



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 37/PUU-XIX/2021**

**Concerning**

**Guarantee of Not Changing Licenses Must Comply with Legislation**

- Petitioner** : Yayasan Wahana Lingkungan Hidup Indonesia (WALHI or The Indonesian Forum for the Environment) represented by Nur Hidayati as the Chairman of the WALHI Board, et al.
- Type of Case** : Judicial review of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Law 3/2020) as partially amended by Law Number 11 of 2020 concerning Job Creation (Law 11/2020) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of Article 4 paragraph (2) and paragraph (3), Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3), and Article 172B paragraph (2) of Law 3/2020, as well as Article 162 of Law 3/2020 as amended by Article 39 number 2 of Law 11/2020 according to the Applicants is against the 1945 Constitution
- Verdict** : 1. To declare that the petition of the Petitioner regarding Article 4 paragraph (2) and Article 4 paragraph (3) 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, Supplement to the State Gazette of the Republic of Indonesia Number 6525) and Article 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) as amended with Article 39 point 2 of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573), as well as the Petitions of Petitioner III and Petitioner IV regarding Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3), and Article 172B paragraph (2) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining

- (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is inadmissible;
2. To declare that Article 17A paragraph (2) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Government shall guarantee that there will be no change in the utilization of space and areas as referred to in paragraph (1) in the Metal Mineral WIUP (mining business permit area) and Coal WIUP (mining business permit area) that have been determined as long as they do not conflict with the provisions of legislations";
  3. To declare that Article 22A of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Government shall guarantee that there will be no change in the utilization of space and areas in the WPR (people's mining area) that have been determined as long as they do not conflict with the provisions of legislations";
  4. To declare that Article 31A paragraph (2) 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, Supplement to State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Governments shall guarantee that there will be no change to the utilization of space and areas in the WIUPK (special mining business permit area) that have been determined as referred to in paragraph (1) as long as they do not conflict with the provisions of legislations";
  5. To declare that Article 172B paragraph (2) 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, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Governments shall guarantee that there will be no

change to the utilization of space and areas as referred to in paragraph (1) in WIUP, WIUPK, or WPR whose permits have been granted as long as they do not conflict with the provisions of legislations;"

6. To dismiss the remainder of the petition of the Petitioner.

**Date of Decision** : Thursday, September 29, 2022

**Overview of Decision** :

The Petitioners are WALHI as Petitioner I, JATAM Kaltim as Petitioner II, Nurul Aini as Petitioner III, and Yaman as Petitioner IV. Petitioner I and Petitioner II are non-governmental organizations that are active in the field of environmental and mining issues advocacy, while Petitioner III and Petitioner IV are individual Indonesian citizens affected by mining activities. The Petitioners believe that their constitutional rights as guaranteed by the 1945 Constitution have been specifically, actually and at least potentially violated as a result of the enactment of the norms of the *a quo* articles because the Petitioners did not get a good living environment and were not able to actively participate in providing input on the KK (working contract) and PKP2B (coal mining concession work agreement) evaluation process because the participation of the Petitioners in fighting for their rights to a good and healthy environment was increasingly remote, no longer in the regions through regional policies but through the central government . In fact, the Petitioners shall potentially lose their right to actively participate in providing inputs in the process of evaluating the KK and PKP2B because their extension is guaranteed by the *a quo* law. In addition, the Petitioners shall potentially experience constitutional rights loss in the form of obstacles to self-development and to gain a sense of security due to the enactment of provisions regarding criminal penalties for those who reject mining business activities in order to protect the environment so that it remains good and healthy.

Regarding the authority of the Court, because the Petitioners petitioned for a review of the constitutionality of a law, *in casu* Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Law 3/2020), as partially amended by Law Number 11 of 2020 concerning Job Creation (hereinafter shall be referred to as Law 11/2020). 2020), against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition;

Regarding the legal standing of the Petitioners, regardless of whether or not the arguments of Petitioner I and Petitioner II regarding the unconstitutionality of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3) and Article 172B paragraph (2) of Law 3/2020, as well as Article 162 as amended by Article 39 number 2 of Law 11/2020 are proven or not, the Court is of the opinion that Petitioner I and Petitioner II have the legal standing to act as Petitioners in the petition for reviewing the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3), and Article 172B paragraph (2) of Law 3/2020, as well as Article 162 of Law 3/2020 as amended by Article 39 number 2 of Law 11/2020.

Meanwhile regarding the Petitioner III and Petitioner IV, the Court is of the opinion that the legal standing to act as the Petitioners in the petition for reviewing the norms of Article 162 of Law 3/2020 which has been amended by Article 39 number 2 of Law 11/2020, but do not have the legal standing to act as the Petitioners in the petition for reviewing the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3), and Article 172B paragraph (2) of Law 3/2020.

The Petitioners petitioned for a review of the constitutionality of the *a quo* provisions, which in principal the Court is of the opinion as follows:

1. Whether the provisions of the norms of Article 4 paragraph (2) and the phrase "policy, administration, management and supervision" in the norms of Article 4 paragraph (3) of Law 3/2020 which eliminates the role of the regions in all aspects of control are in contrary to Article 28D paragraph (1), Article 28H paragraph (1), Article 28C paragraph (2), and Article 33 paragraph (4) of the 1945 Constitution.
2. Whether the provisions of the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of Law 3/2020, specifically in relation to the

guarantees that there will be no change in the utilization of space and areas in WIUP, WIUPK, or WPR are in contrary to Article 28H paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution.

3. Whether the provisions of the norms of Article 162 of Law 3/2020 as amended in Article 39 point 2 of Law 11/2020 are in contrary to Article 28C paragraph (1), Article 28D paragraph (1), and Article 28G paragraph (1) of the 1945 Constitution.
4. Whether the provisions of the norms of Article 169A paragraph (1) of Law 3/2020 regarding Guarantees for Granting the KK/PKP2B Permits and Article 169B paragraph (3) of Law 3/2020 regarding the continuation of contract/agreement operations are in contrary to Article 28H paragraph (1), Article 33 paragraph (3), and Article 33 paragraph (4) of the 1945 Constitution.

Whereas Minerals and coal are strategic natural resources and wealth that control the livelihoods of many people, moreover because of their non-renewable nature, control over them must really be aimed at the benefit or prosperity of the Indonesian people. The prosperity of the people which is the goal of controlling natural wealth by the State, can normatively be achieved if natural wealth, *in casu* Minerals and coal are managed by placing the interests of the people, the nation and the state as the top priority, regardless of whether such mining management is carried out by the Central Government or the Regional Government as long as such management does not neglect the role of each level of government. Based on this, the Court is of the opinion that the arguments of the Petitioners regarding the unconstitutionality of the norms of Article 4 paragraph (2) and paragraph (3) of Law 3/2020 are legally unreasonable.

As for Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of Law 3/2020, the Court is of the opinion that the provisions concerning the guarantees for the use of space and areas in the *a quo* provision can only be carried out as long as it do not conflict with the legislations, including the spatial planning regulations. Therefore, in order not to cause any constitutional problems in implementing the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of Law 3/2020 the Court emphasized the need for consistency not to violate the fulfilment of the requirements as determined by the legislations in guaranteeing the utilization of space and areas. Based on these considerations, the Court is of the opinion that Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of Law 3/2020 are in contrary to the 1945 Constitution if such norms are not furnished with the following interpretation: "as long as they do not conflict with the provisions of the legislations".

Furthermore, regarding the implementation for Article 162 of Law 3/2020 which has been amended by Article 39 point 2 of Law 11/2020, the Court stated that Law 11/2020 had been decided for formal review in the Constitutional Court Decision Number 91/PUU-XVIII/2020, which was later confirmed in the Constitutional Court Decision Number 64/PUU-XIX/2021. Decision Number 91/PUU-XVIII/2020 in principal states that the establishment of Law 11/2020 is in contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted as "no amendments have been made within 2 (two) years since this decision was declared".

Based on these decisions, the petition for a material review of Article 162 of Law 3/2020 as amended by Article 39 number 2 of Law 11/2020 is premature because it was filed during the grace period of 2 (two) years for formal revisions to Law 11/2020, which revision does not rule out the possibility of changes or improvements to the substance made by the legislators.

The Petitioners petitioned for reviewing Article 169A paragraph (1) of Law 3/2020. The Court is of the opinion that this norm has been previously reviewed and decided in the Constitutional Court Decision Number 64/PUU-XVIII/2020, against Article 27 paragraph (1) and Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution as the basis for such review.

The subject matter as petitioned for by the Petitioners in the *a quo* case turns out to be the same as the subject matter of the petition in Case Number 64/PUU-XVIII/2020 before it was decided. However Decision Number 64/PUU-XVIII/2020 has changed the interpretation of Article 169A paragraph (1) of Law 3/2020 even though it was not accompanied by a change in

the editorial sentence. This has resulted in Article 169A paragraph (1) no longer being read and/or understood as intended by the legislators that established Law 3/2020 prior to the Court Decision, but must be read/understood as the verdict in Decision of the Case Number 64/PUU-XVIII/2020.

This difference in meaning has resulted in the petition for reviewing the constitutionality of the norm of Article 169A paragraph (1) of Law 3/2020 which is no longer appropriate in its object. Therefore, the petition for reviewing the Article 169A paragraph (1) letter a and letter b of Law 3/2020 shall be declared as losing an object.

The Petitioners also petitioned for reviewing the Article 169B paragraph (3) of Law 3/2020. Against such petition, the Court is of the opinion of the *a quo* provisions is part of the Transitional Provisions which are intended to clarify the continuation of Operational Contract/Agreement based on the new provisions of Law 3/2020 as a logical consequence of the enactment of a special mining business permit (*Izin Usaha Pertambangan Khusus* or IUPK).

The Court is of the opinion that the appointment of the Minister as the party that can grant the IUPK is a logical-systematic consequence of handing over the management of mineral and coal mining to the Central Government. The Central Government in the context of mining management is none other than the President who is technically-administratively assisted by the minister. The minister also incapable of immediately grant an IUPK as a continuation of the Operational Contract/Agreement because he still have to consider the continuation of the operations, optimizing the potential for mineral or coal reserves in the context of mineral or coal conservation from the special mining business permit area (*Wilayah Izin Usaha Pertambangan Khusus* or WIUPK) for the operational activity stage production, as well as the national interest.

With regard to the Petitioners' argument regarding the non-involvement of the community in the process of granting IUPK as a continuation of the operation of a contract/agreement, the Court is of the opinion that Article 10 of Law 3/2020 clearly stipulates that the determination of mining areas shall be carried out in an integrated manner with reference to the opinions of relevant government agencies, the affected communities, and by taking into account ecological, economic, human rights, and socio-cultural aspects, as well as environmental insights. Therefore, the Court is of the opinion that the argument regarding the unconstitutionality of Article 169B paragraph (3) of Law 3/2020 is legally unreasonable.

From all legal considerations in the *a quo* Decision, the Court is of the opinion that the word "guarantee" in the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2) and Article 172B paragraph (2) of Law 3/2020 has created legal uncertainty so that they are conditionally in contrary to Article 28D paragraph (1) of the 1945 Constitution.

Meanwhile the review over the norms of Article 169A paragraph (1) of Law 3/2020 is losing an object, and the norms of Article 169B paragraph (3) of Law 3/2020 is not proven to cause injustice, legal uncertainty and inequality before the law as guaranteed in the 1945 Constitution, therefore the Court is of the opinion that the Petitioners' argument is legally unreasonable.

Furthermore, in relation to the norms of Article 162 of Law 3/2020 as amended by Article 39 point 2 of Law 11/2020, the Court considered the arguments of the Petitioners' petition are premature. Meanwhile, in reviewing Article 4 paragraph (2) and (3) of Law 3/2020, the Petitioners do not have the legal standing to submit a petition for reviewing the *a quo* article. Even if the Petitioners have the legal standing to petition for a review of the norms of Article 4 paragraph (2) and paragraph (3) of Law 3/2020, *quod non*, the arguments of the Petitioners' petition regarding the *a quo* articles are legally unreasonable.

Based on these considerations, the Court passed down a decision which verdict states:

5. To declare that the petition of the Petitioners regarding Article 4 paragraph (2) and Article 4 paragraph (3) 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, Supplement to the State Gazette of the Republic of Indonesia Number 6525) and Article 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of

2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) as amended with Article 39 point 2 of Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573), as well as the Petitions of Petitioner III and Petitioner IV regarding Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), Article 169A paragraph (1), Article 169B paragraph (3), and Article 172B paragraph (2) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is inadmissible;

6. To declare that Article 17A paragraph (2) of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Government shall guarantee that there will be no change in the utilization of space and areas as referred to in paragraph (1) in the Metal Mineral WIUP (mining business permit area) and Coal WIUP (mining business permit area) that have been determined as long as they do not conflict with the provisions of legislations";
7. To declare that Article 22A of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2020 Number 147, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Government shall guarantee that there will be no change in the utilization of space and areas in the WPR (people's mining area) that have been determined as long as they do not conflict with the provisions of legislations";
8. To declare that Article 31A paragraph (2) 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, Supplement to State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Governments shall guarantee that there will be no change to the utilization of space and areas in the WIUPK (special mining business permit area) that have been determined as referred to in paragraph (1) as long as they do not conflict with the provisions of legislations";
9. To declare that Article 172B paragraph (2) 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, Supplement to the State Gazette of the Republic of Indonesia Number 6525) is in contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted as "The Central Government and Regional Governments shall guarantee that there will be no change to the utilization of space and areas as referred to in paragraph (1) in WIUP, WIUPK, or WPR whose permits have been granted as long as they do not conflict with the provisions of legislations"
10. To dismiss the remainder of the petition of the Petitioner.