

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 30/PUU-XVII/2019**

**REGARDING**

**INTERESTED THIRD PARTIES FILE PETITIONS FOR THE FOUNDATION**

**Petitioner** : H. Armein Kusumah, S.H., Dra. Hj. Sri Wuryatmi, M.M., and Drs. H. Saman, Ak., M.M.

**Type of Lawsuit** : Judicial Review of Law Number 16 of 2001 regarding Foundations against the 1945 Constitution of the Republic of Indonesia (UUD 1945)

**Case of Lawsuit** : Article 53 paragraph (2) of Law Number 16 of 2001 regarding Foundations (Foundation Law) contradicts Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution

**Injunction** : Rejecting the Petitioners’ petition in their entirety.

**Date of Verdict** : Monday, September 30, 2019

**Verdict Summary** :

Related to the Authority of the Court, because the Petitioners' petition is a constitutionality review of the norms of the law, in this case Article 53 paragraph (2) of the Foundation Law against the 1945 Constitution, so that the Court has the authority to hear the Petitioners’ petition.

Related to the legal standing of the Petitioners, the Petitioners are executive board of the Al-Ikhwan Meruya Foundation based on Article 35 paragraph (1) of the Foundation Law which states, "Foundation Executive Board are fully responsible for managing the Foundation for the interests and objectives of the Foundation, as well as have the right to represent the Foundation, both within or outside the court" and Article 32 paragraph (3) of the Foundation Law which states," The composition of the Executive Board shall consist of at least: (a) a chairperson; (b) a secretary; and (c) a treasurer". Thus, based on the deed of establishment Number 49, dated December 16, 1983 before the Notary Public Sinta Susikto, SH, as amended by deed Number 02, dated May 15, 2017 before the Notary Public H. Rakhmat Syamsul Rizal, SH, MH, and Changes in Data based on Decree of the Minister of Law and Human Rights Number AHU-AH.10.06-0005182, dated May 16, 2017, that the executive board can act for and on behalf of the Foundation, both inside and outside the court, so that they are entitled to file a quo petition to the Constitutional Court;

Therefore, the Court has the opinion that the Petitioners as executive board of the Al-Ikhwan Meruya Foundation, which according to their opinion have been impaired by their constitutional rights, after the Court has read the Petitioners' petition, such constitutional rights are related to the existence of the phrase "interested third parties" in Article 53 paragraph (2) of the Foundation Law, giving rise to multiple interpretations. Thus, the Petitioners implicitly actually questioned their constitutional rights to a fair legal certainty as provided for in Article 28D paragraph (1) of the 1945 Constitution. Because, the phrase "interested third parties " which could be interpreted as "anyone", "everyone", or "every person" without limitation, in filing for a petition of examination of the foundation. Therefore, according to the Court, the Petitioners have the legal standing to act as Petitioners in a quo petition.

The principal constitutional issue of the Petitioners is the constitutionality review of Article 53 paragraph (2) of the Foundation Law against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution.

Whereas the norm of "interested third parties" as defined in Article 53 paragraph (2) of the Foundation Law does not specifically state the parties who can file a petition for examination of the foundation or those who cannot file a petition for examination of the foundation, so that the norms of "interested third parties" provide the legal standing of everyone, every person or anyone to file a petition for examination of the foundation and can lead to multiple interpretations, so that those who cannot file petitions become parties who can file petitions.

Whereas according to the Petitioners, it is important to determine the norms of interested third parties are limited, which aims to determine the party who can file for a petition of the examination and the party who cannot file for a petition of the examination, so that there will be no multiple interpretations.

Whereas the interested third parties who has a legal standing to file a petition for examination in allegations where the foundation has committed an illegal act, violated the basic rules, neglected in carrying out their duties, and harmed the foundation or other party is a party who has a direct relationship with the Petitioners, including:

‐ the parties who suffer the direct results of legal actions committed by the Petitioners;

‐ the parties who suffered losses due to legal actions committed by the Petitioners;

‐ the parties who are part of the foundation's organs, but act on behalf of an individual;

‐ the parties who suffer the direct results of the foundation's actions that are contrary to the articles of association;

‐ the parties who suffered losses due to negligence committed by the foundation;

‐ the third parties who suffered loss;

‐ founders of the foundation who have a direct relationship with the Petitioners, but are not included in the foundation's organs.

Whereas based on Article 53 Paragraph (3) of the Foundation Law, the examination of a foundation in the case of allegations that the foundation organ is doing an act that is detrimental to the state can be carried out based on the Court Decision at the request of the Prosecutor's Office in terms of representing the public interest. However, based on Article 53 paragraph (2) of the Foundation Law, if there are allegations that a foundation's organ is committing an act against the law, or is contrary to the Articles of Association, negligent in carrying out their duties, committing acts that are detrimental to the foundation or a third party, it can only be done based on a court's decision at the written request of the interested third parties and the reasons. Of these provisions, an examination of the foundation should be based on the Court's Decision, either at the request of the Prosecutor's Office or at the request of the interested third parties.

Whereas the definition of "interested third parties" in the Foundation Law is basically not clearly spelled out, but a quo phrase cannot be separated from the provisions of Article 54 paragraph (1) of the Foundation Law which states, "The court may reject or grant a petition for examination as referred to in Article 53 paragraph (2)". Therefore, the determination to reject or grant the said examination, including who is the third party entitled to file a petition for examination of the foundation as referred to in Article 53 paragraph (1), is determined by the court. This means that any third party who feels harmed because of the foundation's actions, then the person concerned has the right to file a petition for such examination.

Whereas based on the provisions of Article 53 paragraph (2) and Article 54 paragraph (1) of the Foundation Law, it can be concluded that those who feel they have an interest as described in Article 53 paragraph (1) and paragraph (2) are required to file a petition to the court by mentioning the reasons and henceforth becomes the authority of the judge to consider, whether to reject or grant such petition. The interested third parties in the Foundation Law will become clear when the judge determines that the petitioning party as the interested third parties is granted based on the reasons in the petition and the results of the examination at the trial. In this case, to strengthen their conviction, the court or judge in rejecting or granting the petition of the third party in question is meant to consider the principles of audi et alteram partem.

Whereas the phrase "interested third parties" cannot be interpreted or construed without being linked to a court decision, so that without a court decision, the legal standing of interested third parties cannot be determined unilaterally outside the court examination, so there is no unconstitutionality issue in Article 53 paragraph (2) of the Foundation Law.

Whereas based on all the legal considerations above, the Court has the opinion that the Petitioners' argument has no legal reason.

Thus, the Court subsequently handed down a decision whose injunction was to reject the Petitioners’ petition in their entirety.

This document is translated from Indonesian into English by me, **Drs. EMIL SUSANTO**,

the Authorized and Sworn Translator in Jakarta - Indonesia

JAKARTA, June 24, 2020