



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 75/PUU-XVIII/2020

Concerning

Formal and Material Review Related to Widening of the State Budget Deficit,
Determination of Taxation through Government Regulations, and Immunity
for Policy Makers and Implementers in Law Number 2 of 2020

- Petitioners** : M. Sirajuddin Syamsuddin, et al, Executive Board of Al-Irsyad Youth, LBH (Legal Aid) Catur Bhakti Foundation, Indonesian Muslim Student Action Union, and Islamic Women
- 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 review and material review of Article 2 paragraph (1) letter a number 1, letter a number 2, and letter a number 3, Article 6 paragraph (12), Article 27, and Article 28 of Attachment to Law 2/2020 is in contrary to Article 1 paragraph (2) and paragraph (3), Article 23 paragraph (1), paragraph (2), and paragraph (3), Article 23A, Article 23E paragraph (1), Article 27 paragraph (1) and paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution.
- Verdict** : **In Formal Review:**
To declare that the petition for a formal 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 (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is inadmissible;
In Material Review:
1. To declare that the petition of the Petitioners throughout Article 27 paragraph (1) and 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 of the

Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is inadmissible;

2. To dismiss the Petitioners' petition for the rest/remainder;

Date of Decision : Thursday, October 28, 2021.

Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens and taxpayers as well as Private Legal Entities who feel they have an interest in public health and are affected by the potential for contracting Covid-19 but the issuance of Law 2/2020 and its attachments have abused health emergencies to form emergency laws that have the potential to reduce other constitutional rights owned by the Petitioners;

With regard to the authority of the Court, since the petition of the Petitioners is a petition to examine the constitutionality of legal norms, *in casu* formal review and material review of Attachment to Law 2/2020, then the Court has the authority to hear the *a quo* petition;

Regarding the Deadline for Formal Review, because Law 2/2020 was promulgated on May 18, 2020 while the petitions of the Petitioners were submitted on September 4, 2020, so that the petitions of the Petitioners were submitted past the time limit of 45 days after Law 2/2020 was recorded in the State Gazette. Accordingly, the petition for formal review of the Petitioners is submitted past the time limit for submitting the petition;

Whereas according to the Petitioners, the petition of the norms requested for review has the potential to harm their constitutional rights to obtain fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law because of the arbitrariness of policy arrangements related to state finances and taxation during the Covid-19 pandemic. Therefore, according to the Court, the Petitioners have explained their constitutional rights as well as the assumption of factual and potential impairment from the enactment of the norms of Attachment to Law 2/2020 and the causality between the two has also been seen therefore the Petitioners have legal standing as Petitioners in the *a quo* Petition;

Whereas because the Court has the authority to hear the *a quo* petition and the Petitioners have the legal standing to file the *a quo* petition, the Court will consider the following points of petition:

1. Whereas according to the Petitioners, the norms in the articles petitioned for review are implicitly and explicitly not in line with the principle of the rule of law because it gives absolute authority to the President and negates the DPR (House of Representatives) and DPD (Regional Representative Council) in carrying out their authority in the field of legislation or the establishment of laws. Besides, the *a quo* norms have also provided immunity for institutions and/or policy implementers as well as a policy in the context of implementing the *a quo* provisions, so that the act of abuse of authority is not a criminal act, this is a form of neglect of legal principles as confirmed in Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution;
2. Whereas according to the Petitioners, the APBN (State Budget) must be stipulated in a law not by a Perpu which is then made to be an Attachment to a law, because the APBN must obtain the approval of the DPR as a form of people's sovereignty and the approval of the DPR is absolute and decisive. Article 2 paragraph (1) letter a of Attachment to Law/2020 has taken over the legislative authority in granting the approval of the APBN to the executive authority. Moreover, the government's authority in determining the APBN also applies to the APBN for Fiscal Year 2021 and Fiscal Year 2022, which not yet have any products. In addition, the opening of a deficit limit of 3% of GDP for 3 fiscal years at once, has nullified the importance that the APBN Law must fulfil periodic elements that must be determined once a year. This is in contrary to Article 23 of the 1945 Constitution;

3. Whereas according to the Petitioners, Law Number 17 of 2003 concerning State Finances has provided two mechanisms for implementing the APBN in abnormal or emergency conditions but with due observance of the principle of people's sovereignty which is the essence of the state budget/state finance, namely through the scheme of the Revenue Budget and Changes to State Expenditure Law and schemes in an emergency, namely the Government shifts the budget, including making Expenditures for the purposes for which there is no budget limit in the APBN Law for the current period;
4. Whereas according to the Petitioners, Article 6 paragraph (12) of Attachment to Law 2/2020 is in contrary to Article 23A and Article 22D paragraph (2) of the 1945 Constitution because the imposition of a tax that is coercive does not involve the DPR as a representative of people's sovereignty and the DPD as a state institution that functions to accommodate regional aspirations. In addition, the determination of taxes and other levies must be made in the form of a law not in the form of other regulations;
5. Whereas according to the Petitioners, Article 27 of Attachment to Law 2/2020 basically regulates the right to immunity which provides protection for those who act unfairly or do something that can harm the nation and state, besides that it also has the potential to cause the abuse of authority which gives birth to authoritarian economic policies because it eliminates the authority of the Audit Board (*Badan Pemeriksa Keuangan* or BPK) which is mandated by the 1945 Constitution to examine the management and responsibilities of state finances and automatically eliminates the function of the DPR to oversee the use of the budget;
6. Whereas according to the Petitioners, Article 28 of Attachment to Law 2/2020 applies the principle of the omnibus method whose existence is not really needed. In addition, the waiver of 12 laws, especially those related to the APBN, has resulted in the loss of the DPR's authority to approve or reject the APBN;

Based on all the above legal considerations, the Court is of the opinion that the Court has adjudicated and decided regarding the constitutionality of the norms of Article 2 paragraph (1) letter a number 1, number 2, and number 3, as well as Article 6 paragraph (12) of Attachment to Law 2/2020 and because of the legal issues that are used as the reason for the petition for review by the Petitioners, have similarities with case Number 37/PUU-XVIII /2020 which has been decided by the Court on October 28, 2021, at 10.33 WIB, so that the Decision of the Constitutional Court Number 37/PUU-XVIII/2021 shall apply *mutatis mutandis* and become a part of the legal considerations of this petition;

Whereas the Petitioners' argument regarding the unconstitutionality of Article 28 of Attachment to Law 2/2020, even though the norm of *a quo* Article 28 was not petitioned in case Number 37/PUU- XVIII/2020, but after the Court carefully studied the petition of the Petitioners, according to the Court the issue of constitutionality petitioned by the Petitioners is closely related to the time limit for the validity of Law 2/2020 in dealing with the Covid-19 pandemic which the Court has considered in the Constitutional Court Decision Number 37/PUU-XVIII/2020. Therefore, the Decision of the Constitutional Court Number 37/PUU- XVIII/2021 is valid *mutatis mutandis* and become a part of the legal considerations of this petition;

Whereas the Petitioners' argument regarding the constitutionality of Article 27 paragraph (1), paragraph (2), and paragraph (3) of Attachment to Law 2/2020, the Court has adjudicated and decided on this matter in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020, which in essence the Court gives a constitutional meaning to Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020. With this decision, the norms of Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020 which the Petitioners argue are unconstitutional have lost their object so that they are irrelevant for further consideration. As for Article 27 paragraph (2) of Attachment to Law 2/2020, the legal considerations of the Court in the above Decision, *mutatis mutandis* shall apply to the *a quo* petition;

Therefore, the Court is of the opinion that the Petitioners' arguments regarding the unconstitutionality of Article 2 paragraph (1) letter a number 1, number 2, and number 3, Article 6 paragraph (12), Article 27 paragraph (2), and Article 28 of Attachment to Law 2 /2020, legal considerations for Constitutional Court Decision Number 37/PUU-XVIII/2020 *mutatis mutandis* shall apply to legal considerations petition *a quo* Decision so that the petition of the Petitioners is unreasonable according to law. Meanwhile, the Petitioners' petition in relation to Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020 is a lost object;

Accordingly, the Court issued a decision which verdicts declare as follows:

In Formal Review:

To declare that the petition for a formal 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 (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is inadmissible;

In Material Review:

1. To declare that the petition of the Petitioners throughout Article 27 paragraph (1) and 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) is inadmissible;
2. To dismiss the Petitioners' petition for the rest/remainder.