



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA**

**THE SUMMARY OF DECISION CASE
NUMBER 10/PUU-XV/2017**

CONCERNING

**"THE PROHIBITION OF CONCURRENT POSITION FOR
KKI MEMBERS FROM IDI"**

- Petitioner** : Dr. dr. Judilherry Justam, M.M., M.E., PKK; et al
- Type of Case** : Judicial Review of Law Number 29 of 2004 concerning Medical Practice and Law Number 20 of 2013 concerning Medical Education against the 1945 Constitution
- Subject Matter** : Examination of the constitutionality of Article 1 number 4, Article 1 number 12, Article 1 number 13, Article 14 paragraph (1) letter a, Article 29 paragraph (3) letter d and Article 38 paragraph (1) letter c of the Medical Practice Law and Article 1 number 20, Article 5 paragraph (2), Article 7 paragraph (8), Article 8 paragraph (4), Article 11 paragraph (1), Article 24 paragraph (1), Article 36 paragraph (2), Article 36 paragraph (3), Article 39 paragraph (2) of the Medical Education Law against Article 1 paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3), and Article 31 paragraph (1) of the 1945 Constitution
- Verdict** : To grant the petition of the Petitioners in part.
- Date of Decision** : **Thursday, April 26th, 2018**
- Overview of Decision** :

The Petitioners, namely Petitioners I to Petitioners XXXII are individual Indonesian citizens who have backgrounds as lecturers and/or professors, Deputy Deans, retired lecturers, doctors and retired TNI-AD (military) doctors, retired Health Service doctors, retired employee of PT. Persero Pelabuhan Indonesia II;

Whereas in relation to the jurisdiction of the Court, because what is petitioned for review is the law in this case Law Number 29 of 2004 concerning Medical Practice and Law Number 20 of 2013 concerning Medical Education against the 1945 Constitution, the Court has the jurisdiction to adjudicate the petition *a quo*;

Whereas regarding the legal standing of the Petitioner, based on Article 51 paragraph (1) of the Constitutional Court Law and the decision of the Court regarding the legal standing as well as related to the losses suffered by the Petitioners,

according to the Court:

1. The Petitioners as lecturers and/or professors, Deputy Deans, retired lecturers, doctors, retired TNI-AD doctors, retired Health Service Doctors, Retired employee of PT. Persero Pelabuhan Indonesia II have constitutional rights granted by the 1945 Constitution, especially Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3) and Article 31 paragraph (1), and the Petitioners consider their constitutional rights to be impaired by the enactment of the Law for which the review is petitioned;
2. The constitutional losses of the Petitioners are at least potential, which according to reasonable reasoning can certainly occur;
3. There is a cause-and-effect relationship (*causal verband*) between the said loss and the enactment of the Law for which the review is being petitioned, and there is a possibility that with the granting of the petition, the constitutional loss as argued will not or will no longer occur;

Based on these considerations, the Court is of the opinion that the Petitioners as lecturers and/or professors, Deputy Deans, retired lecturers, doctors, retired TNI-AD doctors, retired Health Service Doctors, Retired employee of PT. Indonesian Port Persero II have legal standing to apply the petition *a quo*.

Whereas the subject matter of the petition of the Petitioners is to review the constitutionality of Article 1 number 4, Article 1 number 12, Article 1 number 13, Article 14 paragraph (1) letter a, Article 29 paragraph (3) letter d, Article 38 paragraph (1) letter c of the Medical Practice Law; and Article 1 number 20, Article 5 paragraph (2), Article 7 paragraph (8), Article 8 paragraph (4), Article 11 paragraph (1), Article 24 paragraph (1), Article 36 paragraph (2) and paragraph (3), Article 39 paragraph (2) of the Medical Education Law, which the Petitioners consider contrary to Article 1 paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3), and Article 31 paragraph (1) of the 1945 Constitution.

Whereas in relation to the six constitutionality issues disputed by the Petitioners in the petition *a quo*, according to the Court, broadly speaking, it covers three issues, namely, (1) Competency Certificate; (2) the authority of the Professional Organization; and (3) concurrent positions of KKI members originating from IDI, each of which is regulated in the following provisions:

1) Certificate of Competence

Article 1 number 4 of the Medical Practice Law:

"Certificate of Competence is a letter of acknowledgment of the ability of a doctor or dentist to practice medicine throughout Indonesia after passing the competency test"

Article 29 paragraph (3) of the Medical Practice Law:

"To obtain a doctor's registration certificate and a dentist's registration certificate, the following requirements must be met: d. have a certificate of competence"; and

Article 36 paragraph (2) of the Medical Education Law:

"Any student who passes the competency test as referred to in paragraph (1) shall obtain a professional certificate issued by the university.

2) Professional Organization

Article 1 number 12 of the Medical Practice Law:

"The Professional Organization is the Indonesian Doctors Association for doctors and the Indonesian Dentist Association for Dentists".

Article 1 number 13 of the Medical Practice Law:

"The Indonesian Collegium of Medicine and the Indonesian Collegium of Dentistry are the entities established by professional organizations for each branch of the scientific discipline in charge of overseeing the relevant branch of the discipline".

Article 14 paragraph (1) letter a of the Medical Practice Law:

"The number of members of the Indonesian Medical Council is 17 (seventeen) consisting of the elements from (a) 2 (two) people from the medical professional organizations".

Article 38 paragraph (1) letter c of the Medical Practice Law:

"To obtain a practice license as referred to in Article 36, a doctor or dentist must: c. have a recommendation from a professional organization."

Article 1 number 20 of the Medical Education Law:

"A professional organization is an organization which has competence in the field of medicine or dentistry that is recognized by the Government.".

Article 5 paragraph (2) of the Medical Education Law:

"Universities in providing Medical Education as referred to in paragraph (1) in cooperation with Teaching Hospitals and Medical Education Forums and in coordination with Professional Organizations".

Article 7 paragraph (8) of the Medical Education Law:

"The internship program as referred to in paragraph (7) is organized nationally together by the ministry in charge of government affairs in the education sector, the ministry in charge of government affairs in the health sector, associations of medical education institutions, associations of teaching hospitals, Professional Organizations, and the Indonesian medical council. "

Article 8 paragraph (4) of the Medical Education Law:

"The Faculty of Medicine and the Faculty of Dentistry in organizing programs for primary care physicians, specialist-sub-specialist doctors, and specialist-sub-specialist dentists as referred to in paragraph (1) shall coordinate with Professional Organizations".

Article 11 paragraph (1) of the Medical Education Law:

"The Faculty of Medicine and the Faculty of Dentistry on behalf of universities in realizing the goals of Medical Education shall collaborate with Teaching Hospitals, Medical Education Forum, and/or other institutions, as well as coordinate with Professional Organizations".

Article 24 paragraph (1) of the Medical Education Law:

"The National Standards of Medical Education which refer to the National Standards of Higher Education are prepared jointly by the ministries that carry out government affairs in the health sector,

associations of medical or dental educational institutions, associations of teaching hospitals, and Professional Organizations”.

Article 36 paragraph (3) of the Medical Education Law:

“The competency test of a Doctor or Dentist as referred to in paragraph (1) implemented by the Faculty of Medicine or the Faculty of Dentistry in collaboration with the associations of medical or dental education institutions and in coordination with Professional Organizations”.

Article 39 paragraph (2) of the Medical Education Law:

“The competency test as referred to in paragraph (1) is carried out by the Faculty of Medicine or the Faculty of Dentistry in collaboration with the associations of medical or dental education institutions and in coordination with Professional Organizations”.

3) Concurrent positions of KKI members from IDI

Article 14 paragraph (1) letter a of the Medical Practice Law:

“The number of members of the Indonesian Medical Council is 17 (seventeen) consisting of elements from (a) 2 (two) medical professional organizations”.

According to the Petitioners, the articles related to the issue of certificate of competence, organizational authority, and concurrent positions are in conflict with Article 1 paragraph (3), Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (3)), and Article 31 paragraph (1) of the 1945 Constitution.

Whereas the Court considers the constitutionality issue which is the main issue in the petition *a quo* is as follows:

1) Certificate of Competence

The Petitioners argue that the competency certificate as stated in the provisions of Article 1 number 4 of the Medical Practice Law should not be applied to new graduates of the Faculty of Medicine and such competency test must be carried out by an accredited educational unit and in the form of an educational legal entity. The Petitioners are of the view that every graduate of the Faculty of Medicine has passed a competency test in accordance with Article 36 paragraph (3) of the Medical Education Law and therefore obtained a professional certificate (doctor's certificate) so that there is no need to obtain a competency certificate from the Indonesian Doctors Collegium formed by IDI.

In relation to this argument, considering the importance of a Competency certificate from the perspective of its designation and purpose, the Court deems it necessary to confirm the existence of the certificate. Normatively, according to Article 36 paragraph (1) of the Medical Education Law, to complete the Professional Doctor or Dentist Program, a student must pass a national Competency Test before taking the oath as a Doctor or Dentist; paragraph (2) Students who pass the competency test as referred to in paragraph

(1) shall obtain a professional certificate issued by university; Paragraph (3) The competency test of a Doctor or Dentist as referred to in paragraph (1) is carried out by the Faculty of Medicine or the Faculty of Dentistry in cooperation with the associations of medical or dental education institutions and in coordination with Professional Organizations.

Certificate of Competency is a certificate of recognition of a doctor or dentist to practice medicine throughout Indonesia after passing the competency test and to obtain a doctor's registration certificate or a dentist registration certificate, a graduate must meet the following requirements:

- a. Have a degree of doctor, specialist doctor, dentist or dentist specialist;
- b. Have a statement letter verifying that the graduate has taken the doctor or dentist oath/promise;
- c. Have a certificate of physical and mental health;
- d. Have a certificate of competence; and
- e. Providing a statement that he/she shall comply with and implement the provisions of professional ethics.

Therefore, the argument of the Petitioners that equates professional certificates with diplomas [vide Article 36 paragraph (2) of the Medical Education Law] as described in the revised petition (page 26) shows that there is a difference between professional certificates (diplomas) and certificates of competence, Professional Certificates (diplomas)) is issued by the University as evidence that a doctor has met all the requirements and has been academically tested. Certificates of Competence is issued by professional organizations as evidence that a doctor has not only been tested academically but has also been tested in applying the knowledge gained to provide health services after going through a Doctor or Dentist competency test conducted by the Faculty of Medicine or the Faculty of Dentistry in collaboration with associations of medical or dental education institutions and in coordination with Professional Organizations [vide Article 36 paragraph (3) of the Medical Education Law]. Therefore, a professional certificate (diploma) is one of the requirements to obtain a competency certificate, while a competency certificate is a requirement to register with the KKI in order to obtain a Doctor's Registration Certificate (*Surat Tanda Registrasi Dokter - STR*). A doctor who has obtained an STR, must first do an Internship Program. Furthermore, to be able to practice independently, a doctor must obtain a practice permit (*Surat Izin Praktik - SIP*) from the authorized agency.

The Certificate of Competence shows the recognition of the ability and readiness of a doctor to perform medical actions in independent practice that he will undergo and is only given to those who have gone through various stages to become a professional doctor. Thus, giving a certificate of competence to an incompetent doctor can endanger the patient safety and at the same time threaten public confidence in the medical profession, which in turn can threaten the guarantee of the constitutional rights of citizens as stipulated in Article 28H paragraph (1) of the 1945 Constitution, so that the state can be considered failed to carry out its constitutional obligations as referred to in Article 34 paragraph (3) of the 1945 Constitution.

Therefore, it is clear to the Court that a professional certificate ("doctor's certificate") cannot be equated with a certificate of competence as argued by the Petitioners. Professional Certificate and Certificate of Competence are two different things that are obtained at different stages as requirements that must be met by a doctor who will practice independently. The Court has examined the facts of the existing trial and considered that both professional certificate and certificate of competence are efforts to maintain

and encourage the improvement of competence and scientific quality of doctors as the main component of providing health services to the community. The test process shall sharpen and improve the competence as well as recognize a doctor's the proficiency in science and technology which is the main basis for any doctor in carrying out medical actions. Through this process, new graduates of the medical faculty will be scientifically tested before undertaking independent practice as a professional doctor. Even if professional certificate and certificate of competence are given at the same time as the mechanism determined by educational institutions and medical professional organizations and other related institutions, such arrangements cannot be considered as a reduction or limitation, let alone eliminating the opportunity or right of new graduates to become doctors who will carry out independent practice in a professional manner because such provisions are unavoidable demands of the profession. Therefore, it cannot be considered as detrimental to the constitutional rights of citizens to get a job as guaranteed by the 1945 Constitution. The Court's considerations apply *mutatis mutandis* against the Petitioners' petition which requests to examine the constitutionality of the provisions of Article 29 paragraph (3) of the Medical Practice Law and Article 36 paragraph (2) of the Medical Education Law.

Likewise, to ensure the competence of a doctor to continue to meet the standards and developments of the world of medicine and the latest medical science, periodic recertification of every doctor who already has a Certificate of Competence is an unavoidable necessity. This is in accordance with the provisions of Article 29 paragraph (4) of the Medical Practice Law which states, "*Doctor registration certificate and dentist registration certificate are valid for 5 (five) years and are re-registered every 5 (five) years while still meeting the requirements as referred to in paragraph (3) letter c and letter d*" *junto* Article 14 paragraph (1) of the Indonesian Medical Council Regulation Number 6 of 2011 which states, "*Physical and Mental Health Certificate issued by a doctor who has a valid SIP and the doctor who issues it is physically and mentally healthy*" The recertification can be carried out by reassessing competence or can also be carried out by participating in the continuing medical education and development program (*Pengembangan dan Pendidikan Kedokteran Berkelanjutan - P2KB*) where the participant shall acquire special credit unit. Without compromising the quality of the purpose of recertification, the mechanism must be implemented in a simple manner so as to enable every doctor to fulfil it. In addition, to avoid the possibility of abuse of authority, the recertification process is carried out in a transparent and accountable manner. Therefore, the Government needs to encourage simplification of the recertification process and at the same time supervise the process.

Thus, both the existence of professional certificate and certificate of competence as well as the requirements for recertification are intended to maintain the competence and scientific quality of a doctor whose ultimate goal is to protect the community, the Petitioners' argument stating Article 1 number 4, Article 29 paragraph (3) of the Medical Practice Law, as well as Article 36 paragraph (2) and paragraph (3) of the Medical Education Law are contrary to the 1945 Constitution is unjustified according to the law.

2) Professional Organization

In relation to the argument regarding the professional organization, the Petitioners petition that the phrase *professional organization* in the provisions of Article 1 number 12 and Article 38 paragraph (1) letter c of the Medical Practice Law is defined as "also includes" the Association of Specialist Doctors" within IDI to guarantee the right to freedom of association, assembly and expression of opinion regulated in the provisions of Article 28E paragraph (3) of the 1945 Constitution and the right to advance himself in fighting for his right collectively to build his community, nation and country as regulated in Article 28C paragraph (2) of the 1945 Constitution. To such petition, according to the Court, there is no question of unconstitutionality in the provisions *a quo*. The Association of Specialist Doctors is naturally a part of IDI. IDI as a house of the medical profession is filled with various fields of medical expertise which also includes the Association of Specialist Doctors as an integral and inseparable element of IDI. However, if the logic of the Petitioners' petition is followed, legal uncertainty will arise because in practice it becomes unclear how or when the professional organization is defined as IDI and at what time or when the professional organization is defined as the Association of Specialist Doctors.

The Court's consideration shall also apply *mutatis mutandis* to the petition of the Petitioners related to the examination of the provisions of Article 38 paragraph (1) letter c of the Medical Practice Law.

Article 1 number 13 of the Medical Practice Law stated, "*the Indonesian Collegium of Medicine and the Indonesian Collegium of Dentistry are the entities established by professional organizations for each branch of the scientific discipline in charge of overseeing the relevant branch of the discipline*" according to the Petitioners it is contrary to the 1945 Constitution and has no binding legal force. The Petitioners petition that the phrase "*professional organization*" removed or deleted from the provision so that Article 1 number 13 of the Medical Practice Law reads, "*The Indonesian Medical Collegium and the Indonesian Dentistry Collegium are entities established for each branch of the scientific discipline in charge of overseeing the relevant branch of the discipline.*". Against this argument, the Court is of the opinion that the law allows each group of health workers to form a collegium based on their respective disciplines. In the IDI structure, based on the AD/ART (Articles of Association) of IDI, the collegiums gathered in the Indonesian Medical Collegium Assembly are one of the elements in the IDI management structure at the Central level whose task is to provide guidance and regulation of the implementation of the medical professional education system. Thus, the Indonesian Medical Collegium and the Indonesian Dentistry Collegium are elements in IDI as medical professional organizations in charge of overseeing their respective branches of discipline. Therefore, IDI in this case functions as a house for the medical profession in which it can form collegiums to carry out certain authorities based on laws and regulations and IDI's AD/ART. The removal of the phrase "*professional organization*" in the provision *a quo* eliminating the collegial-forming elements, which were doctors themselves based on their respective disciplines, who in the end also gathered in the MKKI as one of the elements of the central leadership of IDI. Based on these considerations, according to the Court, the argument of the Petitioners is unjustified according to the law.

The Petitioners also petition a review on the phrase "*professional organization*" which is mentioned in the provisions of Article 1 number 20, Article 5 paragraph (2), Article 7 paragraph (8), Article 8 paragraph (4), Article 11 paragraph (1), Article 24 paragraph (1), Article 36 paragraph (3) and Article 39 paragraph (2) of the Medical Education Law. The Petitioners petition that the phrase "*professional organization*" also interpreted as including "Specialist Doctors Association" (Article 38 paragraph (1) letter c of the Medical Practice Law) and is defined as the Indonesian Medical Collegium/Medical Collegium Assembly [Article 1 number 20, Article 5 paragraph (2), Article 7 paragraph (8), Article 8 paragraph (4), Article 11 paragraph (1), Article 24 paragraph (1), Article 36 paragraph (3) and Article 39 paragraph (2) of the Medical Education Law]. Regarding the arguments of the Petitioners, the Court is of the opinion that the Indonesian Medical Collegium/Medical Collegium Assembly is an element contained in IDI and is not an organization separate from IDI. As the home of Indonesian doctors, IDI accommodates the medical profession from various disciplines. Thus, each element in IDI has its own function in accordance with the AD/ART of IDI. The Indonesian Medical Collegium/Medical Collegium Assembly is an element in the IDI whose task is to regulate and foster the implementation of the medical profession education system. In carrying out this function, the Indonesian Medical Collegium/Medical Collegium Assembly continues to coordinate with various related elements both inside and outside of IDI to realize national goals in improving the health status of the Indonesian people, which is also the goal of establishing IDI through the provision of medical education. Therefore, regarding the implementation of medical education, as also stated in the AD/ART of IDI, it is the function of the Indonesian Medical Collegium/Medical Collegium Assembly as one of the elements of IDI that has competence in the field of medical education. It would not be an exaggeration to place the Collegium/Collegium Assembly as *academic body* of the medical profession. In relation to the disharmony regarding collegium as intended in the Medical Practice Law which only involves the Indonesian Medical Collegium and Indonesian Dental Collegium, meanwhile the Medical Education Law only mentions professional organizations, this does not mean that there is an unconstitutionality of norms because in essence the collegium is part of professional organization in this case IDI. In this case the professional organization (IDI) must empower the existence of elements in the organizational structure including the collegiums in accordance with their respective functions.

Therefore, the argument of the Petitioners insofar as it concerns with the unconstitutionality of the phrase "*professional organization*" in Article 1 number 12, Article 1 number 13, and Article 38 paragraph (1) letter c of the Medical Practice Law and in Article 1 number 20, Article 5 paragraph (2), Article 7 paragraph (8), Article 8 paragraph (4), Article 11 paragraph (1), Article 24 paragraph (1), Article 36 paragraph (3), and Article 39 paragraph (2) of the Medical Education Law is unjustified according to the law.

3) Concurrent positions of KKI members from IDI

In relation to the argument regarding concurrent positions of KKI members originating from IDI, the Petitioners argue that Article 14 paragraph (1) letter a of the Medical Practice Law, which states "*The number of members of the Indonesian Medical Council is 17 (seventeen) consisting of elements from (a) 2 (two) people from the medical professional organizations*" is contrary to the 1945 Constitution and has no binding legal force, insofar as the phrase "medical professional organization"

is not interpreted as "any person who is not a member of the board of the medical professional organization". In relation to the petition, the Court is of the opinion that the filling in to be members of the KKI shall considers the duties of the KKI which have the potential to intersect with the interests of the institutions from which the members of the KKI originate. Based on the statutory provisions, KKI has the task of registering doctors as the basis for issuing STR, carrying out regulatory functions and carrying out guidance on the implementation of medical practice. The medical professional organization, in this case IDI, as one of the original institutions of the KKI members has a close relationship with the tasks carried out by the KKI, especially in the regulatory function because doctors who are members of the IDI are the objects of the regulations made by the KKI. On the other hand, IDI, as a medical professional organization is also one of the original institutions of KKI members. This situation creates a potential conflict of interest from the IDI side because IDI acts as a regulator in carrying out its functions as a member of the KKI, at the same time it also becomes the object of the regulations made by the KKI. Therefore, to prevent this potential conflict of interest, IDI members who sit on the KKI should be those who are not IDI administrators to prevent conflicts of interest because the KKI has three tasks, namely the function of registering doctors as the basis for issuing STR, regulatory functions related to the doctor's profession, and coaching functions. On the other hand, IDI is the medical professional organization and therefore the existence of IDI management in KKI has the potential to cause a conflict of interest, especially in the formulation of regulations. This is not in accordance with the principle of fair legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution.

Based on these considerations, the Petitioners' argument regarding the unconstitutionality of the membership of the KKI from the management element of the medical professional organization, in this case IDI, in Article 14 paragraph (1) letter a of the Medical Practice Law is justified according to the law, insofar as the element of the "medical professional organization" is not interpreted as not holding concurrent positions as IDI administrators.

Whereas based on the opinion of the Court above, the Court has rendered the following verdicts:

1. To grant the petition of the Petitioners in part.
2. To state that Article 14 paragraph (1) letter a of Law Number 29 of 2004 concerning Medical Practice (State Gazette of the Republic of Indonesia of 2004 Number 116, Supplement to the State Gazette of the Republic of Indonesia Number 4431) which states "*The number of members of the Indonesian Medical Council is 17 (seventeen) consisting of the elements from: (a) 2 (two) people from the medical professional organizations; ...*" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force since the element of "medical professional organization" is not interpreted as not being the administrator of a medical professional organization.
3. To dismiss the rest of the petition of the Petitioners.
4. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate.