



**The Constitutional Court
of the Republic of Indonesia**

SUMMARY OF DECISION ON CASES NUMBER 16/PUU-XVII/2019

About

Educational Commercialization in the Trade Law

Petitioner : Reza Aldo Agusta

Judicial Review : Examination of Law Number 7 of 2014 concerning Trade (Law 7/2014) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Case of Lawsuit : Article 4 paragraph (2) letter d Law 7/2014 is against the principle legal certainty protection guarantee in Article 28D paragraph (1) The 1945 Constitution, creates an education system that is dualistic in nature, which is contrary to Article 31 paragraph (3) of the 1945 Constitution, giving rise to a conflict between state responsibilities in the education and trade sectors as guaranteed by Article 28C paragraph (1) and Article 31 paragraph (1) and paragraph (3) of the 1945 Constitution, and

relinquishing the state's responsibility to finance primary education as mandated by Article 31 paragraph (2) and paragraph (4) of the 1945 Constitution;

Injunction : Stating that the Petitioners' petition cannot be accepted.

Date of the Decision : Thursday, 28th of November 2019

Decision Overview:

The Petitioner is an individual Indonesian citizen who is a student at the Atmajaya University in Yogyakarta;

Regarding the authority of the Court, because of the petition to test the constitutionality of statutory norms, in casu Law Number 7 of 2014 concerning Trade against the 1945 Constitution, the Court has the authority to try the Petitioner's petition;

Concerning the Petitioner's legal position, the Court considered based on the description of the Petitioner in explaining the Petitioner's opinion regarding the impairment of his constitutional rights, and the Court considered that this was related to the principal of the petition so that the Petitioner's legal position would only be known after the Court considered the principal of the petition;

In the Principle of the Petition, before further considering the Petitioners' arguments, the Court shall consider the following:

1. The fourth paragraph of the Preamble of the 1945 Constitution mandates the objectives of the Indonesian state, one of which is to educate the nation's life. Therefore education is one of the most fundamental rights. For this reason, the Constitution instructs the state, in this case, the government, to organize a national

education system which aims to form a nation that is completely intelligent, not only knowledgeable but also aimed at shaping the character of a nation that is faithful, cautious and has noble character;

2. On the other hand, the Fourth Paragraph of the Preamble of the 1945 Constitution promotes public welfare, so one of the efforts that can be made to achieve the intended goal is development in the economic sector. One aspect that can be used as a benchmark for economic growth is trade activity. In relation to trading activities, the implementation of these trading activities remains within constitutional boundaries in line with the democratic economic framework for the people's greatest possible welfare based on Article 33 paragraph (3) of the 1945 Constitution.
3. The implementation of educational service activities must remain under the basic principles of education as stipulated in Law 20/2003 and all implementing regulations. Meanwhile, in the context of higher education, the principles outlined in the provisions of Article 64 and Article 65 of Law 20/2003 are reinforced in Law 12/2012, which basically states that other state universities can provide higher education in Indonesia following the provisions of the laws and regulations. -Introduction with one of its obligations is to provide higher education with a non-profit principle. And the non-profit principle is referred to as "the principle of an activity whose purpose is not for profit so that all the remaining proceeds from the activity must be reinvested in the tertiary institution to increase the capacity and/or quality of education services."

Regarding the argument of the Petitioner's petition which states that Article 4 paragraph (2) letter d of Law 7/2014 creates legal uncertainty, according to the Court, to comprehensively understand the meaning of educational services in article 4 paragraph (2) letter d of Law 7/2014 cannot be separated from Law 20/2003 and Law 12/2012 which in principle determine the provision of non-profit education, which means that it does not seek profit. Even if there is residual income from the provision of such education, it must be returned or reinvested into the university concerned to increase the capacity and/or quality of education services. Even though it is categorized as a "commodity," such educational services must still refer to and cannot be separated from the basic principles of efforts to educate the nation's life as confirmed in the Preamble to the 1945 Constitution; means that the inclusion of education services as tradable services does not mean that they must be traded. The state retains the power to assess and determine what educational services can be traded without violating the Constitution;

Regarding the Petitioner's argument that Article 4 paragraph (2) letter d of Law 7/2014, makes education services a trade commodity that makes education a private good so that it has the potential to release state responsibility. The court considers that education concerning government responsibility is classified as public goods in which the state cannot let go of its role to regulate and provide direction for the national education system policy. In addition, the nature of education, which must be accessible to all citizens (accessible), is the reason why education is classified as a public good. In this case, the Court has affirmed its

stance as stated in the Decision of Constitutional Court Number 012 / PUU-III / 2005, dated 19 October 2005; the considerations in this decision indicate that the state's central role in education cannot be reduced and transferred. With the existence of provisions that include education in the scope of tradable services, it does not make the government release itself from its responsibilities because as a tradable service, its educational services are bound and subject to all national education regulations, which must be a reference in its implementation;

Regarding the Petitioner's argument that there is dualism in Indonesia's education system, the Court believes that trade regulations, in this case, Law 7/2014, are not independent but are closely related to other laws and regulations *casu* Law 20/2003. The direction of education policy and the boundaries outlined in the management of national education has been comprehensively regulated in Law 20/2003 along with Law 12/2012, which is complemented by other implementing regulations that become national education regulations that must be obeyed by anyone with interest in national education in Indonesia. Even though education services can be traded, education is not subject to the trade regime so that it remains within the national education system regime within the Unitary State of the Republic of Indonesia;

Based on the considerations described above, the Court believes that the Petitioners' petition is groundless according to law;

Furthermore, the Court considered the legal standing of the Petitioner; after reading the Petitioners' petition carefully, it has been shown until the Court has thoroughly examined and considered the main points of the petition, no

correlation has been found regarding the presumption of constitutional impairment which, according to the Petitioner, was caused by the enactment of the norm of article a quo. Even if it is true that there has been an increase in the cost of education, which is considered high by the Petitioner, the Court has found no evidence that the increase in education costs was due to the enactment of Article 4 paragraph (2) letter d of Law 7/2014. The Petitioner himself acknowledged that an increase in education costs had no direct effect on the Petitioner, especially the Petitioner's college, in casu Atma Jaya University, provided a full scholarship scheme to complete education for the Petitioner. Therefore, the Court did not find any actual or potential impairment of the Petitioner's constitutional rights, so that the Petitioner did not have the legal standing to act as the Petitioner in the a quo petition.

Based on all the descriptions of the considerations above, it has been shown that the Petitioner has no legal standing to act as a Petitioner in the a quo Petition. Even if you have such a legal position, quod non, it also turns out that the subject of the petition is not legally grounded, so that the remaining petition is not considered. So that in its verdict, the Court stated that the Petitioners' petition could not be accepted.