elements in the legal standing to act as the Petitioner in the Petition for Judicial Review of the *a quo* law;

**[3.7]** Considering whereas however, in order to have legal standing as a Petitioner in case of Judicial Review, in addition to meet the qualifications as intended in paragraph **[3.6]**, a person or party is required to meet the requirements of the impairment of constitutional rights and/or authorities. With respect to the matter, The Court, as from the pronouncement of the Case Decision Number 006/PUU-III/2005 and the subsequent Decision, is of the opinion that the impairment incurred due to the coming into effect of a law

pursuant to Article 51 Paragraph (1) of the Constitutional Court, must meet 5 (five) requirements as follows:

- a. The Petitioners must have constitutional rights granted by the 1945 Constitution;
- b. Such constitutional rights shall be deemed to have been impaired by the coming into effect of the law petitioned for review;
- c. the constitutional right impairment shall be specific and actual or at least potential in nature which pursuant to a logical reasoning will take place for sure;
- d. there is a causal connection (*causal verband*) between the constitutional right impairment and the law petitioned for review ;
- e. there is a possibility that upon the granting of a petition, the constitutional right impairment argued shall not come into existence or shall cease to exist;

**[3.8]** Considering whereas based on the explanation of the paragraph **[3.7]** above, in order to judge whether the presumption of the *a quo* Petitioners right or wrong, the Court shall first consider carefully as to the constitutional impairment of the Petitioners as a result of the coming into effect of the *a quo* Article;

**[3.9]** Considering whereas in order to know the existence of the constitutional right impairment of the Petitioners in the *a quo* petition which in fact is directly related to the petition matter, the Court is of the opinion that it is deemed necessary to first hear the statements of the law makers (DPR and the Government), Attorney General's Office, and Police Force of the Republic of Indonesia as the Related Parties, and Experts;

**[3.10]** Considering whereas at the court hearing dated February 12, 2008, the Court has heard the statements of the People's Legislative Assembly (DPR), Government, Related Parties, and Experts presented by the Petitioners, Government, and Related Parties as completely spelled out in the Principal Case section of this Decision which in essence describe the following:

### **1. Statements of the People's Legislative Assembly (DPR)**

Whereas according to DPR, the Petitioners do not have the legal standing so that the *a quo* petition must be declared unacceptable (*niet ontvankelijk verklaard*). In addition to that, DPR is of the opinion that the provision of Article 30 Paragraph (1) Sub-paragraph d of the Public Prosecutor's Office Law is not contradictory to Article 28D Paragraph (1) and Article 28G Paragraph (1) of the 1945 Constitution;

### **2. Statements of the Government**

- Whereas according to the Government, the petition of the Petitioners is an obscure petition (*obscuur libel*) so that the *a quo* petition must be declared unacceptable (*niet ontvankelijk verklaard*);
- Whereas the law enforcement process in Indonesia in terms of criminal act handling including therein the particular criminal acts is a mechanism known as an integrated criminal justice system considering the settlement process of the criminal acts as an integrated series starting from investigation, prosecution, case decision to settlements at the penal institution level. Thus, the system is not a system which will lead to the segregation functions resulting in the difficult and time-consuming settlement process;
- Whereas the authority over the investigation conducted by the Public Prosecutor's Office in terms of the criminal acts of corruption handling cannot be separated from the philosophical, historical, sociological, strategic environment, and legal aspects;

### **3. Statements of the Related Parties of the Attorney General's Office**