



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

**THE SUMMARY OF THE DECISION  
CASE NUMBER 25/PUU-XII/2014**

**Concerning  
Existence, Duties, and Authorities of the Financial Services  
Authority (*Otoritas Jasa Keuangan - OJK*)**

- Petitioner** : Salamudin, Ahmad Suryono, and Ahmad Irwandi Lubis.
- Type of Case** : Judicial Review of Law Number 21 of 2011 concerning the Financial Services Authority (OJK Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject matter** : Article 1 point 1, Article 5, Article 34, and Article 37 as well as the phrase “...*regulatory and supervisory duties in the banking sector...*” in Article 6, Article 7, Article 55, Article 64, Article 65, and Article 66 of the OJK Law against Article 23 paragraph (1), Article 23A, Article 23D, and Article 33 of the 1945 Constitution.
- Verdict** : **In Provision:**  
Stating that the Petitioners' provisional petition cannot be accepted.  
**In the Principal of the Petition:**  
To declare, partially grant the petition of the Petitioners;
- Date of Decision** : Tuesday, August 4<sup>th</sup>, 2015.

**Overview of Decision :**

The Petitioners are individual Indonesian citizens, taxpayers, and banking customers who have been harmed by the enactment of Article 1 point 1, Article 5, Article 34, and Article 37 as well as the phrase “...*regulatory and supervisory duties in the banking sector...*” in Article 6, Article 7, Article 55, Article 64, Article 65, and Article 66 of OJK Law, with the following arguments: (1) The establishment of OJK is only related to bank supervision; (2) The OJK Law does not have a constitutional basis; (3) The word "independent" in the OJK Law does not find any constitutional justification and the consideration of Article 33 of the 1945 Constitution in the formation of the OJK Law thus it makes it impossible for OJK to be independent; (4) The authority of the OJK in the supervisory and regulatory functions overlaps with those of Bank Indonesia (BI); (5) OJK's acceptance as stipulated in Article 34 and Article 37 may reduce the independence of OJK and in relation to OJK levies, they are contrary to Article 23A of the 1945 Constitution;

In relation to the jurisdiction of the Court, since what the Petitioners are requesting for is a judicial review of the Law in this case OJK Law against the 1945 Constitution,

which is one of the jurisdiction of the Court, based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the jurisdiction to adjudicate the petition *a quo*;

In relation to the legal position of the Petitioners who argue that they are individual Indonesian citizens, taxpayers, banking customers who have constitutional rights which have been harmed by the enactment of the articles *a quo* because banks impose OJK levies on banking customers, the APBN (state budget) will be used to finance OJK as long as the complete levies by the OJK have not been applied to all financial industry parties, and the APBN will be used to finance any bailout In the event of a financial crisis, according to the Court, it is related to the conditions as stipulated in Article 51 paragraph (1) of the Constitutional Court Law along with its Elucidation and the conditions referred to by the Court's decision regarding the legal standing of the Petitioners in the case of judicial review, the constitutional rights of the Petitioners as argued by the Petitioners are specific and actual so that there is a causal relationship between the loss of constitutional rights referred to and the enactment of the Law being requested for examination and if the petition of the Petitioners is granted, the loss of constitutional rights as argued by the Petitioners will not or will no longer occur. Thus, according to the Court, the Petitioners have the legal standing to file a petition *a quo*;

In relation to the provisional petition, according to the Court, because the petition for a provisional decision *a quo* closely related to the subject of the petition, therefore the provisional petition of the Petitioners is irrelevant for consideration, therefore the provisional petition *a quo* is declared as unacceptable;

In the subject of the petition. The main issues in the petition of the Petitioners are generally related to the regulation, authority, independence of OJK, coordination of OJK and BI, as well as sources of funding and levies from OJK;

In relation to the regulation of the OJK, the Court is of the opinion that the establishment of the OJK is an order from Article 34 of the BI Law, so that although it is not ordered by the 1945 Constitution, it is not necessarily unconstitutional. Article 10 paragraph (1) of Law 12/2011 concerning the Establishment of Legislation stipulates that the content that must be regulated by law shall contain an order for a Law to be regulated by Law. There are institutions whose formation is based on the orders of the Law, such as the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi - KPK*) which was established under Law 30/2002, the National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia - Komnas HAM*) which was established under Law 39/1999, the Indonesian Broadcasting Commission (*Komisi Penyiaran Indonesia - KPI*) which was established under Law 32/2002, the Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha - KPPU*) which was established under Law 5/1999, and so on. As for the separation and incorporation of the authority of institutions that are macroprudential and microprudential, it is not a matter of constitutionality, but an open legal policy of the legislators.

In relation to the word "independent" in Article 1 point 1 of the OJK Law, it is the mandate of Article 34 paragraph (1) of the BI Law which is an elaboration of Article 23D of the 1945 Constitution, so it does not constitute as a violation if the legislators attach the word "*independent*" to OJK. In terms of meaning and purpose, the word "independent" for the central bank in Article 23D of the 1945 Constitution is the same as the phrase "independent" for a general election commission in Article 22E paragraph (5) of the 1945 Constitution. There are also institutions that are given the

word "independent" without being associated with the articles in the 1945 Constitution, such as the Business Competition Supervisory Commission [Article 30 paragraph (2) of Law 5/1999], the Corruption Eradication Commission [Article 3 of Law 30/2002], and the Indonesian Broadcasting Commission [Article 7 paragraph (2) of Law 32/2002].

The Court is of the opinion that in order to understand the independence of the OJK, it must be linked to the central bank which is intended to have the freedom to achieve the objectives set out in the law and the decisions taken to achieve these objectives cannot be interfered with by the government and other branches of state power. The independence of OJK does not mean that OJK can determine its own goals, because the purpose of establishing OJK has been determined in the OJK Law, including Article 4 of the OJK Law. Based on the purpose of establishing OJK which is directly related to the economic sector, it is appropriate that Article 33 of the 1945 Constitution is used as the legal basis for the authority to form the OJK Law;

In relation to the adoption of Article 33 of the 1945 Constitution as the legal basis for the authority to form the OJK Law, thereby reducing the independence of the OJK, according to the Court, the OJK Law has clearly and firmly stated the aspects of the independence of the OJK, which is intended to ensure that every regulation and supervision carried out by the OJK is objective, without being influenced by any intervention from any party and to prevent any conflicts of interest with the financial industry service parties whom they supervise. Therefore, it is irrelevant to question the legal basis for the authority to form the OJK Law, in particular Article 33 of the 1945 Constitution, with the issue of OJK independence.

The independence of the OJK as described in the General Elucidation of the OJK Law shows that OJK is not separate from the state which would have made it seem as if OJK is a state within a state, due to the existence of elements of government representatives at OJK as well as coordination, cooperation, and harmonization of policies with other institutions, as set out in Article 10 paragraph (4), Article 44 paragraph (1), Article 38, and the arrangements regarding the membership of the Audit Board and the Ethics Committee which are also external to the OJK. Therefore, the meaning of "independent" for OJK has been clearly and unequivocally stated in the OJK Law so that according to the Court, the phrase "*and free from interference from other parties*" which follows the word "*independent*" in Article 1 number 1 of the OJK Law, it is no longer needed because its meaning is already included in the word "independent". The independence of the OJK is not absolute and unlimited, but it is limited by the matters that are expressly regulated in the OJK Law itself.

In relation to the regulatory and supervisory tasks that were transferred from BI to OJK, which was initially carried out by BI was temporary in nature so that in its development the legislators could integrate these two tasks to the OJK, based on the reasons for the experience of the monetary crisis that had occurred in Indonesia, the current financial structure and system, and the best practice adopted in several countries. Therefore, the combination of these two tasks to OJK is an open legal policy from the legislators.

As for the division of authority macroprudential to BI and microprudential to OJK, the Court is of the opinion that it has been explained in the Elucidation of Article 7 of the OJK Law. However, in the future, the Legislators need to make clear and firm regulations on the scope of macroprudential law by BI through the amendment to the BI Law so as not to cause problems in the implementation of the OJK Law. In addition, it is necessary to immediately build a means of integrated exchange of

information within the three institutions in the banking sector (OJK, BI, and LPS) as mandated by Article 43 of the OJK Law.

In relation to the terms of OJK as an "institution" without the word "state" it does not mean that OJK's position is an illegal institution because it carries out the functions, duties, and authorities ordered by Law, so that it is only natural that the financing of OJK comes from the APBN to fund all operational activities such as: in the early days of the formation of OJK [see Article 34 of the OJK Law and its Elucidation] as long as the levies from the parties conducting activities in the financial services industry have not been able to fund all operational activities independently and are carried out with due regard to the ability of the parties conducting activities in the financial services sector as well as the funding needs of OJK, in accordance with the laws and regulations. Therefore, any funding sourced from the APBN as referred to in Article 34 paragraph (2) of the OJK Law is temporary, so there must be a clear time limit on the extent to which OJK can use the APBN as a source of operational activities. In this case, it is the authority of the legislators to assess it because the determination of the OJK budget is carried out by first seeking approval from the DPR (House of Representatives) [Article 36 of the OJK Law].

In relation to OJK levies, even though they are not regulated by Law as ordered by Article 23A of the 1945 Constitution, it does not necessarily mean that they are contrary to the 1945 Constitution because in reality there is no law that specifically regulates other levies of a coercive nature, such as fees or costs on the Stock Exchange as stipulated in Law 8/1995 concerning Capital Markets and fees for forest utilization business license holders as stipulated in Law 41/1999 concerning Forestry. Technically, it will also cause complications if each levy must be subject to a separate law because there will be many special and separate laws that regulate each type of levy. Any potential for misuse and accountability of levies, including in the event that there is an excess of levy proceeds, according to the Court, it has been anticipated in Article 38 of the OJK Law which shows that there has been supervision and accountability from OJK to the state and society.

Meanwhile, in the event that there is an excess of levy proceeds which are then deposited into the State Treasury, according to the Court, this is not related to the issue of constitutionality but it is an issue of open legal from the legislators, and has been in accordance with Article 9 of Law 17/2003 concerning State Finance and Article 16 of Law 1/2004 concerning State Treasury and is commonly practiced in several countries, so that it is not contrary with the 1945 Constitution.

Whereas based on the entire description of the considerations above, according to the Court, the main point of the petition is legally grounded in part. Accordingly, the Court subsequently rendered the verdicts which stated that:

**In Provision:**

Stating that the Petitioners' provisional petition cannot be accepted.

**In the Principal of the Petition:**

1. To grant the petition of the Petitioners in part;
  - 1.1 The phrase "*and free from interference from other parties*" which follows the word "*independent*" in Article 1 point 1 of Law Number 21 of

2011 concerning the Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253) is contrary to the 1945 Constitution of the Republic of Indonesia;

- 1.2 The phrase “*and free from interference from other parties*” which follows the word “*independent*” in Article 1 point 1 of Law Number 21 of 2011 concerning the Financial Services Authority (State Gazette of the Republic of Indonesia of 2011 Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253) does not have binding legal force;
  - 1.3 Article 1 number 1 of Law Number 21 of 2011 concerning the Financial Services Authority (State Gazette of the Republic of Indonesia of 2011, Number 111, Supplement to the State Gazette of the Republic of Indonesia Number 5253) in full shall be “*The Financial Services Authority, hereinafter abbreviated as OJK, is an independent institution, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in this Law*”.
2. To dismiss the rest of the Petitioners’ petition;
  3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate.