



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASES NUMBER 68 / PUU-XVII / 2019

Concerning

**Legal certainty of tax rights and exemption of input tax crediting
after being confirmed as a taxable entrepreneur**

Petitioner: PT. Wira Pratama Gasindo.

Case: Review of Law Number 28 of 2007 concerning Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (Law 28/2007) and Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (UU 42/2009) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Case of Lawsuit : Article 2 paragraph (4a) of Law 28/2007 as well as Article 9

paragraph (2), paragraph (8) letter a and letter i of Law 42/2009 are considered contrary to the 1945 Constitution.

Injunction: Reject the Petitioners' petition in its entirety.

Date of Deciiion: Wednesday, 26 February 2020.

Decision Overview:

The petitioner is an Indonesian private legal entity company and taxpayers / corporate taxpayers with taxable entrepreneur status (PKP) who feel aggrieved by the existence of a tax bill and are subject to administrative sanctions for fines based on Article 7 of Law 28/2007 on Delay in Submitting Periodic Value Added Tax (VAT) Tax Returns (SPT) and Fines According to the Petitioner, there is no justice in the provisions of the proposed norms of Law 28/2007 and Law 42/2009 because there is no provision regarding taxation rights that were withdrawn 5 years before issuance was confirmed as PKP, and provisions regarding exceptions to the Crediting of Input Tax so that taxes payable and fines incurred the petitioner must pay too much.

In relation to the authority of the Court, because what the Petitioner petitioned was a review of Law *in casu* Law 28/2007 and Law 42/2009 against the 1945 Constitution, which is one of the Court's authorities, the Court has the authority to adjudicate the petition. *a quo*.

Related with the position of the Petitioner, regardless of whether or not the Petitioners' argument is proven regarding the contradiction of norms in Law 28/2007 and 42/2009 against the 1945 Constitution, according to the Petitioners' Court, it has been obtained describes specifically the existence of a causal relationship that with the enactment of provisions relating to Value Added Tax on Goods and Services, in particular regarding the acquisition of Taxable Goods or Taxable Services, it will have

an impact on the existence of invoices and tax penalties that are detrimental to the Petitioner. As a Private Legal Entity, the Petitioner has proven that it is a company that has become a PKP so that according to the Court its constitutional rights are influenced by the existence of the provisions submitted for review relating to the tax obligations that the Petitioner must perform. Thus, the Petitioner has the legal position to act as the Petitioner in the a quo petition;

Related to the principal of the Petitioner's petition regarding Article 2 paragraph (4a) of Law 28/2007 which has been filed in case Number 13 / PUU-XIV / 2016, although the norms in the 1945 Constitution used as the basis for testing are the same, namely Article 28D paragraph (1) of the 1945 Constitution, but according to the Court, the two petitions, there are different reasons for the petition and the main issues that constitute the basis for constitutional impairment are also different so that regardless of whether or not a constitutionality issue is conducted if a review is conducted on the grounds as mentioned above, the Court is of the opinion that the norms of Article 2 paragraph (4a) of Law 28 / 2007 can be submitted again in this application;

In connection with the Petitioner's argument that Article 2 paragraph (4a) of Law 28/2007 does not provide fair legal certainty because it only states that the PKP tax obligations are withdrawn for a maximum of 5 (five) years, even though the PKP also has taxation rights. According to the Court the provisions in Article 2 paragraph (4) and paragraph (4a) of Law 28/2007 are a logical consequence of the provisions in Article 2 paragraph (1) and paragraph (2) of Law 28/2007, if the Taxpayer and / or PKP are not fulfilling its obligation to register itself or report its business at the DGT office even though it has met the subjective and objective requirements in accordance with tax laws and regulations. The provisions in Article 2 paragraph (4a)

of Law 28/2007 which states that taxation obligations for taxpayers begin when the taxpayer fulfills subjective and objective obligations no later than 5 (five) years prior to the issuance of the NPWP and / or confirmed as PKP is intended to confirm and provide assurance that there will be provisions for the expiration of the tax determination of 5 (five) years as referred to in Article 13 paragraph (1) and paragraph (4) of Law 28/2007. Meanwhile, the meaning of "to be confirmed as PKP" means that from the beginning there has been an obligation to carry out something (in this case as PKP) so that the confirmation is only administrative in nature, because the tax obligations have existed since the subjective and objective requirements have been fulfilled. The provisions of Article 2 paragraph (4a) of Law 28/2007 when read and understood together with other provisions in the *a quo* law constitute norms regulating tax obligations for PKP which must be in effect since the PKP has met objective and subjective requirements, and is a consequence of the self-assessment system, so it is not appropriate to be forced to regulate PKP rights as well. If the Petitioner means the right to tax relief and / or other rights, for example objection (vide Article 25 of Law 28/2007), appeal (vide Article 27 of Law 28/2007), reconsideration (vide Article 91 of Law No. 14 of 2002 concerning the Tax Court), interest compensation (vide Article 27a Law 28/2007), lawsuits (vide Article 23 paragraph (2) Law 28/2007), certainty of overpayment of SPT in the process of restitution (vide Article 11 of Law 28/2007) and others that the right is universally provided as an instrument by law and is automatically owned by every taxpayer. Hence these rights its interpretation cannot be related to the norms questioned by the Petitioner *a quo*, considering that such rights have been regulated in other article norms. Although the norms relating to the rights of taxpayers are placed on different norms, but in essence they are still attached to and side by side with the obligations of each taxpayer. Thus the Petitioners' argument which states the unconstitutionality

of the norms of Article 2 paragraph (4a) of Law 28/2007 is groundless according to law.

In connection with the Petitioner's argument that Article 9 paragraph (2) of Law 42/2009 does not provide justice and legal certainty, the Court is of the opinion that the inauguration of PKP is administrative in nature because, as previously considered, that the tax obligations for taxable entrepreneurs actually started since the taxpayer's business met subjective and objective requirements in accordance with the provisions. legislation, no later than 5 (five) years before the NPWP is issued and / or confirmed as PKP [vide Article 2 paragraph (4) of Law 28/2007]. In other words, the tax obligation arises because of the law, not solely because when it is confirmed as PKP. Universally and doctrinally, taxation obligations arise since the taxation law has been enacted, as long as the law regulates something that creates a taxation obligation. Furthermore, the application of the provisions of Article 9 paragraph (2) is "cumulative". This means that when interpreting the a quo norm, it must be fully implemented simultaneously with other norms in this law, namely Article 9 paragraph

(8) which determines the criteria for which input tax can not credited, one of which is the acquisition of Taxable Goods or Taxable Services before the Entrepreneur is confirmed as PKP. Thus the a quo provision does not result in the emergence of norms constitutionality issues, moreover it creates legal uncertainty and injustice, because the norms of the articles contained in the taxation law have special characteristics that oblige every taxpayer to fulfill his tax obligations for every citizen who has met the requirements as a taxpayer. With such characteristics, the parameters of legal uncertainty and injustice as feared by the Petitioner are irrelevant to be equated with the assessment of the subjectivity of taxpayers, including by the

Petitioners.

In connection with the Petitioner's argument that Article 9 paragraph (8) letter a Law 42/2009 does not provide legal certainty and justice, because if the PKP is examined for the tax year in the previous period, namely before the entrepreneur was confirmed as PKP, in accordance with the provisions of Article 9 paragraph (8) letter a of Law 42 / 2009, the Input Tax paid by PKP to the Buyer who collects it, cannot be credited. According to the Court, this provision is intended to confirm that the stipulation or confirmation of entrepreneurs as PKP demands a number of conditions that must be met. Although administratively all documents and requirements are complete, factual requirements are still needed, namely a process that must be passed in the form of a survey or verification by related officers. This process can generally take some time after all requirements are completed. The essence of the process is closely related to the assessment to determine whether or not the requirements of an entrepreneur to be factually determined as a taxpayer or PKP are fulfilled. Furthermore, he explained, while the verification process is carried out, business activities must still be carried out, which may still occur in changes to tax data. In other words, even though business activities have been carried out before the taxpayer is confirmed as PKP, the calculation of the tax payment obligation is still calculated after the entrepreneur is confirmed as PKP. By itself, income obtained before the Taxpayer is confirmed as PKP cannot be credited. This in fact provides legal certainty because the nature of the norms questioned by the Petitioner clearly provides a concrete picture of the relevance of the PKP's obligations inherent since factually the entrepreneur concerned has been confirmed / confirmed as PKP. Thus the Petitioner's argument regarding the unconstitutionality of the norm of Article 9 paragraph (8) letter a of Law 42/2009 a quo is groundless according to law.

In connection with the Petitioner's argument that Article 9 paragraph (8) letter i of Law 42/2009 does not provide legal certainty and justice because PKP has paid Input VAT but he cannot credit it just because he forgot to report it in the Value Added Tax Periodic Tax Return but was found during the audit. according to the Court, the norm of Article 9 paragraph (8) letter i of Law 42/2009 is clear and correlates with the logical consequences of granting taxpayer authority in accordance with the principle of self-assessment, in which PKP is obliged to report all of its business activities in the Value Added Tax Periodic Tax Return. . In addition, PKP has also been given the opportunity to make corrections to the Periodic Value Added Tax Return, so that it is appropriate if the Input Tax which is not reported in the Periodic Value Added Tax Return cannot be credited. The Petitioners' concern regarding the amount of tax burden which according to the Petitioner is unfair and unbalanced is something that can occur in the realm of implementation, does not necessarily occur due to the unconstitutionality of norms. Even if the Petitioners' argument is true, the law has provided an instrument to file an objection. Thus the Petitioners' argument regarding Article 9 paragraph (8) letter i of Law 42/2009 creates legal uncertainty is groundless according to law. Even if the Petitioners' argument is true, the law has provided an instrument to file an objection. Thus the Petitioners' argument regarding Article 9 paragraph (8) letter i of Law 42/2009 creates legal uncertainty is groundless according to law. Even if the Petitioners' argument is true, the law has provided an instrument to file an objection. Thus the Petitioners' argument regarding Article 9 paragraph (8) letter i of Law 42/2009 creates legal uncertainty, is groundless according to law.

That based on the Court's consideration in the previous Constitutional Court Decision, namely Decision Number 004 / PUU-II / 2004, dated December 11, 2004, page 44, Decision Number 3 / PUU-XVI / 2018, dated May 9, 2018, page 93, and

Decision Number 19 / PUU-XVI / 2018, dated 23 May 2018, page 26 has emphasized that the state's authority to collect taxes is a legitimate authority not only because it is doctrinally legitimate but mainly because it has constitutionally obtained its foundation in the Constitution, *in casu* Article 23A of the 1945 Constitution. Regarding not all citizens being able to pay taxes, it is a social fact or an empirical fact, but this fact cannot be used as a basis for argumentation to state that the state's authority to collect taxes is contrary to the 1945 Constitution by adhering to the authority granted by Article 23A of the 1945 Constitution a quo, the state has the right to make adjustments and changes to the prevailing regulations relating to the technical and practical application of laws including the amount and mechanism of tax collection due to the need to adapt to dynamic conditions.

Whereas based on all the considerations of the Court above, the Court has ruled against the petitioner's petition for the whole.