



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 64/PUU-XVIII/2020

Concerning

Extension of Work Contract

- Petitioner** : Helvis, et al.
- Type of Case** : Review of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU 3/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 169A of Law 3/2020 against Article 18A paragraph (2), Article 27 paragraph (1), and Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.
- Verdict** : 1. To declare that the petition of Petitioner I and Petitioner III is not acceptable;
2. To grant the petition of Petitioner II in part;
3. To declare that the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) along the phrase " given a guarantee" is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can be given";
4. To declare that the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), along the word "guaranteed" is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can";
5. To declare that the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) shall be read in full, **"KK and PKP2B as referred to in Article 169 may be granted an extension into an IUPK as a Continuation of Contract/Agreement Operation after fulfilling the requirements with the following provisions:: ..."**;

6. To declare that the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), shall be read in full:
 - a. **contracts/agreements that have not yet received an extension can get 2 (two) extensions in the form of IUPK as a Continuation of each Contract/Agreement Operation for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B by taking into account any efforts to increase state revenue.**
 - b. **contracts/agreements that have obtained the first extension may be granted a second extension in the form of an IUPK as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B by considering the efforts to increase state revenues.**
7. To dismiss the petition of Petitioner II for the rest/remainder;
8. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate;

Date of Decision

: Wednesday, October 27, 2021

Overview of Decision

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The Petitioners in their qualifications as individual Indonesian citizens and private legal entities have constitutional rights, namely Article 18A paragraph (2), Article 27 paragraph (1), and Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.

With regard to the authority of the Court, since the petition of the Petitioners is a review of the constitutionality of the law, *in casu* Article 169A of Law 3/2020 against the 1945 Constitution, therefore the Court has the authority to hear and decide on the *a quo* petition.

In relation to the legal standing of the Petitioners, regardless of whether or not the Petitioners' argument is proven regarding the conflict of norms, in particular Article 169A of Law 3/2020 against the 1945 Constitution, according to the Court, Petitioner II has been able to specifically describe and explain the existence of a causal relationship (*causal verband*), that the enactment of the provisions of Article 169A of Law 3/2020 has been deemed detrimental to Petitioner II, both actual and potential. Meanwhile, Petitioner I and Petitioner III cannot specifically describe and explain the existence of a causal relationship (*causal verband*), whether the enactment of the provisions of *a quo* Article is detrimental to their constitutional rights. Therefore, the Court is of the opinion that Petitioner II has been able to explain the alleged impairment of Petitioner II's constitutional rights guaranteed in the 1945 Constitution, both actual and at least a potential impairment with the enactment of the norms of Article 169A of Law 3/2020 which is submitted in the petition for *a quo* review. Therefore, according to the Court, Petitioner I and Petitioner III do not have the legal standing to file the *a quo* petition. While Petitioner II has the legal standing to act as Petitioner in the *a quo* petition.

In relation to the argument of Petitioner II, according to the Court the construction of Article 75 paragraph (3) of Law 3/2020 which has the relevance to the provisions of the norms of Article 169A of Law 3/2020 has actually given confirmation regarding the granting of priority to State-Owned Enterprises (*Badan Usaha Milik Negara* or BUMN) and Regional-Owned Enterprises (*Badan Usaha Milik Daerah* or BUMD) to obtain IUPK. Since the beginning, this has become the legal politics chosen by the legislators as stated in Law Number 4 of 2009 concerning Mineral and Coal Mining. The philosophy contained in giving priority to BUMN and BUMD is none other than because the state wants to embody the role of the state in actualizing

the principle of "state control over natural resources". Because, it is through the organs of BUMN and BUMD that the state's control over natural resources can be realized as also mandated by Article 33 paragraph (3) of the 1945 Constitution. Therefore, it is particularly important to treat the differences between state-owned enterprises and regional-owned enterprises and private enterprises.

Whereas it can be further explained, the distinction as mentioned above is intended to provide reinforcement (justification) so that natural resources in Indonesia cannot easily be handed over to private parties, both domestic and foreign, unless the priority has already been given to BUMN and BUMD. Therefore, the selection for granting an IUPK must be carried out strictly and must be guided by the provisions of Article 75 of Law 3/2020.

Whereas based on the provisions of Article 75 of Law 3/2020 above, it is clear that the granting of IUPK to private entities must be carried out by way of WIUPK auctions and shall not be differentiated between domestic and foreign private business entities (see Article 75 paragraph (4) Law 3/2020) and it must fulfil the considerations as required in the provisions of Article 75 paragraph (5) of Law 3/2020. Therefore, in relation to this, the provisions of Article 169A of Law 3/2020 cause a discrepancy with the spirit contained in Article 75 of Law 3/2020. Moreover, the provisions justify being granted an extension guarantee into an IUPK as a continuation of the operation of the contract/agreement. This means that business entities that enter into a Contract of Work (*Kontrak Karya* or KK) and Coal Mining Concession Work Agreement (*Perjanjian Karya Pengusahaan Pertambangan Batubara* or PKP2B) automatically get a guarantee for an extension to become an IUPK, however in fact the KK and PKP2B are private legal relationships that must have been completed at the time of the agreement period ends. Therefore, there is no longer a legal relationship between the Government and private business entities contained in the KK and PKP2B to be given priority in the form of guarantees for an extension to become an IUPK even if it fulfils the requirements as stipulated in Article 169A paragraph (1) of Law 3/2020. Thus, the Government should therefore begin to reorganize by embodying the state's control over natural resources, particularly in the granting of permits, to begin controlling with a priority scale as mandated in *a quo* Law 3/2020.

Whereas based on the description of the considerations above, apart from the essence of the existence of guarantees for KK and PKP2B, an IUPK extension is granted after fulfilling the requirements due to historical factors relating to the history of investments that have contributed to Indonesia's economic growth, but the provision of such guarantees will close and keep away the implementation of controlling natural resources by the state. In addition to these legal considerations, the guarantee of granting the IUPK also closes the opportunity for any domestic business entities to play a role in advancing the economy in accordance with the spirit in Article 33 of the 1945 Constitution. Therefore, the Court is of the opinion that the phrase "given a guarantee" in Article 169A paragraph (1) of Law 3/2020 and the word "guaranteed" in Article 169A paragraph (1) letter a and letter b of Law 3/2020 is in contrary to the spirit of state control and providing opportunities to domestic enterprises as mandated by *a quo* Law 3/2020. Therefore, without intending to reduce the opportunity for private business entities to compete in obtaining the IUPK and supplemented with the consideration so that the government obtains a private business entity that truly has the capability and integrity and is in accordance with the provisions of laws and regulations that meet the principles of good corporate governance, then the phrase "given a guarantee" in Article 169A paragraph (1) of Law 3/2020 must be interpreted with the phrase "can be given" and the word "guaranteed" in Article 169A paragraph (1) letter a and letter b of Law 3/2020 must be interpreted with the word "can".

Whereas based on the entire description of the legal considerations above, it has been found that the provisions in Article 169A paragraph (1) of Law 3/2020 along the phrase "given a guarantee" and Article 169A paragraph (1) letter a and letter b of Law 3/2020 along the word "guaranteed" is in contrary to Article 27 paragraph (1), as well as Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution. Accordingly, the petition of Petitioner II is reasonable according to law in part;

Therefore, in relation to the *a quo* petition, The Court issued a decision which verdicts declare as follows:

1. To declare that the petition of Petitioner I and Petitioner III is inadmissible;
2. To grant the petition of Petitioner II in part;
3. To declare that the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) along the phrase " given a guarantee" is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can be given";
4. To declare that the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), along the word "guaranteed" is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, as long as it is not interpreted as "can";
5. To declare that the provisions of Article 169A paragraph (1) of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525) shall be read in full, **"KK and PKP2B as referred to in Article 169 may be granted an extension into an IUPK as a Continuation of Contract/Agreement Operation after fulfilling the requirements with the following provisions: ..."**;
6. To declare that the provisions of Article 169A paragraph (1) letter a and letter b of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, State Gazette of the Republic of Indonesia Number 6525), shall be read in full:
 - a. **contracts/agreements that have not yet received an extension can get 2 (two) extensions in the form of IUPK as a Continuation of each Contract/Agreement Operation for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the KK or PKP2B by taking into account any efforts to increase state revenue.**
 - b. **contracts/agreements that have obtained the first extension may be granted a second extension in the form of an IUPK as a Continuation of Contract/Agreement Operations for a maximum period of 10 (ten) years as a continuation of operations after the expiration of the first extension of KK or PKP2B by considering the efforts to increase state revenues.**
7. To dismiss the petition of Petitioner II for the rest/remainder;
8. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate.