



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE 58/PUU-XX/2022

Concerning

Formal Review of South Kalimantan Province Law

- Petitioner** : Chamber of Commerce and Industry (*Kamar Dagang dan Industri* or KADIN) of Banjarmasin City represented by Muhammad Akbar Utomo Setiawan as Chairman of the Chamber of Commerce and Industry of Banjarmasin City, Syarifuddin Nisfuady, et al.
- Type of Case** : Formal judicial review of 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** : The formation of Law 8/2022 is in contrary to the 1945 Constitution.
- Verdict** : To dismiss the Petitioners' petition entirely.
- Date of Decision** : Thursday, September 29, 2022.

Overview of Decision :

In submitting their petition, Petitioner I qualifies himself as a legal entity (Chamber of Commerce and Industry of Banjarmasin City) represented by Muhammad Akbar Utomo Setiawan as Chairman of the Chamber of Commerce and Industry of Banjarmasin City and considers that the establishment process of Law 8/2022 was carried out without exercising the right to have his opinion heard (*right to be heard*) regarding the relocation of the Province Capital of South Kalimantan, thus it has harmed Petitioner I as a forum for entrepreneurs because the impact of relocating the Province Capital of South Kalimantan will reduce the progress of supporting the development of infrastructure in Banjarmasin City. Whereas Petitioner II to V qualify themselves as individual Indonesian citizens and consider that their rights have been harmed because by moving the capital to Banjarbaru, the Provincial Government of South Kalimantan and Banjarbaru City will allocate the South Kalimantan Provincial Revenue and Expenditure Budget (*Anggaran Pendapatan dan Belanja Daerah* or APBD) for the cost of constructing facilities and infrastructure that supports the new provincial capital, namely Banjarbaru City, which should be used for the welfare of the people of South Kalimantan Province and other priority matters.

Regarding the authority of the Constitutional Court, the Court is of the opinion that it is in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution *juncto* Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) and therefore the object the petition of the Petitioners is a formal review of the law, *in casu* Law 8/2022 against the 1945 Constitution, then the Court has the authority to adjudicate the *a quo* petition.

Regarding the grace period for a formal review, based on the Constitutional Court Decision Number 47/PUU-XX/2022 which was declared in a trial open to the public on May

31 2022, it has been confirmed that the deadline for filing a petition for a formal review of any law against the 1945 Constitution is to be submitted within 45 (forty-five) days since its promulgation in the State Gazette of the Republic of Indonesia and Supplement to the State Gazette of the Republic of Indonesia. Furthermore, because Law 8/2022 was promulgated on March 16, 2022, the deadline for submitting a petition is April 29, 2022. Meanwhile, the Petitioners' petition was accepted by the Court on April 19, 2022. Thus, the petition filed by the Petitioners is still within the deadline for filing a petition for a formal review of a law.

Regarding the legal standing of the Petitioners, the Court is of the opinion that since the Decision of the Constitutional Court Number 27/PUU-VII/2009 and the subsequent decisions relating to the legal standing in terms of formal review of laws, the Court has taken the stand that the Petitioners must explain whether there is a direct link between the Petitioners with the law being petitioned for review. Regarding the requirements of legal standing in the formal review, the Court is of the opinion that the Petitioners have the legal standing to act as petitioners because there is a direct link between the Petitioners and Law 8/2022.

Furthermore, in considering the arguments of the Petitioners' petition in relation to the principle of clarity of purpose, the Court is of the opinion that the intent, purpose and urgency of establishing Law 8/2022 had been clearly outlined in the preamble and General Elucidation of Law 8/2022, among other things, that there was a need to adjust the legal basis for the formation of any province which is still based on the 1950 Provisional Constitution which is no longer compatible with the current concept of regional autonomy and reflects the uniqueness and direction of development based on the potential and characteristics of the region. Therefore, the argument of the Petitioners which states that the process for establishing Law 8/2022 had violated the principle of clarity of purpose is legally unreasonable.

Moreover, regarding the argument of the Petitioners' petition in relation to the principle of legal certainty because in the drafting process there were 3 (three) versions of the South Kalimantan Provincial Bills, the Court considered that the existence of more than one version of the Draft Bill in its establishment process was something that could not be avoided as a result of a series of refinement processes that must be passed by a bill to then be promulgated as law.

Furthermore, regarding the arguments of the Petitioners' petition in relation to the principle of proper establishment institution or official as well as the principle of conformity between types, hierarchy and content material, the Court is of the opinion that the procedure for relocating the capital as stipulated in Law 23/2014 and Minister of Home Affairs Regulation 30/2012 shall apply to the relocation of any capital city of a region without being followed or accompanied by the changes to the regional law. Or in other words, if you want to move the location of the capital city of a region without any amendment to the law on the establishment of such region, then the procedure as specified in Law 23/2014 and Minister of Home Affairs Regulation 30/2012 shall apply. However, in the event that there is a process of changing the law of a region in which it regulates the relocation of the capital city of a region, then the applicable procedure shall be to amend the law as stipulated in Law 12/2011. Because the change in the capital city is simultaneous with amendment in the Law on South Kalimantan Province, *in casu* the amendment of the province capital of South Kalimantan from Banjarmasin City to Banjarbaru City through Law 8/2022, the Court is of the opinion that this can be justified. Apart from that, in terms of the content material of a law, it is also more general and complex than the content material of a Government Regulation, thus it requires a more substantive and participatory discussion. Moreover, factually, the plan to relocate the Province Capital of South Kalimantan from Banjarmasin City to Banjarbaru City has apparently also been contained in the Regional Regulation of South Kalimantan Province Number 17 of 2009 concerning the Long Term Regional Development Plan of South Kalimantan Province for 2005-2025.

Then in relation to the arguments of the Petitioners' petition regarding the principle of openness, the Court is of the opinion that based on the description of the facts revealed in

the trial, it is clear that the legislators have made the efforts and activities in the context of disseminating information as well as opening up the space for public discussion in the process of establishing Law 8/2022, therefore the argument of the Petitioners' petition is legally unreasonable.

Thus, based on all of the aforementioned legal considerations, the Court is of the opinion that the establishment of Law 8/2022 has complied with the provisions for establishing a law according to the 1945 Constitution and therefore, the argument of the Petitioners which states that the process of establishing Law 8/2022 is not in accordance with the principles of good establishment of legislations as stipulated in the provisions of Article 5 letters a, b, c and g of Law 12/2011 is entirely legally unreasonable.

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