THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION OF CASE NUMBER 37/PUU-XVIII/2020

Concerning

Time Limit for Enforcement of Law Number 2 of 2020 and Threats of Civil and Criminal Penalties for Perpetrators of Financial Misuse in Handling the Covid-19 Pandemic

Petitioners	**:**	**Strengthening Participation, Initiative, and Partnership of Indonesian Community Foundation (*Yayasan Penguatan Partisipasi, Inisiatif, dan Kemitraan Masyarakat Indonesia* or YAPPIKA), et al**
Type of Case	**:**	Review of Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (UU 2/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter	**:**	Formal and Material Review of Title and Norms of Article 1 paragraph (3), Article 2 paragraph (1) letter a, Article 2 paragraph (1) letter a number 1, Article 2 paragraph (1) letter e number 2, Article 2 paragraph (1) letter f, Article 2 paragraph (1) letter g, Article 3 paragraph (2), Article 4 paragraph (1) letter a, Article 4 paragraph (2), Article 5 paragraph (1) letter a and letter b, Article 6, Article 7, Article 9, Article 10 paragraph (1), Article 10 paragraph (2), Article 12 paragraph (1), Article 16 paragraph (1) letter c, Article 19, Article 23 paragraph (1) letter a, Article 27 paragraph (1), Article 27 paragraph (2) and paragraph (3), and article 29 of Attachment to Law 2/2020 against Article 1 paragraph (3), Article 24, Article 27 paragraph (1) and paragraph (2) as well as Article 29 paragraph (1), 1945 Constitution
Verdict	**:**	**Adjudicate:** **On Formal Review:** To Dismiss the Petitioners' petition in its entirety; **On Material Review:** 1. To grant the petition of the Petitioners in part; 2. To declare that the phrase "not a state loss" in Article 27 paragraph (1) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to

the Gazette of the Republic of Indonesia Number 6516) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted as "not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations". Therefore Article 27 paragraph (1) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "Any costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state spending policies including policies in regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not a loss to the state", shall be read in full, **"Any costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state spending policies including policies in regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations".**

3. To declare that the phrase "are not objects of lawsuit that can be submitted to the state administrative court" in Article 27 paragraph (3) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia Year 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as, "are not objects of lawsuit that can be submitted to the state administrative court as long as they are related to the handling of the Covid-19

pandemic and carried out in good faith and in accordance with the laws and regulations". Therefore Article 27 paragraph (3) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, " All actions, including decisions taken based on this Government Regulation in Lieu of Law, are not objects of lawsuit that can be submitted to the state administrative court", shall be read in full, **"All actions, including decisions taken based on this Government Regulation in Lieu of Law, are not objects of lawsuit that can be submitted to the state administrative court as long as they are carried out in relation to the handling of the Covid-19 pandemic and are carried out in good faith and in accordance with the laws and regulations."**

4. To declare that Article 29 of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "This Government Regulation in Lieu of Law shall come into force on the date of promulgation", is in contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as **"This Government Regulation in Lieu of Law shall come into force on the date of promulgation and must be declared invalid since the President officially announced that the status of the Covid-19 pandemic has ended in Indonesia and that status must be declared no later than the end of the 2nd year. In fact, the Covid-19 pandemic has not ended, before entering the 3rd year of the *A quo* Law , it can still be enforced, but the allocation of the budget and the determination of the budget deficit limit for the handling of the Covid-19 pandemic, must obtain the approval of the DPR and the consideration of the DPD."**
5. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
6. To dismiss the Petitioners' petition for the rest/remainder.

Date of Decision **:** Thursday, October 28, 2021

Overview of Decision:

The Petitioners consist of Petitioner I, namely Non-Governmental Organizations (NGOs) that grow and develop independently, which has a vision of realizing a democratic, independent, and benevolent civil society in fighting for citizens' rights (Petitioner I). Meanwhile, Petitioners II to IV are activists who fight for good governance.

In relation to the authority of the Court, because the Petitioner's petition is a judicial review of the Law *in casu* formal and material review of Title and Norms of Article 1 paragraph (3), Article 2 paragraph (1) letter a, Article 2 paragraph (1) letter a number 1, Article 2 paragraph (1) letter e number 2, Article 2 paragraph (1) letter f, Article 2 paragraph (1) letter g, Article 3 paragraph (2), Article 4 paragraph (1) letter a, Article 4 paragraph (2), Article 5 paragraph (1) letter a and letter b, Article 6, Article 7, Article 9, Article 10 paragraph (1) Article 10 paragraph (2), Article 12 paragraph (1), Article 16 paragraph (1) letter c, Article 19, Article 23 paragraph (1) letter a, Article 27 paragraph (1), Article 27 paragraph (2) and paragraph (3), as well as Article 29 of Law 2/2020 against the 1945 Constitution, then the Court is authorized to adjudicate the *a quo* petition.

Regarding the time limit for the Formal review, whereas because Law 2/2020 was promulgated on May 18, 2020 and the Petitioners submitted the petition to the Court on May 15, 2020 based on the Deed of Receipt of Petition Document Number 91/PAN.MK/2020, the request for a formal review of Law 2/ 2020 is still within the time limit as required in the Constitutional Court Decision Number 27/PUU-VII/2009. In relation to the time limit for completing the formal judicial review of the law at the Court as required in the Constitutional Court Decision Number 79/PUU-XVII/2019, dated May 4, 2021, because the *a quo* case was in the trial review period when the decision of the Constitutional Court Number 79/PUU-XVII/2019 was declared, then according to the Court the *a quo* case was not included in the category that is bound by the requirement of a period of 60 (sixty) business days since it is recorded in the BRPK to be resolved by the Court because the Constitutional Court Decision Number 79/PUU- XVII/2019, was declared and has binding legal force on May 4, 2021 so that it cannot be applied retroactively to the *a quo* petition. Likewise, the procedures for reviews can be carried out separately or *splitsing* between formal review and material review in the *a quo* petition, it cannot be implemented yet.

In relation to the legal standing of the Petitioners, whereas in essence the Petitioners argue that the establishment of Law 2/2020 derived from the Perpu, the discussion process did not involve the Regional Representatives Council (*Dewan Perwakilan Daerah* or DPD) and uses virtual meetings which have the potential not to be attended in a concrete way, has violated the constitutional rights of the Petitioners because it has violated the constitutional rights of the Petitioners to advocate for and influence the implementation of good governance, in this case adherence to the constitutional procedures for the preparation of the Law on the Stipulation of Perpu. Meanwhile, the articles requested to be reviewed by the Petitioners have violated the constitutional rights of the Petitioners, because the provisions in the attachment to the law that regulate the use of the budget in handling the Covid-19 pandemic are detrimental to the Petitioners to advocate for and obtain accountable, transparent and appropriate regional financial management for the greatest prosperity of the people during the Covid-19 pandemic, as well as legitimizing the misappropriation of state financial management and freeing state administrators from being ensnared by articles of criminal acts of corruption, and also not providing a time limit for the validity of Law 2/2020 originating, so that the government potentially being arbitrary. Whereas based on the entire description of the arguments for the legal standing of the Petitioners, regardless of whether or not the arguments of the Petitioners have been proven regarding the process of establishing Law 2/2020 as well as the conflicting norms in the articles petitioned for review against the 1945 Constitution, according to the Court, the Petitioners consisting of Non-Governmental Organizations (Petitioners I) and activists who fight for good governance (Petitioners II to Petitioners IV) have been able to describe the direct linkage relationship with the proposed law and specifically describe the existence of a causal relationship between the validity of the norms requested to be reviewed by the Petitioners with the assumption that the Petitioners' constitutional rights are being impaired, as regulated in Articles of the 1945 Constitution. Moreover, the Petitioners are citizens who are directly

affected by state financial policies as regulated in Law 2/2020. The presumption of factual and potential impairment in question does not occur and will not occur if the *a quo* petition of the Petitioners is granted. Therefore the Court is of the opinion that the Petitioners have the legal standing to act as the Petitioners in the *a quo* petition.

Whereas in relation to the formal review which basically the Petitioners argue that the exclusion of the DPD in the discussion of Perpu 1/2020 which has been stipulated as Law 2/2020 whose substance is related to the administration of local government has reduced the rule of law values, so that the power of the DPD is reduced in participating in the discussing and providing considerations on regional issues, thus the exclusion of the DPD in the discussion of Law 2/2020 is a formal defect in the establishment of laws, and decision-making through virtual meetings according to the Petitioners has the potential to violate people's sovereignty, because with the potential for non-concrete attendance and merely "sign an attendance" it is unconstitutional and has reduced the essence of the implementation of the people's mandate which is entrusted to their representatives in the DPR (House of Representatives). The Court basically is of the opinion as follows:

1. Whereas Law 2/2020 is a law originating from a Perpu. Based on the provisions of Article 22D paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution, from the aspect of proposing a bill, the DPD is only given legislative authority as regulated in Article 22D of the 1945 Constitution, which relates to regional autonomy, central relations and regions, formation and expansion and merging of regions, management of natural resources and other economic resources, as well as central and regional financial balance. Meanwhile, from the aspect of discussion, the DPD has the authority to participate in discussions on bills relating to regional autonomy, central and regional relations, the formation and expansion and amalgamation of regions, management of natural resources and other economic resources, as well as those relating to the balance of central and regional finances. and provide consideration to the DPR on the Bill on the State Budget and the Bill on taxes, education, and religion. Even though some of the substance of Law 2/2020 contains material that is directly related to state budget/financial policies, but because the *A quo* Law comes from Perpu Number 1/2020 therefore constitutionally the process of determining Perpu into law is subject to the norms of Article 22 of the 1945 Constitution. In this case Article 22 paragraph (1) of the 1945 Constitution which states, *"In the event of a compelling urgency, the President has the right to stipulate government regulations in lieu of laws."*

2. Whereas the background of the President issuing this Perpu is based on the fact that there is a Covid-19 pandemic. This is stated in the "Considering" considerations which are described in more detail in the Explanation section of Perpu 1/2020. And after observing the Elucidation section of Perpu 1/2020, the Court needs to relate to the conditions regarding the compelling urgency as stipulated in the Constitutional Court Decision Number 138/PUU-VII/2009, dated February 8, 2010, namely: a) there is an urgent need to resolve the legal problem quickly based on the Law; b) The required law does not yet exist, resulting in a legal vacuum or inadequacy of the existing law; and c) the condition of a legal vacuum that cannot be overcome by making laws in the usual procedure which takes quite a long time, while the urgent situation requires certainty to be resolved. Therefore, according to the Court, the *a quo* Perpu has fulfilled the requirements as stipulated in the Decision of the Constitutional Court Number 138/PUU-VII/2009. Whereas based on the description of the legal considerations, according to the Court, although the establishment and stipulation of Perpu 1/2020 into Law 2/2020 did not involve the DPD, the formation of Law 2/2020 was in accordance with the provisions of Article 22 of the 1945 Constitution, therefore the *a quo* arguments of the Petitioners are unreasonable according to law.

3. Whereas the Petitioners' argument which basically argues that decision-making through virtual meetings has the potential to violate people's sovereignty, according to the Court, the Covid-19 Pandemic is a global pandemic that has been determined by World Health Organization (WHO) on March 11, 2020. Not only WHO, in Indonesia, the Covid-19 pandemic has been designated by the President as a non-natural national disaster that triggers the emergence of a Health emergency based on Presidential Decree No. 11 of 2020 concerning the Determination of Corona Virus Disease 2019 (COVID-19) as Public Health Emergency. There is a change in the pattern of interaction between humans, which must apply health protocols such as maintaining physical and social distancing, avoiding crowds, limiting the movement of people, wearing masks, washing hands to prevent transmission. This condition demands quick and precise handling, one of which is by making various regulations. However, the process of establishing the law encountered various obstacles due to restrictions on community movement through Large-Scale Social Restrictions (*Pembatasan Sosial Berskala Besar* or PSBB) and Restrictions on the Enforcement of Community Activities (*Pembatasan Pemberlakuan Kegiatan Masyarakat* or PPKM). Likewise, in various state administrations, they experience similar problems. Therefore, the performance of legislation in the context of making regulations as needed by the community and the effectiveness of the running of government processes and programs should not be hampered. Therefore, according to the Court, the meeting which was held virtually by the DPR and the President by utilizing current technological sophistication in making the required regulations was a necessity and a breakthrough to continue to present the state in people's lives, especially during a pandemic. Furthermore, during the Covid-19 pandemic, which has factually caused a health, humanitarian crisis, and the need to immediately save the economy and finances with the orientation of the people's safety. Because people's safety is the highest law *(Salus Populi Suprema Lex Esto).*
4. Whereas in responding to the Covid-19 pandemic and in order to continue to carry out its duties in drafting legislation, the actions taken by the DPR by stipulating DPR Regulation Number 1 of 2020 concerning Code of Conduct (DPR 2020 Regulations) which came into force on April 2, 2020 are part of the effort to anticipate the spread of the Covid-19.
5. Whereas during the Covid-19 pandemic which has been going on since the beginning of 2020 until now where mobility, activities, events be it Hearings Meetings (*Rapat Dengar Pendapat* or RDP), seminars, focus group discussions are limited and the platform for public aspirations is completely limited, but on the other hand the legislative work by the people's representative institutions should not be hampered. Many bills must be completed in accordance with the plans set by the DPR to meet the needs of the community and business actors. Therefore, public participation cannot be carried out directly (face to face) due to limitations caused by the pandemic conditions, so that conventional public participation is irrelevant during the Covid-19 pandemic. Whereas, based on these considerations, according to the Court, the Petitioners' argument which basically states that a virtual meeting has the potential to violate the sovereignty of the people, is unreasonable according to law.
6. Whereas based on the entire description of the considerations above, according to the Court, in relation to the formal review submitted by the Petitioners in the *a quo* petition, it is unreasonable according to law.
7. Whereas in relation to material review, the Court first considers the Title and norms of Article 1 paragraph (3), Article 2 paragraph (1) letter a, Article 2 paragraph (1) letter a number 1, Article 2 paragraph (1) letter e number 2, Article 2 paragraph (1) letter f, Article 2 paragraph (1) letter g, Article 3 paragraph (2), Article 4 paragraph (1) letter a, Article 4 paragraph (2), Article 5 paragraph (1) letter a and letter b, Article 6, Article 7, Article 9, Article 10 paragraph (1), Article 10 paragraph (2), Article 12 paragraph (1), Article 16 paragraph (1) letter c, Article 19, and Article 23 paragraph (1) letter a of Attachment to Law 2/2020 which according to the Court cannot be released from the concerns of the Petitioners regarding the use of state finances in dealing with the Covid-19 pandemic contained in the Petitioners' petition, therefore according to the Court, the actual choice of government policy as set out in the norms requested to be reviewed as above by the Petitioners is a choice of policy issued by the Government due to the urgency or emergency conditions. In this case, the policies in

handling the Covid-19 pandemic, which inevitably must deal with finances or budgets, including the possibility of assuming the misuse of state finances as referred. Therefore, the Court can understand the policy choices made by the Government because the government does have very limited options in handling the Covid-19 pandemic which of course requires an unpredictable budget as the state budget under normal circumstances. Therefore, the Court does not immediately negate the concerns of all parties, including in this case the Petitioners, regarding the disruption of financial stability which is used to focus on handling the Covid-19 pandemic. Thus, in relation to the issue of title expansion which the Petitioners were concerned about, it has automatically been answered with the *a quo* affirmation from the Court. However, in such a dilemmatic situation, the Court affirms that there is no constitutionality issue related to the norms in question above as long as it is only related to the handling of the Covid-19 pandemic. Therefore, the arguments of the Petitioners regarding the unconstitutionality of the articles mentioned above are unreasonable according to law.

8. Whereas according to the Court, the concerns of the Petitioners above will also be answered automatically after the Court assesses the constitutionality of the norms of Article 29 of Attachment to Law 2/2020. Therefore, the Court further considers the constitutionality of the norms of Article 29 of Attachment to Law 2/2020 which according to the Petitioners is in contrary to the principles of the rule of law and the principles of guarantees, protection, and fair legal certainty because the *a quo* article as closing does not give a period of validity even though it is issued to solve problems in public health emergencies. Regarding the arguments of the Petitioners, according to the Court, regardless of the DPR's approval of the *a quo* Perpu, the absence of a strict time limit content in the *A quo* Law has a significant impact on the time limit for the implementation of an emergency which is the main substance because the characteristics possessed by the Law originating from the Perpu are intended to overcome emergencies due to the Covid-19 pandemic. Moreover, the substance in the Attachment of the *A quo* Law as stated in Article 28 of Law 2/2020 which has annulled several norms of articles of various laws. Therefore, if there is no time limit for the enactment of Law 2/2020, then a number of norms in the various annulled laws will permanently lose their validity. Even when the Covid-19 pandemic has ended, in the absence of a time limit, the norms annulled by Article 28 of Attachment to Law 2/2020 still do not apply because they are still used for other purposes, namely in the context of facing threats that endanger the national economy and/or financial system stability. This creates uncertainty about the time limit for the conditions of the emergency crisis. Moreover, the enactment of the *a quo* Law is closely related to the use of state finances which greatly affect the country's economy, which based on Article 23 paragraph (2) of the 1945 Constitution should obtain the approval of the DPR and the consideration of the DPD.
9. Whereas the main thing that must also be emphasized in terms of an emergency is a clear time limit on when the Covid-19 pandemic emergency situation will end. Conceptually, state of emergency and law in time of crisis must become a unified whole that cannot be separated as an effort to emphasize to the public that the emergency will have an end so that it will certainly give rise to fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Based on the considerations above, the Court in this decision must emphasize the time limit for the enactment of the *A quo* Law expressly and definitely so that all parties have certainty over all the provisions in this law which are only in the context of tackling and anticipating the impact of the Covid-19 pandemic so that the enactment of this law must be linked to the emergency status that occurs due to the pandemic. Therefore, this Law is only valid as long as the status of the Covid-19 pandemic has not been announced as ending by the President and at the latest until the end of the 2nd year since Law 2/2020 was enacted. However, in the event that the pandemic is expected to last longer, before entering its 3rd year, in relation to budget allocation for the handling of the Covid-19 pandemic, it must obtain the approval of the DPR and the consideration of the DPD. Such restrictions need to be carried out because the *A quo* Law has given restrictions on the budget deficit scheme until 2022. Therefore, the two-year limitation at the latest when the President officially announces the end of the pandemic is in accordance with the estimated timeframe for the budget deficit mentioned above. Therefore,

based on these considerations, according to the Court, Article 29 of Attachment to Law 2/2020 must be declared in contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as a Government Regulation in Lieu of Law, which comes into force on the date of its promulgation and must be declared no longer valid since the President officially announces that the status of the Covid-19 pandemic has ended in Indonesia and that status must be declared no later than the end of the 2nd year. In fact, the Covid-19 pandemic has not ended, before entering the 3rd year of the *A quo* Law it can still be enforced, but the allocation of the budget and the determination of the budget deficit limit for the handling of the Covid-19 pandemic must obtain the approval of the DPR and the consideration of the DPD.

10. Whereas based on the description of the legal considerations above, it turns out that Article 29 of Attachment to Law 2/2020 is in contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "**This Government Regulation in Lieu of Law shall come into force on the date of promulgation and must be declared invalid since the President officially announced that the status of the Covid-19 pandemic has ended in Indonesia and that status must be declared no later than the end of the 2nd year. In fact, the Covid-19 pandemic has not ended, before entering the 3rd year of the *A quo* Law, it can still be enforced, but the allocation of the budget and the determination of the budget deficit limit for the handling of the Covid-19 pandemic, must obtain the approval of the DPR and the consideration of the DPD."** Therefore, according to the Court, the arguments of the Petitioners are legally grounded in part.

11. Whereas in relation to the arguments of the Petitioners that Article 27 paragraph (1), paragraph (2), and paragraph (3) of Attachment to Law 2/2020 is in contrary to the principle of the rule of law, the principle of managing state finances, the authority of the Audit Board (*Badan Pemeriksa Keuangan* or BPK), the authority of the judicial power , the principle of equality before the law, and the principle of guarantees, protection, and fair legal certainty, because the *a quo* articles provide immunity for state administrators to be free from lawsuits in implementing the provisions of the *a quo* Perpu. The Court is of the opinion that the phrase "is not a state loss" in the norm of Article 27 paragraph (1) of Attachment to Law 2/2020, because it is closely related to state finances, it cannot be separated from Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Corruption Law) which determines that one of the essential elements that must be met in proving the occurrence of a criminal act of corruption is the fulfilment of the element "harming the state's finances or the country's economy ". Loss of state finances or state economy occurs due to abuse of authority in the management of state finances. In the perspective of Article 27 paragraph (1) of Attachment to Law 2/2020, if examined carefully, there is no element of state loss, whether for the costs used for handling the Covid-19 pandemic, which was spent in good faith and in accordance with the laws and regulations by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in taxation, state spending policies, including regional financial policies, financing policies, financial system stability policies and national economic recovery programs as part of the economic cost to save the economy from the crisis. Therefore, *a contrario* although the use of funds from state finances for the purpose of handling the Covid-19 pandemic is carried out not in good faith and not in accordance with the laws and regulations, the perpetrators who commit abuse of authority cannot be charged with criminal charges because they have been locked with the phrase "not a loss to the state" as stated in the norm of Article 27 paragraph (1) of Attachment to Law 2/2020. This is not in line with the provisions of the norm of Article 27 paragraph (2) of the *a quo* Law which opens the possibility that KSSK Members, KSSK Secretaries, KSSK Secretariat Members, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, as well as the Deposit Insurance Corporation, and other officials can be prosecuted both criminally and civilly if they do not carry out their duties in good faith and not in accordance with the laws and regulations. This is because the provisions that open up the possibility that they can be prosecuted both criminally and civilly in Article 27 paragraph (2) of Attachment to Law 2/2020 must fulfil the essential element, namely the existence of "state losses", which are caused by the use of state finances not based on good faith and not in accordance with the

laws and regulations.

12. Whereas the situation as described above shall results in the legal provisions of Article 27 paragraph (2) of Law 2/2020 cannot be enforced or applied to anyone who abuses the authority related to state finances if the phrase "not a loss to the state" is maintained even if the abuse of authority is in actuality not based on good faith and not in accordance with the laws and regulations. In other words, to the perpetrators of abuse of authority over state finances in the *a quo* Law, the possibility for being prosecuted both criminally and/or civilly has been closed. Because, as previously considered, in order to be able to carry out criminal and civil charges, the fundamental element of "state loss" must be met (vide Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law) and the element of "loss" in an unlawful act (vide Article 1365 of the Civil Code).

13. Whereas the provisions of Article 27 of Attachment to Law 2/2020 also have the potential to provide immunity rights for any parties that have been specifically mentioned in Article 27 paragraph (2) of Attachment to Law 2/2020 which in the end has the potential to cause impunity in law enforcement. According to the Court, by looking at the construction of Article 27 paragraph (1) of Attachment to Law 2/2020 which specifically stipulates that any costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing crisis management policies due to the Covid-19 pandemic are part of the costs to save the economy and "not a loss to the state", then the main thing that becomes a benchmark is related to the right of immunity, specifically for policy-making officials in terms of overcoming the economic crisis due to the Covid-19 pandemic which cannot be prosecuted both civilly and criminally if in the task is carried out based on good faith and in accordance with the laws and regulations. The emergence of the word "costs" and the phrase "not a loss to the state" in Article 27 paragraph (1) of Attachment to Law 2/2020 which is not accompanied by good faith and in accordance with the laws and regulations in the end has led to *a quo* Article creates uncertainty in law enforcement. According to the Court, the placement of the phrase "is not a loss to the state" in Article 27 paragraph (1) of Attachment to Law 2/2020 is certainly in contrary to the principle of due process of law to get equal protection. Such a distinction, surely, has denied everyone's rights, because of a law that deprive some people of the right to be exempt but give such rights to others without exception then such situation can be considered a violation of equal protection. Therefore, for the sake of legal certainty, the norm of Article 27 paragraph (1) of Attachment to Law 2/2020 must be declared unconstitutional as long as the phrase "not a state loss" is not interpreted as "not a state loss as long as it is carried out in good faith and in accordance with the laws and regulations" . Based on the description of the legal considerations, it has been found that Article 27 paragraph (1) of Attachment to Law 2/2020 is in contrary to the principle of certainty and equal treatment before the law as regulated in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Therefore, the arguments of the Petitioners' petition regarding Article 27 paragraph (1) of Attachment to Law 2/2020 are legally grounded in part.

14. Whereas in relation to the norm of Article 27 paragraph (2) of Attachment to Law 2/2020, the Court considers, because the phrase "not a state loss" has been declared conditionally unconstitutional as long as it is not interpreted as "not a state loss as long as it is carried out in good faith and in accordance with the laws and regulations' in the norms of Article 27 paragraph (1) of Attachment to Law 2/2020, therefore there is no longer any unconstitutionality issue between the norms of Article 27 paragraph (1) and Article 27 paragraph (2) of Attachment to Law 2/2020. Therefore, there is no longer the issue of unconstitutionality against the norms of Article 27 paragraph (2) of Attachment to Law 2/2020. This is because legal actions, both criminal and civil, can still be taken against legal subjects who abuse state finances as referred to in Article 27 paragraph (2) of Attachment to Law 2/2020 as long as the act causes state losses because it is not carried out in good faith and not in accordance with the laws and regulations in the norms of Article 27 paragraph (1) of Attachment to Law 2/2020. Therefore, based on the description of the legal considerations above, it has turned out that Article 27 paragraph (2) of Attachment to Law 2/2020 has guaranteed legal certainty and equal treatment before the law as stipulated in Article 27 paragraph (1) and Article 28D paragraph (1) the 1945 Constitution. Therefore,

the proposition of the Petitioners' petition regarding the unconstitutionality of Article 27 paragraph (2) of Attachment to Law 2/2020 is unreasonable according to law.

15. Whereas in relation to the constitutionality of Article 27 paragraph (3) of Law 2/2020 which states that all actions including decisions taken based on Law 2/2020 are not objects of lawsuit that can be submitted to the state administrative court is in contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. In relation to the *a quo* argument, the Court considers that the provisions of Article 27 paragraph (3) of Law 2/2020 cannot be separated from the provisions of Article 49 of Law Number 5 of 1986 concerning State Administrative Courts (Administrative Court Law). By referring to the provisions of Article 49 of the Administrative Court Law above, in fact, in the current state of the Covid-19 pandemic, it is part of the excluded situation so that it cannot be used as objects of lawsuit against the Decision of the State Administration to the State Administrative Court. However, after careful scrutiny, it has been found that Law 2/2020 is not only related to the Covid-19 pandemic but also related to various kinds of threats that endanger the national economy and/or financial system stability (vide Title of Law 2/2020). Therefore, with respect to the circumstances outside of the Covid-19 pandemic and similarly to the decisions of the State Administrative Body which are not based on good faith and are not in accordance with the laws and regulations, according to the Court, such matters should remain controllable and can be made the object of a lawsuit to the State Administrative Court. Moreover, with the enactment of Law Number 30 of 2014 concerning Government Administration (UU 30/2014) the object of a lawsuit to the State Administrative Court is not only a decision but also a government administrative action (vide Article 75 and General Elucidation of Law 30/2014). Therefore, if the control function is not given, it has the potential to the abuse of power and legal uncertainty. Because, in fact, those who have the authority to judge decisions and/or actions that are in contrary or not against the law are the Court Judges. Therefore, as long as decisions and/or actions are issued in relation to the Covid-19 pandemic and are carried out in good faith and in accordance with the laws and regulations, the judge must state that the object of the decision of the State Administration and/or government administrative action is not the object of a lawsuit. . However, in the event that what happens is factually the other way around, then the decision of the state administrative body and/or government action must be declared null and void and has no binding legal force if it is proven that there has been abuse of authority.
16. Whereas based on the description of the legal considerations above, it has turned out that Article 27 paragraph (3) of Attachment to Law 2/2020 has created legal uncertainty and unequal treatment before the law as stipulated in Article 27 paragraph (1) and Article 28D paragraph (1) the 1945 Constitution, as long as the phrase "are not objects of lawsuit that can be submitted to the state administrative court", as long as it is not interpreted as "**are not the objects of lawsuit that can be submitted to the state administrative court as long as it is carried out in relation to the handling of the Covid-19 pandemic and is carried out in good faith and in accordance with the laws and regulations.** Therefore, the petition of the Petitioners is legally grounded in part.
17. Whereas based on the description of the legal considerations above, according to the Court, the provisions of the norms of Article 27 paragraph (1) and paragraph (3) as well as Article 29 of Attachment to Law 2/2020 must be declared conditionally unconstitutional so that the Court issued a decision which verdicts declare as follows:

Adjudicate:

On Formal Review:

To Dismiss the Petitioners' petition in its entirety;

On Material Review:

1. To grant the petition of the Petitioners in part;

2. To declare that the phrase “not a state loss” in Article 27 paragraph (1) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State’s Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the Gazette of the Republic of Indonesia Number 6516) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted as "not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations". Therefore Article 27 paragraph (1) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State’s Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "Any costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state spending policies including policies in regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not a loss to the state”, shall be read in full, **“Any costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state spending policies including policies in regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations”.**
3. To declare that the phrase “are not objects of lawsuit that can be submitted to the state administrative court” in Article 27 paragraph (3) of Attachment Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State’s Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia Year 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is in contrary to the 1945 Constitution of the Republic of Indonesia and it does not have conditionally binding legal force as long as it is not interpreted as, "are not objects of lawsuit that can be submitted to the state administrative court as long as they are related to the handling of the Covid-19 pandemic and carried out in good faith and in accordance with the laws and regulations”. Therefore Article 27 paragraph (3) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State’s Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, " All actions, including decisions taken based on this Government Regulation in Lieu of Law, are not objects of lawsuit that can be submitted to the state administrative court”, shall be read in full, **"All actions, including decisions taken based on this Government Regulation in Lieu of Law, are not objects of lawsuit that can be submitted to the state administrative court as long as they are carried out in relation to the handling of the Covid-19 pandemic and are carried out in good faith and in accordance with the laws and regulations."**
4. To declare that Article 29 of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State’s Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019

(Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) which originally read, "This Government Regulation in Lieu of Law shall come into force on the date of promulgation", is in contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as **"This Government Regulation in Lieu of Law shall come into force on the date of promulgation and must be declared invalid since the President officially announced that the status of the Covid-19 pandemic has ended in Indonesia and that status must be declared no later than the end of the 2nd year. In fact, the Covid-19 pandemic has not ended, before entering the 3rd year of the *A quo* Law , it can still be enforced, but the allocation of the budget and the determination of the budget deficit limit for the handling of the Covid-19 pandemic, must obtain the approval of the DPR and the consideration of the DPD."**

5. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
6. To dismiss the Petitioners' petition for the rest/remainder.

Dissenting Opinions

Whereas against the decision of the *a quo* Constitutional Court, 3 (three) Constitutional Justices, namely Constitutional Justice Anwar Usman, Constitutional Justice Arief Hidayat, and Constitutional Justice Daniel Yusmic P. Foekh have dissenting opinions as follows:

a. The request for a formal review is unreasonable according to law. Therefore, the Court dismisses the petition for a formal review of the Petitioners;
b. In relation to all the arguments presented by the Petitioners which are declared unreasonable according to law and therefore dismissed, except regarding the Article 27 paragraph (1) and paragraph (3) and Article 29 of Attachment to Law 2/2020.
c. Whereas the Petitioners' argument regarding Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020 is in contrary to the principle of the rule of law, the principle of managing state finances, the authority of the The Audit Board (BPK), the authority of judicial power, the principle of equality before the law, and the principles of guarantees, protection, and fair legal certainty. Whereas according to this argument, as long as the state's financial policy is not against the law, the costs incurred are not state losses. If in the action/deed of the executor of Law 2/2020 it is done against the law or does not meet the requirements in Article 27 paragraph (2) of Attachment to Law 2/2020, then of course the check and balances mechanism can still be implemented. Furthermore, Article 27 paragraph (1) of the Attachment to Law 2/2020 does not in any way eliminate the authority of the BPK to carry out supervision in the framework of the implementation of Law 2/2020.
d. Whereas the purpose of the inclusion of Article 27 of Attachment to Law 2/2020 is not intended to provide absolute immunity, but rather to provide guarantees and confidence for the executors of Attachment to Law 2/2020 within the legal framework and legal system that will protect them in carrying out their duties and authorities based on Attachment to Law 2/2020. Therefore, the provision of good governance in Law 2/2020 actually shows that Law 2/2020 cannot be misused by irresponsible parties. Discussion in decision making is needed openly with up and down and all the risks. If the state spending during the Covid-19 pandemic is considered detrimental to the state, then no official will dare to take extraordinary policy measures even if for the goal of saving the country, society, and economy. In the context of legal protection given by law to officials who make and implement policies, the Court has also provided legal protection to advocates in the form of immunity from being prosecuted both civilly and criminally, both inside and outside of court sessions in carrying out their duties and professions as long as it was done in good faith (vide Constitutional Court Decision Number 26/PUU-XI/2013, May 14, 2014). In addition, the Court has also reviewed Article 16 of the Advocate Law in the case Number 52/PUU-XVI/2018.
e. The Court even gave its interpretation of the phrase 'good faith' in Article 16 of the Advocate

Law on a material review of Article 21 of Anti-Corruption Law, namely "*keywords of the establishment of immunity rights in this provision* (Article 16 of Advocate Law) *not lies in the "interest"* of the client's defence but in "good faith". This means, a contrario, the immunity automatically falls when the element of "good faith" is not fulfilled...Therefore, there is no reason to postulate the unconstitutionality of Article 21 of the PTPK Law by basing on the immunity rights possessed by advocates because the norms of the *A quo* Law does not invalidate the validity of such immunity rights at all." The Court have also given consideration in relation to the legal protection for officials related to the implementation of tax amnesty in the Decision of the Constitutional Court Number 57/PUU-XIV/2016, dated December 14, 2016.

f. Based on the Court's considerations in the decisions above, by using the *argumentum per analogiam* legal interpretation method, then actually what is established in Article 27 of Attachment to Law 2/2020 is constitutional. It is very unreasonable if the Petitioners arguing the unconstitutionality of Article 27 of Attachment to Law 2/2020 based on the principle of equality before the law because basically the right of immunity owned by the legislators in Article 27 of Attachment to Law 2/2020 does not at all eliminate such principle of equality before the law.

g. Whereas the Petitioners' argument which states that the enforcement of Article 27 paragraph (3) of Attachment to Law 2/2020 has overruled the function of the state administrative court, a similar provision has been regulated in Article 49 of Law Number 5 of 1986 concerning State Administrative Court (UU 5/1986) which states,

> *"The court is not authorized to examine, decide, and resolve certain State Administrative disputes in the event that the disputed decision is issued:*
>
> *a. in times of war, in a state of danger, in a state of natural disaster, or in an extraordinary situation that is dangerous, based on the prevailing laws and regulations;*
>
> *b. in a state of emergency for the public interest based on the prevailing laws and regulations."*

In this provision, it is regulated that the State Administrative Court is not authorized to examine, decide, and settle any state administrative disputes in the event that the decision is issued in a state of danger, natural disaster, or extraordinary circumstances and in emergency circumstances for the public interest. This means that the establishment of Article 27 paragraph (3) of Attachment to Law 2/2020 is in harmony with the provisions of Article 49 of Law 5/1986. Therefore, the *a quo* arguments of the Petitioners are unreasonable according to law and should be ruled out.

The arguments of the Petitioners stating that Article 27 of Attachment to Law 2/2020 has the same content and meaning as Article 29 of the Government Regulation in Lieu of Law Number 4 of 2008 concerning the Financial System Safety Net (Perpu 4/2008) which reads "Minister of Finance, Governor of Bank Indonesia, and/or any parties carrying out their duties in accordance with this Government Regulation in Lieu of Law cannot be punished because they have taken decisions or policies that are in line with their duties and authorities as referred to in this Government Regulation in Lieu of Law". It is true that the norms in Article 27 of Attachment to Law 2/2020 have similarities with Article 29 of Perpu 4/2008. Comparing Perpu 4/2008 with Perpu 1/2020 is incorrect. The comparison is not apple to apple because every emergency is different in type and impact. The state of emergency (non-natural disaster) caused by Covid-19, is not only a health crisis, but has *domino effect* that impacts all sectors of life. Therefore, the Petitioners' petition is unreasonable according to law.

h. Whereas in relation to Article 29 of Attachment to Law 2/2020, the DPR as the holder of the authorities to establish laws may limit the validity period of a Perpu. The PPP Law only prohibits the DPR from discussing norms in the Perpu. The DPR can only approve or reject the proposed Perpu. Actually, the PPP Law does not prohibit the DPR from limiting the validity period of Perpu. The DPR may use its authority to limit the validity period of the Perpu during the discussion of the Bill regarding ratification of the Perpu to become law. For the sake of future state administration, this needs to be the attention of the DPR, because not all Perpu approved by the DPR should turn into law.

So far, every President has stipulated a Perpu as extraordinary rules, it has never

been preceded by the determination of the state of danger as extraordinary measures. Likewise, when the President stipulates Perpu 1/2020, even if it is followed by a statement of emergency as stated in Presidential Decree No. 11 of 2020 concerning the Determination of Corona Virus Disease 2019 (Covid-19) as Public Health Emergency which was later followed by the issuance of Presidential Decree No. 12 of 2020 concerning Determination of Non-Natural Disasters the Spreading of Corona Virus Disease 2019 (COVID-19) as National Disaster. However, the two Presidential Decrees were issued not based on Article 12 of the 1945 Constitution but based on Article 4 paragraph (1) of the 1945 Constitution. Likewise, Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases, Law Number 24 of 2007 concerning Disaster Management, and Law Number 6 of 2018 concerning Health Quarantine are not organic laws from Article 12 of the 1945 Constitution.

In relation to the *a quo* arguments of the Petitioners, the question of when the covid-19 pandemic will end is not measurable. And for however long it is, we are in a state of emergency. At least until the Covid-19 pandemic turns into an endemic like other seasonal diseases that have been controlled. Because, the impact of the Covid-19 pandemic, may not end by it turning into an endemic. Therefore, Law 2/2020 is still needed to ensure the legality and legitimacy of the legislators in dealing with the negative impacts of Covid-19. There is a different character between the Covid-19 pandemic and the emergency situation that exist because of Article 12 of the 1945 Constitution regarding the state of danger that gave birth to civil emergency, war emergency, and military emergency. The Perpu that is born as a result of Article 12 of the 1945 Constitution needs to be set a deadline. Meanwhile, the Covid-19 Perpu as stated in the dictum, Considering that it is based on Article 22 of the 1945 Constitution, it is not based on Article 12 of the 1945 Constitution. Likewise, the constitutional basis used as reference in Presidential Decree No. 11/2020 and Presidential Decree No. 12/2020 is Article 4 paragraph (1) of the 1945 Constitution. Therefore, the Petitioners' petition is unreasonable according to law.

i. On the basis of all legal considerations as mentioned above, we are of the opinion that all of the arguments of the Petitioners' petition, both formal and material reviews, are unreasonable according to law.