



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 19/PUU-XX/2022**

**Concerning**

**Authority of the Regional Representative Council  
in the Harmonization of Tax Regulations**

- Petitioner** : **Priyanto**
- Type of Case** : Examination of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Law 7/2021) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Examination of the Constitutionality of Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 number 2, Article 16B paragraph (1a) letter j number 1, number 2, number 3 and number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word “can” in Article 40B paragraph (3) in Article 14 number 2 and the word “can” in Article 64 paragraph (1) in Article 14 number 3, Article 7 paragraph (3) in Article 3 number 3 and its Elucidation, Article 17 paragraph (2) in Article 3 number 7, Article 7 paragraph (4) in Article 4 number 2 and its Elucidation, Article 13 paragraph (4), Article 13 paragraph (10) along with its Elucidation, Article 13 paragraph (11) and its Elucidation, Article 13 paragraph (15) and its Elucidation and Article 4 paragraph (2) in Article 14 number 1 and its Elucidation in Law 7/2021 concerning Harmonization of Tax Regulations against the 1945 Constitution.
- Verdict** : 1. To declare that the Petitioner's petition as long as Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 number 2, Article 16B paragraph (1a) letter j number 1, number 2, number 3 and number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word “can” in Article 40B paragraph (3) in Article 14 number 2 and the word “can” in Article 64 paragraph (1) in Article 14 number 3

of Law 7/2021 are inadmissible;

2. To dismiss the Petitioner's petition for the remainder

**Date of Decision** : Thursday, July 7, 2022

**Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen who works as an entrepreneur and is also a tax payer.

Regarding the authority of the Court, because of the Petitioner petitions for the Examination of Law Number 7 of 2021 concerning Harmonization of Tax Regulations against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Petitioner is an Indonesian citizen who is a tax payer, who believes that his constitutional rights have been prejudiced due to the promulgation of Law 7/2021 in which the Petitioner thinks he has the right to choose to obtain legal certainty and equal treatment in relation to tax regulations as guaranteed in the 1945 Constitution.

Furthermore, the Court considers the legal standing of the Petitioner. The Court is of the opinion that the Petitioner has clearly described his qualifications as an individual Indonesian citizen who is a tax payer. In such qualifications, the Petitioner has also specifically explained his constitutional rights which in his opinion are prejudiced by the promulgation of the norms for which the examination is being petitioned, namely the right to fair legal certainty, the right to education, the right to live in physical and spiritual prosperity, the right to social security, and the right to be free from discriminatory treatment on any basis as guaranteed in the 1945 Constitution due to the promulgation of Law 7/2021.

Therefore, the Court is of the opinion that there has been a logical connection and a causal relationship (*causal verband*) between the Petitioner's presumption regarding the loss of constitutional rights as described and the petition of the norms of Article 7 paragraph (3) in Article 3 number 3 and its Elucidation, Article 17 paragraph (2) in Article 3 paragraph 7, Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 paragraph 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 paragraph 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 paragraph 2, Article 7 paragraph (4) in Article 4 number 2 and its Elucidation, Article 16B paragraph (1a) letter j number 1 and its Elucidation, Article 16B paragraph (1a) letter j number 2 and its Elucidation, Article 16B paragraph (1a) letter j number 3 and its Elucidation, as well as Article 16B paragraph (1a) letter j number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, Article 13 paragraph (4), Article 13 paragraph (10) and its Elucidation, Article 13 paragraph (11) and its Elucidation, Article 13 paragraph (15) and its Elucidation, Article 4 paragraph (2) in Article 14 number 1 and its Elucidation, the word "can" in Article 40B paragraph (3) in Article 14 paragraph 2 and the word "can" in Article 64 paragraph (1) in Article 14 number 3 of Law 7/2021 which are being petitioned for an examination and are related to the status of the Petitioner as a tax payer, so that if the petition is granted, such loss will no longer occur. Regardless of whether or not the Petitioner's argument regarding the unconstitutionality of the legal norms being petitioned for an examination is proven, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Whereas because the issue with the Petitioners' petition is deemed clear enough, there is no urgency and relevance for the Court to request the statements and/or minutes of meetings in relation to the Petitioners' petition to the parties as referred to in Article 54 of the Constitutional Court Law.

Meanwhile, regarding the subject matter of the petition, the Court in its consideration stated that in relation to Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 number 1 and its

Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 number 2, Article 16B paragraph (1a) letter j number 1, number 2, number 3 and number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word “can” in Article 40B paragraph (3) in Article 14 number 2 and the word “can” in Article 64 paragraph (1) in Article 14 number 3 of Law 7/2021 which, according to the Petitioner, are in contrary to the 1945 Constitution so that it must be declared as having no binding legal force.

The Court is of the opinion, in his petition, the Petitioner did not present any arguments regarding the contradiction between the articles being petitioned for an examination and the 1945 Constitution and did not present any arguments on how the contradictions between the *a quo* articles and the articles that are used as the basis for examination in the 1945 Constitution. In addition, the Petitioner also did not elaborate on the relationship between the loss of constitutional rights experienced by the Petitioner and the unconstitutionality of norms, but instead described the potential for losses in concrete cases that would potentially be experienced by the Petitioner and also directed the Court to formulate new norms (positive legislature) by stating that the articles that have been removed from the *a quo* Law to be reinstated by petitioning to add the interpretation as the Petitioner described in the *petitum* of the *a quo* petition.

Moreover, the Petitioner's arguments did not fully and clearly describe the conflicting norms between the articles being examined and the 1945 Constitution. Particularly in relation to the application of VAT for education services, basic necessities, medical services and social services, tax and excise amnesty which, according to the Petitioner, have resulted in the absence of a fair legal certainty as guaranteed in the 1945 Constitution. In addition, the Court is of the opinion that the description was also not supported by sufficient and relevant evidence to support the *a quo* petition as regulated in Article 31 paragraph (2) of the Constitutional Court Law.

Although, the Court in the preliminary examination hearing on March 8, 2022 has given the advice to the Petitioner to revise his petition in accordance with the provisions of Article 39 paragraph (2) of the Constitutional Court Law and to describe the arguments in relation to the loss of his constitutional rights as experienced by the Petitioner in outlining the legal standing and to clarify the arguments in the subject matter of the petition in relation to why the norms of the law being petitioned for an examination are deemed to be in contrary to the 1945 Constitution. However, the Petitioners' petition remains as described above [*vide* Summary of Preliminary Examination Hearing dated March 8, 2022]. Therefore, the Court cannot understand the reasons for the Petitioner's petition if it is related to the *petitum* of the petition which petitioned for the articles being examined since their constitutionality are in contrary to the 1945 Constitution and shall not have binding legal force, thus petition for the Court to declare that several *a quo* articles which has been removed to be reinstated as having binding legal force and to add a phrase made by the Petitioner himself as described by the Petitioner in *petitum* number 5 in relation to Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation of Law 7/2021. The Court is of the opinion that this is more appropriate if it is used as a reason for submitting a proposal of legislative review to the legislators and not judicial review to the Constitutional Court.

Due to the ambiguity as referred to before, The Court is of the opinion that the Petitioner's petition in relation to Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 paragraph 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 paragraph 2, Article 16B

paragraph (1a ) letter j number 1, number 2, number 3 and number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word “can” in Article 40B paragraph (3) in Article 14 number 2 and the word “can” in Article 64 paragraph (1) in Article 14 number 3 of Law 7/2021 are unclear or vague.

Furthermore, regarding Article 7 paragraph (3) in Article 3 number 3 and its Elucidation, Article 17 paragraph (2) in Article 3 number 7, Article 7 paragraph (4) in Article 4 number 2 and its Elucidation, Article 13 paragraph (4), Article 13 paragraph (10) and its Elucidation, Article 13 paragraph (11) and its Elucidation, Article 13 paragraph (15) and its Elucidation and Article 4 paragraph (2) in Article 14 number 1 and its Elucidation of Law 7/2021 which, according to the Petitioner, are in contrary to the 1945 Constitution because it does not involve or include the DPD (Regional Representatives Council) in various processes for the formation of legislation under the laws related to taxes and override the functions, duties, and roles of the DPD in terms of providing consideration and supervision in the field of taxation, thereby violating the provisions of Article 22D paragraph (2) and paragraph (3) of the 1945 Constitution. Regarding these matters, the Court considers the following:

Whereas regarding the *a quo* argument, the constitutionality issue that must be answered by the Court is whether the exclusion of the DPD in the formation process of the regulations under the law related to taxes has overridden the functions, duties, and roles of the DPD as regulated in Article 22D paragraph (2) and paragraph (3) of the 1945 Constitution.

The Court in its legal considerations has stated that it was necessary to reaffirm the Court's considerations in the Decision of the Constitutional Court Number **92/PUU- X/2012** which was declared in a plenary hearing open to the public on March 27, 2013, which basically stated that the DPD could submit a Bill (RUU) in relation to regional autonomy, central and regional relations, the formation and expansion of regions, as well as regional mergers, management of natural resources and other economic resources, as well as in relation to the balance of central and regional finances in accordance with the options and interests of the DPD as confirmed in Article 22D paragraph (1) of the 1945 Constitution.

In addition, in this consideration, the Court also emphasized that the DPD has the same rights and/or authorities as the DPR (House of Representatives) and the President in discussing the bills in relation to regional autonomy, central and regional relations, the formation and expansion of regions, as well as regional mergers, management of natural resources and other economic resources, as well as in relation to the balance of central and regional finances as confirmed in Article 22D paragraph (2) of the 1945 Constitution. Likewise, in the preparation of the National Legislation Program, the involvement of the DPD in the preparation of the National Legislation Program also emphasizes that the DPD also has the same rights and/or authorities as the DPR.

The Court is of the opinion that one of the main things that is important to reaffirm is related to the issue of constitutionality in the *a quo* petition, whereas the DPD has been given the rights to give its considerations in the discussion of the State Budget Bill and the Bills related to taxes, education and religion, but the meaning of giving these considerations is not the same as the weight of the authority of the DPD to participate in the discussion of the Bill. The Court is of the opinion that the most important thing is that there is an obligation from the DPR and the President to request the considerations from the DPD for the State Budget Bill and the Bills related to taxes, education and religion. This has been confirmed by the Court in the considerations of the Decision of the Constitutional Court Number **92/PUU-X/2012** in Sub-paragraph **[3.18.5]**, therefore the participation in the formation of legislation under the law related to taxes is not a part of the DPD's authority.

Based on these considerations, constitutionally the DPD is only given the right to give its considerations in discussing the Bills related to the State Budget, taxes, education, and religion. Meanwhile, the involvement of the DPR in the formation of legislation under the law related to tax has been explicitly limited to only consultation [*vide* Article 7 paragraph (3) in Article 3 number 3 and Article 13 paragraph (10) of Law 7/2021]. The main thing that must

also be emphasized by the Court regarding the *a quo* argument of the Petitioner is that the DPD can still supervise the implementation of laws related to taxes, the results of which shall be submitted to the DPR as a consideration for a follow-up. This is in line with Article 22D paragraph (3) of the 1945 Constitution which states: *“The Regional Representative Council can supervise the implementation of laws in relation to: regional autonomy, the formation, expansion and merger of the regions, central and regional relations, management of natural resources and other economic resources, implementation of the state revenue and expenditure budget, taxes, education, and religion and submit the results of its supervision to the House of Representatives for a consideration for a follow-up.”*

Based on all of the aforementioned considerations, the Petitioner’s arguments which states that Law 7/2021 is in contrary to the 1945 Constitution because it does not involve or include the DPD for the formation of legislation under the laws related to taxes and override the functions, duties, and roles of the DPD in terms of providing consideration and supervision in the field of taxation, thereby violating the provisions of Article 22D paragraph (2) and paragraph (3) of the 1945 Constitution, the Court is of the opinion that the Petitioner’s petition is legally unjustifiable.

Accordingly, the Court issued a decision which verdicts state that:

1. To declare that the Petitioner’s petition as long as Article 4A paragraph (2) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter a as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter b as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 4A paragraph (3) letter g as contained in Article 4 number 1 and its Elucidation, Article 7 paragraph (1) in Article 4 number 2, Article 16B paragraph (1a) letter j number 1, number 2, number 3 and number 6 and its Elucidation in Article 4 number 6, Article 5 to Article 12 in CHAPTER V TAXPAYER VOLUNTARY DISCLOSURE PROGRAM, the word “can” in Article 40B paragraph (3) in Article 14 number 2 and the word “can” in Article 64 paragraph (1) in Article 14 number 3 of Law 7/2021 are in admissible;
2. To dismiss the Petitioner’s petition for the remainder