

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 31/PUU-XVII/2019**

**REGARDING**

**THE AUTONOMY OF UNIVERSITIES TO MANAGE THEIR OWN INSTITUTIONS**

**Petitioner** : Zico Leonard Djagardo Simanjuntak and Ikhsan Prasetya Fitriansyah

**Type of Lawsuit** : Judicial review of Law Number 12 of 2012 concerning Higher Education (Higher Education Law) against the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution)

**Case of Lawsuit** : Judicial review of Article 62 paragraph (1), Article 63, Article 64 paragraph (3), and Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law against the 1945 Constitution

**Injunction** : 1. Declaring the petition of the Petitioners, as long as regarding Article 63 and Article 64 paragraph (3) of Law Number 12 of 2012 concerning Higher Education (State Gazette of the Republic of Indonesia Number 158 of 2012, Supplement to the State Gazette of the Republic of Indonesia Number 5336) is unacceptable;

2. Rejecting the petition of the Petitioners, as long as regarding Article 62 paragraph (1) and Elucidation of Article 65 paragraph (3) letter b of Law Number 12 of 2012 concerning Higher Education (State Gazette of the Republic of Indonesia Number 158 of 2012, Supplement to State Gazette of the Republic of Indonesia Number 5336).

**Date of Verdict** : Thursday, November 28, 2019

**Verdict Summary** :

Whereas 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 62 paragraph (1), Article 63, Article 64 paragraph (3), and Elucidation of Article 65 paragraph (3) letter b of the Law Number 12 of 2012 concerning Higher Education, the Court has the authority to adjudicate the petition of said Petitioners.

Whereas related to the legal standing of the Petitioner, the Petitioners are individual Indonesian citizens who respectively are also students, irrespective of the Petitioners' argument regarding the unconstitutionality of the norms of the Higher Education Law petitioned for review is proven or not, according to the Court the Petitioners have explained the potential loss of their constitutional rights as guaranteed in Article 28D paragraph (1) of the 1945 Constitution with the enactment of the provisions of Article 62 paragraph (1), Article 63, and Article 64 paragraph (3), and Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law, namely the potential for political intervention in the academic domain, especially in the management of higher education institutions that can curb the student's right to criticize if there is a policy that does not reflect the public interest and therefore conflicts with the rights of the Petitioners for guarantees, protections and fair legal certainty. The Petitioners’ potential constitutional impairment in question will not occur if the petition of said Petitioners is granted. With the potential for such losses, then the loss in question have a causal relationship with the provisions petitioned for review by the Petitioners. Therefore, the Petitioners have the legal standing to act as Petitioners in the said petition.

Whereas because the substance of the Petitioners' petition has been clear, the Court does not consider it necessary to request the statements of the parties as referred to in the provisions of Article 54 of the Constitutional Court Law. Whereas because of the petition of the Petitioners regarding the review of Article 63 and Article 64 paragraph (3) of the Higher Education Law can be re-reviewed in accordance with the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 42 of PMK 06/PMK/2005, so that further the Court will only consider the petition of the Petitioners, as long as it concerns the reviewing of Article 62 paragraph (1) and Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law against the 1945 Constitution.

Whereas the non-clarification of the provisions regarding the independence of higher education institutions which is independent of certain political influences and interests in the Higher Education Law, in this case Article 62 paragraph (1), does not necessarily result in Article 62 paragraph (1) of the Higher Education Law being contrary to the 1945 Constitution. Moreover, in the general section the elucidation of the Higher Education Law is declared, "Higher education as an institution that organizes Higher Education for Research and Community Service must have autonomy in managing their own institutions. This is needed so that in the development of science and technology in higher education applies academic freedom and academic pulpit, as well as scientific autonomy. Thus, universities can develop academic culture for academicians who has a function as an authoritative scientific community and are able to carry out interactions that elevate the dignity of the Indonesian people in international relations".

Whereas the Petitioners in their petitum requested that the phrase "managing their own institutions" in Article 62 paragraph (1) of the Higher Education Law be interpreted as "the management of a University institution does not have political affiliations or certain interests". With regard to this matter, the election of a person to become a management of a university institution is not directly related to the Higher Education Law because the election of a person to be a management of a university institution is actually regulated in the statutes of each tertiary institution. In this case, the UI Statute is regulated based on the Government Regulation Number 68 of 2013 concerning the Statute of the University of Indonesia and the Statute of Gadjah Mada University is regulated based on the Government Regulation Number 67 of 2013 concerning the Statute of Gadjah Mada University. The two statutes in question is established as the basic rules for Universities Management which are used as the basis for the preparation of operational regulations and procedures in the two Universities in question. This means that the prohibition regarding political affiliation or certain interests of the management of a university institution is not the substance of the law but the substance that can be contained in each statute of the university. Thus, the argument of the Petitioners' petition regarding the phrase "managing their own institutions" in Article 62 paragraph (1) of the Higher Education Law is contrary to the 1945 Constitution, as long as it is not interpreted as "the management of a University having no political affiliation or certain interests" are no legal grounds.

Whereas related to the review of the Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law, according to the Court, the Elucidation in the laws and regulations serves as an official interpretation of the drawing up of the laws and regulations on certain norms in the body. With regard to the position of elucidation in the laws and regulations system, point 186 in Attachment of Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning Drawing up of Laws and Regulations determines that the formulation of the elucidation of article by article considers the following matters: a) not in conflict with the subject matter arranged in the body; b) not expanding, narrowing or increasing understanding of norms that exist in the body; c) not repeat the subject matter arranged in the body; d) not repeat the description of words, terms, phrases or meanings that have been contained in the general provisions; and/or e) not contain a delegation formula.

Whereas the norm of Article 65 of the Higher Education Law has been reviewed by the Court and has been decided in the Constitutional Court Verdict Number 103/PUU-X/2012 dated December 12, 2013 with the injunction rejecting the petition of the Petitioners in their entirety. Therefore, basically there are no constitutional issues related to the norms contained in Article 65 of the Higher Education Law. If the petition of the Petitioners is granted, that means the Court has justified the existence of a new norm in the elucidation of said article. Accordingly, the petition of the Petitioners who requested that the Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law be interpreted as "the meaning of being independent is that the management of a State University of Legal Entity does not have political affiliation or certain interests" are no legal grounds.

Based on the above description of considerations, the argument of the Petitioners, as long as regarding Article 63 and Article 64 paragraph (3) of the Higher Education Law are not considered further, while Article 62 paragraph (1) and Elucidation of Article 65 paragraph (3) letter b of the Higher Education Law has no legal grounds.

Based on all the above considerations, the Court subsequently handed down the verdict with the following injunction:

1. Declaring the petition of the Petitioners, as long as regarding Article 63 and Article 64 paragraph (3) of Law Number 12 of 2012 concerning Higher Education (State Gazette of the Republic of Indonesia Number 158 of 2012, Supplement to the State Gazette of the Republic of Indonesia Number 5336) is unacceptable;

2. Rejecting the petition of the Petitioners, as long as regarding Article 62 paragraph (1) and Elucidation of Article 65 paragraph (3) letter b of Law Number 12 of 2012 concerning Higher Education (State Gazette of the Republic of Indonesia Number 158 of 2012, Supplement to State Gazette of the Republic of Indonesia Number 5336).

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