



**CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA
SUMMARY OF LAWSUIT VERDICT
NUMBER 80/PUU-XVI/2018
REGARDING
THE ROLE OF**

**THE INDONESIAN MEDICAL ASSOCIATION EXECUTIVE BOARD (PB-IDI)
IN THE FIELD OF MEDICAL EDUCATION**

- Petitioner** : Prof. Dr. R. Sjamsuhidajat, et al.
- Type of Lawsuit** : Summary of Decisions on Judicial Review of Law Number 29 of 2004 regarding Medical Practices (Law 29/2004) against the 1945 Constitution of the Republic of Indonesia (UUD 1945);
- Case of Lawsuit** : Judicial Review of Article 1 point 12 and point 13, Article 28 paragraph (1), and Elucidation of Article 29 paragraph (3) letter d of Law 29/2004 against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1) and Article 28H paragraph (1) and paragraph (2) of the 1945 Constitution;
- Injunction** : Rejecting the Petitioners' petition in their entirety.

Date of Verdict : Tuesday, May 21, 2019;

Verdict Summary :

The Petitioners are individual Indonesian citizens who work as doctors and academics in the field of medical science who doubt the existence of transparency and accountability in the Continuing Professional Education Development Program (P2KB) because the process is without adequate supervision from the regulator, namely the government and/or the Indonesian Medical Council (KKI).

Related to the authority of the Court because the Petitioners' petition is a judicial review of Article 1 point 12 and point 13, Article 28 paragraph (1), and Elucidation of Article 29 paragraph (3) letter d of Law 29/2004 against Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1) and Article 28H paragraph (1) and paragraph (2) of the 1945 Constitution, the Court has the authority to adjudicate the petition of the Petitioners;

Related to the legal standing of the Petitioners, the Petitioners feel disadvantaged by the articles being reviewed by the Petitioners in Law 29/2004 because these articles have made the recertification of basic medical doctors completely out of government oversight or the Indonesian Medical Council as a regulator. Because IDI has a guideline that continuing education and training organized by professional organizations (in this case IDI) are solely internal affairs of the IDI organization which considers its organization as a self-organizing body that has the right to regulate itself, without considering that the medical profession's services also involve the interests of many people who need regulation from the government and the state.

Whereas from the Petitioners' argument regarding the legal standing according to the Court, the Petitioners who have interests and concerns realize the establishment of organizational ethics and the creation of good professional organization governance in order to increase the professionalism of doctors in Indonesia and also the implementation of quality medical education, can explain their assumptions regarding the impairment of constitutional rights caused by the enactment of the norms of the law petitioned for judicial review, as well as the causal relationship between the norms petitioned for judicial review and the assumption of factual impairment suffered by the Petitioner. Therefore, the Petitioners have the legal standing to file a quo petition.

Whereas in relation to the principal petition of the Petitioners, which in principle states that with the articles being reviewed by the IDI Petitioners, the interpretations of the councils as contained in the IDI's Articles of Association and Bylaws are subordinated to PB-IDI, whereas academics consider that the Indonesian Medical College Council (MKKI) should take care of the realm of education/academic who have an equal position with PB-IDI in one institution, namely the Indonesian Medical Association. With a narrow understanding that the Indonesian Medical Association (IDI) is interpreted as PB-IDI, so that the councils (MKKI, MKEK, and MPPK) are placed as PB-IDI subordination, then according to the Petitioners there is legal uncertainty in interpreting the IDI phrase, thus detrimental to the constitutional interests of the Petitioners because they are in conflict with the 1945 Constitution. Besides, the Petitioners have the opinion that PB-IDI disregard the Constitutional Court's considerations relating to the judicial review of the provisions of Article 1 Number 12 regarding professional organizations as set forth in the Decision of the Constitutional Court Number 10/PUU-XVI/2017. Disregard of these considerations,

according to the Petitioners, due to these considerations are not contained in the norms set forth in the injunction but only in the legal consideration section, so they are considered to have no binding legal force. Against the argument of the Petitioners, the Court considers the following:

1. The leadership of IDI has been considered by the Court in Decision of the Constitutional Court Number 10/PUU-XV/2017 which has clarified the position of PB-IDI, MKKI, MKEK, and MPPK which are aligned with the leadership structure of IDI at the central level. Although the Petitioners in their refinement petitioned the Court, so that these considerations could be made legal norms in the form of a Court decision to be obeyed by PB-IDI, so PB-IDI did not place MKKI, MKEK, and MPPK as subordinated to PB-IDI, according to the Court, the consideration of the Court in a decision even though it was not declared in a Court's injunction, but such consideration is an integral and inseparable part of an injunction which has final and binding power that must be obeyed by all parties.
2. Whereas between KKI and college have different roles in medical professional organizations as provided for in applicable laws and regulations, so that it is not appropriate if the Petitioners ask the Court for the phrase "a college was formed by professional organizations" in Article 1 Number 13 of Law 29/2004 and declared contrary to the 1945 Constitution, as long as it is not interpreted, "a college was formed by a professional organization by being ratified, fostered, and overseen by the Indonesian Medical Council", because the petition of the Petitioners seemed to want the Court to intervene in an Indonesian medical organization that is connected with the issue of a norm.

Precisely the establishment of the college if done by KKI will be able to make it as subordinated, so that it will reduce the independence of the KKI itself. Therefore, there is no unconstitutionality of a norm that is contrary to the 1945 Constitution.

3. Whereas those who issue competency certificates for doctors, both basic medical doctors or specialist doctors are professional organizations as evidence that a doctor has not only been academically tested but has also been tested in applying the knowledge obtained to conduct 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 the association of medical or dental education institutions and coordinates with professional organizations. As for what is issued by higher education institution in this case the faculty of medicine is a professional certificate (diploma) as evidence that a doctor has fulfilled all the requirements and has been academically tested.
4. That the authority of professional organizations in maintaining medical competence and the medical profession education system that has been built by professional organizations, in this case IDI, is no longer the authority of the government and KKI. KKI has its own tasks including registering doctors and dentists by issuing Registration Certificate (STR) as state recognition that doctors and dentists have competency in accordance with the qualifications in their registration which recognizes that a doctor is fit to practice medicine. Therefore, the KKI is inappropriate to be involved in overseeing the process of recertification and the Continuing Professional Education Development

Program (P2KB) because the functions and tasks of the KKI are about the regulation, ratification, determination, and fostering of doctors and dentists who carry out medical practices, in order to improve the quality of medical services, and registering the doctors and dentists, ratifying the professional education standards for doctors and dentists; and provide the fostering to the implementation of medical practices carried out with related institutions in accordance with their respective functions [refer to Article 6 and Article 7 of the Law 29/2004]. Likewise, the MKKI has its own responsibilities, namely managing internal organizations in the field of medical education. As for the role of the government in addition to fostering and overseeing the medical practice in accordance with their respective functions and tasks as defined in Article 71 of Law 29/2004.

Whereas based on the aforementioned considerations, the Court handed down a decision in which the injunction declares 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