



**CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA
SUMMARY OF LAWSUIT VERDICT
NUMBER 2/PUU-XVI/2018
REGARDING**

CONSTITUTIONALITY OF THE LAW ON CIVIL SOCIETY ORGANIZATIONS

- Petitioner** : 1. Dewan Da'wah Islamiyah Indonesia;
2. Yayasan Forum Silaturrahim Antar Pengajian;
3. Perkumpulan Pemuda Muslimin Indonesia;
4. Perkumpulan Hidayatullah;
5. H. Munarman, S.H.
- Type of Lawsuit** : Judicial review of Law Number 16 of 2017 regarding Determination of Government Regulations in Lieu of Law Number 2 of 2017 regarding Amendment to Law Number 17 of 2003 concerning Civil Society Organizations into the Law (CSO Law) of the Republic of Indonesia's 1945 Constitution.
- Case of Lawsuit** : Article I point 6 to point 21, the phrase "or other understanding" in the Elucidation of Article 59 paragraph

(4) letter c, Article 62 paragraph (3), Article 80A, and Article 82A paragraph (1) and paragraph (2) are contrary to Article 1 paragraph (3), Article 28, Article 28C paragraph (2), Article 28D paragraph (1), Article 28E paragraph (2) and Article 28G paragraph (1) of the 1945 Constitution.

Injunction : Rejecting the Petitioner's petition in their entirety.

Date of Verdict : Tuesday, May 21, 2019

Verdict Summary :

The Petitioners postulate as CSOs and individual Indonesian citizens who are members of CSOs feel that their constitutional rights as contained in Article 1 paragraph (3), Article 28, Article 28C, Article 28D paragraph (1), and Article 28G paragraph (1) of the 1945 Constitution are impaired by the enactment of norms of Article 1 point 6 to point 21, the phrase "or other understanding" in the Elucidation of Article 59 paragraph (4) letter c, Article 62 paragraph (3), Article 80A, Article 82A paragraph (1) and paragraph (2) of the CSO Law.

Related to the authority of the Court, because the Petitioners are petitioning for a judicial review of the Law in this case the CSO Law against the 1945 Constitution, which becomes one of the authorities of the Court, then 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 Law on Judicial Power, the Court has the authority to adjudicate a quo petition;

Regarding the legal standing, regardless of whether the Petitioners' arguments are proven or not regarding the unconstitutionality of the norm of the CSO Law petitioned for judicial review, that the Petitioners have specifically explained their constitutional rights in which the Petitioners consider to be impaired due to the enactment of Article I point 6 to point 21, the phrases "or other understanding" in the Elucidation of Article 59 paragraph (4) point c, Article 62 paragraph (3), Article 80A, and Article 82A paragraph (1) and paragraph (2) of the CSO Law, in which has also seen the causality of the Petitioner's opinion regarding the potential loss of such constitutional rights with the norms of the law petitioned for judicial review, so that if the petition is granted, such losses will not occur.

Regarding the constitutionality judicial review of the norms of the CSO Law as argued by the Petitioners, the Court has the following opinion:

1. The Petitioners' argument that reviewed Article I point 6 to point 6 of the CSO Law cannot be accepted because the essence of the Petitioners' argument is the formal judicial review argument but the argument used is material judicial review argumentation. In addition, the role of the court is still there, namely by questioning the validity of the actions of the state (government) which impose sanctions on a CSO through the court;
2. Whereas the phrase "or other understanding" in the Elucidation of Article 59 paragraph (4) letter c of the CSO Law in the context of any understanding that aims to changing/amend Pancasila and the 1945 Constitution is prohibited. This prohibition not only does not contradict the 1945 Constitution but must be understood as a constitutional obligation of the state which is derived from the mandate of the Preamble to 1945 Constitution of the Fourth Paragraph.

Furthermore, the rule of law does not prohibit the restriction of constitutional rights as provided for in the 1945 Constitution or human rights in general as long as they meet the requirements as defined in Article 28J paragraph (2) of the 1945 Constitution;

3. Whereas Article 62 Paragraph (3) of the CSO Law is a set of unity of all norms contained in Article 62 of the CSO Law which is with that construction, postulates the imposition of sanctions in the form of revocation of registered certificate or legal entity status of a CSO that has committed a series of violations as subjective action without proof of violation, let alone declare it to be in conflict with the 1945 Constitution, is an argument which is completely unacceptable. This is because the types of violations which are threatened by administrative sanctions have been clearly determined and the sanctions which are threatened to be imposed have also been formulated proportionally and gradually;
4. Throughout regard to the judicial review of Article 80A of the CSO Law, the legal considerations of the Court in the Constitutional Court Decision Number 94/PUU-XV/2017 shall apply mutatis mutandis, so that the judicial review of a quo Article has no legal grounds;
5. Whereas by closely noting the formulation of the norms contained in Article 82A paragraph (1) and paragraph (2) of the CSO Law, an understanding which is threatened by criminal in the provision is not a person who is a member and/or board of management of the CSO, unless he has committed a prohibited act intentionally, either deliberateness with possibility,

deliberateness with intent/purpose, or deliberateness with certainty and carried out directly or indirectly.

Whereas based on the entire description of the aforementioned considerations, according to the Court the Petitioner's arguments have no legal grounds. Therefore, the Court subsequently handed down a decision in which its injunction rejected the petition of the Petitioners 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