



DECISION

Number 017/PUU-III/2005

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 5 Year 2004 regarding Amendment to the Law of the Republic of Indonesia Number 14 Year 1985 regarding the Supreme Court and the Law of the Republic of Indonesia Number 22 Year 2004 regarding the Judicial Committee against the 1945 Constitution of the State of the Republic of Indonesia filed by;

1. Dominggus Maurits Luitnan, SH, Advocate/Lawyer, domiciled at Jl. Stasiun Sawah Besar No.1-2 Central Jakarta;
2. H. Azi Ali Tjasa, SH, Advocate/Lawyer, domiciled at Jl. Stasiun Sawah Besar No. 1-2 Central Jakarta;
3. Toro Mendrofa, SH, Advocate/Lawyer, domiciled at Jl. Stasiun Sawah Besar No. 1-2 Central Jakarta.

hereinafter referred to as **PETITIONERS**;

Having read the petition of the Petitioners;

Having heard the statement of Petitioner in the hearing;

Having heard the written statement of the Government in the hearing;

Having read the written statement of the Government and related parties;

Having read and examined the written evidence of the Petitioners;

LEGAL CONSIDERATIONS

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

Considering whereas prior to examining the substance or the principal issue of the case, the Constitutional Court (hereinafter referred to as the Court) shall take the following matters into account:

1. Whether or not the Constitutional 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 act as Petitioners in the *a quo* petition.

Whereas in respect of the abovementioned two issues the Court shall give the following considerations:

1. AUTHORITIES OF THE COURT

Whereas with regard to the authority of the Court, Article 24 Paragraph (1) of the 1945 Constitution states among other things that the Constitutional Court has the authority to hear at the first and final level, the decisions of which shall be final, to review a law against the Constitution. This is reaffirmed in Article 10 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law);

Whereas the *a quo* petition is a petition for the judicial review of Law Number 5 Year 2004 regarding Amendment to the Law of the Republic of Indonesia Number 14 Year 1985 regarding the Supreme Court and the Law of the Republic of Indonesia Number 22 Year 2004 regarding the Judicial Commission, namely that the articles regarding supervision in the said two laws are assumed by the Petitioners to contravene the 1945 Constitution, therefore it is the authority of the Court to hear, examine and decide upon the *a quo* petition under Article 24C Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) Sub-Paragraph a of the Constitutional Court Law.

2. LEGAL STANDING OF THE PETITIONERS

Considering whereas Article 51 Paragraph (1) of the Constitutional Court Law states that, "*Petitioner is a party who assumes that his constitutional right and/or authority has been impaired by the coming into effect of a law, namely:*

- a. *an individual Indonesian citizen ;*
- b. *a traditional law community unit insofar as it is still in existence and in accordance with the developments of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law;*
- c. *a public or private legal entity; or*
- d. *a state institution”.*

Therefore qualify as a Petitioner in a petition for judicial review of a law against the 1945 Constitution, as in the *a quo* case, the person or party shall first explain about:

- a. His qualification in the *a quo* petition as specified in the abovementioned Article 51 Paragraph (1) Sub-Paragraph a;
- b. His constitutional right and/or authority in such qualification assumed to have been impaired by the coming into effect of the law being reviewed.

Whereas based on the above mentioned two standards for determining whether or not the parties have the legal standing as Petitioners in the *a quo* case, the Court shall also take into account the requirements of the constitutional impairment which should be clearly explained by the Petitioners, as it has become the jurisprudence of the Court, namely:

1. The Petitioners must have constitutional rights granted by the 1945 Constitution;
2. The Petitioners believe that their constitutional rights have been impaired by the law petitioned for judicial review;
3. The constitutional impairment of the Petitioners in question is specific and actual in nature or at least potential in nature which, based on logical reasoning will surely occur;
4. There is a causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for judicial review;
5. If the petition is granted, it is expected that the constitutional impairment argued will not or does not occur any longer.

Considering whereas the Petitioners have explained about their respective qualification as individual Indonesian citizens and/or as advocates under the “Dominika Association of Advocates/Lawyer”, having that their constitutional rights/authorities have been impaired, as regulated in:

- a. Article 27 Paragraph (1) which sets forth that all citizens shall have an equal position before the law and government and shall be obligated to uphold the law and government without exception;

- b. Article 28D Paragraph (1) of the 1945 Constitution which sets forth that every person has the right to the recognition, the guarantee, the protection, as well as fair legal certainty and equal treatment before the law;

- c. Article 24B Paragraph (1) of the 1945 Constitution which sets forth that the Judicial Commission shall be independent has and shall have the authority to make proposal for the appointment of justices and other authorities in the framework of maintaining and upholding the honor, noble dignity and conduct of the judges, as elaborated in Article 11 Paragraph (1), Article 12 Paragraphs (1) and (2), Article 13 Paragraph (1), Article 32 Paragraph (2) of Law Number 5 Year 2004, and Article 21, Article 22 Paragraph (1) Sub-Paragraph e and Article 23 Paragraphs (3), (4), (5), and (6) of Law Number 22 Year 2004. Each provision of the law has rendered supervision of and repressive action on the judges which according to the 1945 Constitution should be undertaken by the Judicial Commission, meaningless and ineffective since the Judicial Commission becomes dependent on the policies/ wishes of the Supreme Court Chief Justice. This has a concrete causal relationship with the impairment of the constitutional rights of the Petitioners, since no action was taken by the Supreme Court Chief Justice on the judge reported to have committed a crime; In fact, the judge was protected by issuing Supreme Court Circular Letter Number 4 Year 2002 which forbids judges, registrars, and bailiffs to heed the investigator's summons for examination, which constitutes a form of legal discrimination that has deprived the Petitioners of their right and which contravenes Article

27 Paragraph (1), Article 28D Paragraph (1) and Article 24B Paragraph (1) of the 1945 Constitution.

Whereas with regard to the arguments of the said Petitioners, the Court is of the following opinion:

1. whereas according to the Court what was claimed by the Petitioner to be the constitutional right mentioned in Article 27 Paragraph (1) and Article 28D Paragraph (1) of the 1945 Constitution, is not a constitutional right in relation to the law petitioned for judicial review, because Article 27 Paragraph (1) pertains to the rights of citizens and residents who have equal rights before the law and government and disallows discriminatory treatment before the law and in the government. The argument filed by the Petitioners regarding the existence of the Supreme Court Circular Letter Number 4 Year 2002, which does not allow any Judges, Registrars, and Bailiffs to heed the summons of an investigator with respect to a case he is handling, does not involve any constitutional right being impaired with the coming into effect of Law Number 5 Year 2004 and Law Number 22 Year 2004 to the extent it concerns the articles petitioned for judicial review, the entirety of which involves supervision on the judges, which is exercised by the Supreme Court or the Judicial Commission;
2. whereas the independence of the Judicial Commission in exercising its authority as set forth in Article 24B Paragraph (1) of the 1945 Constitution, which was argued by the Petitioners to have been elaborated by the articles

in Law Number 22 Year 2004 and Law Number 5 Year 2004 regarding Amendment to Law Number 14 Year 1985 regarding the Supreme Court in contradiction with the 1945 Constitution, the Court is of the opinion that in that respect, no constitutional right of the Petitioners has been impaired, since the constitutional right does not concern the Petitioners, but rather concerns another party. Therefore, the Petitioners may not refer to Article 24B Paragraph (1) of the 1945 Constitution to establish the existence of any impaired constitutional right of the Petitioners, whether actual or potential, which arises in a causal relationship (*causal verband*) with the coming into effect of Law Number 5 Year 2004 and Law Number 22 Year 2004. Considering whereas with such reasons and considerations, the Court is therefore of the opinion that the Petitioners have no legal standing to file the a *quo* petition.

In that regard, one Constitutional Court Justice is of the opinion that the Petitioners have the legal standing for the reason that the constitutional interest arising on the basis of Article 24B of the 1945 Constitution does not concern the Petitioners. However, there are constitutional rights arising in a derivative manner from the existence of Article 28D Paragraph (1) as expressly argued, and other articles in Chapter XA of the 1945 Constitution despite not being expressly argued, which concern the basic rights, especially if connected to Article 1 Paragraph (3) and the Preamble to the 1945 Constitution. Such derivative constitutional rights cover the right of every person to fair protection through a fair trial, due process of law, and justice for all.

Considering whereas notwithstanding the above dissenting opinion, without having to further take into account the principal issue of the case, there are sufficient reasons for the Court to declare that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*).

In view of Article 56 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court;

PASSING THE DECISION

To declare that the petition of Petitioners can not be accepted (*niet ontvankelijk verklaard*).

Hence the decision was made in the Consultative Meeting of nine (9) Constitutional Court Justices of the Republic of Indonesia on Wednesday, January 4, 2006 and was read out in a Plenary Session of the Constitutional Court open for the public on this Friday, January 6, 2006, by us: Prof. Dr. Jimly Asshiddiqie, S.H., as the Chairman and concurrent Member, Prof. Dr. H. M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M., Prof. H.A. Mukthie Fadjar, S.H., M.S., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., M.C.L., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H., respectively as Members and assisted by Fadzlun Budi S.N, S.H., M.Hum. as Substitute Registrar, and in the presence of the Petitioners/their Attorneys, the Government, and the People's Legislative Assembly or their representatives, and the Related Party from the Judicial Commission.

Chief Justice,

signed

Prof. Dr. Jimly Asshiddiqie S.H.

Justices,

Signed

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

Signed

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

Signed

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

Signed

H. Achmad Roestandi, S.H.

Signed

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

Signed

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

Signed

Maruarar Siahaan, S.H.

Signed

Soedarsono, S.H.

Substitute Registrar,

Signed

Fadzlun Budi S.N., S.H., M.Hum