



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE 59/PUU-XX/2022**

Concerning

Relocation of the Province Capital of South Kalimantan

- Petitioner** : **Chamber of Commerce and Industry (*Kamar Dagang dan Industri* or KADIN) of Banjarmasin City, Syarifuddin Nisfuady, et al.**
- Type of Case** : Judicial review over Law Number 8 of 2022 concerning South Kalimantan Province (Law 8/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 4 of Law 8/2022 is in contrary to Article 1 paragraph (1), Article 1 paragraph (2), Article 1 paragraph (3), and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition entirely
- Date of Decision** : Thursday, September 29, 2022.
- Overview of Decision :**

Petitioner I as a legal entity which serves as a forum for entrepreneurs as well as a representation of entrepreneurs in Banjarmasin. Petitioner II, Petitioner III, and Petitioner IV are individual Indonesian citizens who are citizens of South Kalimantan. And Petitioner V are an individual Indonesian citizen who is an Artist Figure in the South Kalimantan region. The Petitioners consider that their constitutional rights have been impaired due to the enactment of Article 4 of Law Number 8 of 2022 concerning South Kalimantan Province (Law 8/2022) which impacts the welfare of the people of South Kalimantan Province;

With regard to the authority of the Court, because the petition of the Petitioners is a petition to review the constitutionality of the norms of the Law, *in casu* Law 8/2022 against the 1945 Constitution, then based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to adjudicate the *a quo* petition;

Whereas regarding the legal standing of the Petitioners, the Court in the Constitutional Court Decision Number 87/PUU-XIII/2015 dated 13 October 2016 and the Constitutional Court Decision Number 3/PUU-XVIII/2020 dated 25 November 2020, emphasized that the Court's stance in relation to the party who can represents regional interests to file for a review of any norms related to regional administration are regional heads (governors or regents/mayors) together with the Regional People's Legislative Assembly (*Dewan Perwakilan Rakyat Daerah*) (provincial or district/city);

Whereas in relation to this, because the norms being petitioned for constitutionality review is Article 4 of Law 8/2022 which deals with the relocation of the province capital of South Kalimantan from Banjarmasin City to Banjarbaru City, even though it is closely related to regional government but since the *a quo* matter of constitutional norms is not solely regarding regional authority but regarding the provincial capital which concerns the interests of all people in the South Kalimantan region. Therefore, the determination of legal standing shall not solely be based on authority but it shall be more related to the loss of constitutional

rights as referred to in Article 51 paragraph (1) of the Constitutional Court Law.

Whereas Petitioner I in his qualifications as a legal entity that has legality based on Law Number 1 of 1987 concerning the Chamber of Commerce and Industry *juncto* Presidential Decree Number 17 of 2010 concerning Approval of Amendment to the Articles of Association and Bylaws of the Chamber of Commerce and Industry (Presidential Decree 17/2010) *juncto* Decree Number 16/SK/DP/KDKS/V/2021 concerning Ratification of the Advisory Board, Consultative Body, Executive Board of the Chamber of Commerce and Industry (Kamar Dagang dan Industri or KADIN) of Banjarmasin City for the period of 2021-2026 as established on June 23, 2021, represented by M. Akbar Utomo Setiawan as Chairman of the Chamber of Commerce and Industry of Banjarmasin City for the period of 2021-2026 who received the approval from the Board Meeting which states that the General Chairman may represent the Chamber of Commerce and Industry of Banjarmasin City to file for the *a quo* petition as stated in the Minutes of Meeting Number 01/BA/KADIN-BJM/VI/2022 regarding the Board Meeting of the Chamber of Commerce and Industry of Banjarmasin City for the period of 2021-2026 and Petitioner II, Petitioner III, Petitioner IV, and Petitioner V in their respective qualifications as an individual Indonesian citizen who is a citizen of South Kalimantan and has explained the presumed loss of his constitutional rights to legal guarantees and protection. Therefore, the Court is of the opinion that Petitioner I, Petitioner II, Petitioner III, Petitioner IV, and Petitioner V (hereinafter shall be referred to as the Petitioners) have the legal standing to act as the Petitioners in the *a quo* petition;

Whereas the relocation of the capital is part of the regional management as the implementation of decentralization which aims to realize the effectiveness of regional government administration, to accelerate community welfare improvement, to accelerate public service quality improvement, to improve the quality of governance, to increase national competitiveness and regional competitiveness, and to maintain the uniqueness of local customs, traditions and cultures. Based on Article 48 paragraph (1) of Law 23/2014 the relocation of the capital is a Regional Adjustment;

Whereas historically the South Kalimantan Province was formed based on Law Number 25 of 1956 concerning the Formation of Autonomous Regions of the Provinces of West Kalimantan, South Kalimantan and East Kalimantan (Law 25/1956). Then, finally the South Kalimantan Province is regulated in the new law, namely the Law 8/2022. In the Academic Text of the South Kalimantan Provincial Bill, Law 8/2022 was drafted since the legal basis of its formation had expired because it was formed during the time when Indonesia was still using the 1950 Provisional Constitution, therefore there were a lot of content material that was not in accordance with constitutional developments.

Based on Item 223 Appendix II of Law Number 12 of 2011 concerning Formation of Legislation (Law 12/2011) to be able to change content material that is no longer in line with a legislation, such legislation may be revoked by another legislation which must be at the same level or may be revoked by another legislation which is at a higher level. Therefore, the Court is of the opinion that the amendment arrangements regarding the South Kalimantan Province as outlined in the form of a law are already in accordance with the provisions in Law 12/2011;

The content material regarding the regulation of the capital of South Kalimantan Province is one of the agreements made by the lawmakers at the time of discussion, and it was not the only content material in Law 8/2022. Therefore, the Court is of the opinion that the amendment arrangement regarding South Kalimantan Province in Law 8/2022 which also includes Banjarbaru City as the capital of South Kalimantan Province, even though this is new and different from Law 25/1956 which states that the location of the capital is in Banjarmasin, such law is still constitutional. Therefore, based on all of the aforementioned legal considerations, the arguments of the Petitioners regarding the relocation of the capital of the South Kalimantan Province from Banjarmasin City to Banjarbaru City as the substance regulated in Article 4 of Law 8/2022 is in contrary to the 1945 Constitution is legally unreasonable.

Based on the description of the aforementioned legal considerations, the Court is of the opinion that the provisions of the norms of Article 4 of Law 8/2022 apparently have not created any legal uncertainty and have provided legal protection as guaranteed by the 1945 Constitution. Therefore, the petition of the Petitioners is entirely legally unreasonable. Moreover, any other things shall not be considered because they are seen as irrelevant.

Therefore, the Court passed a decision which verdict is to dismiss the Petitioners' petition entirely.