



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 67/PUU-XXI/2023**

Concerning

**Constitutionality of Health Facilities and Medical Expenses
in the Law on Harmonization of Tax Regulations**

Petitioner	: Leonardo Siahaan
Type of Case	: Judicial Review of Law 7 of 2021 concerning Harmonization of Tax Regulations (Law 7/2021) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	: Judicial Review of the Elucidation to Article 4 paragraph (1) letter a of Law Number 36 of 2008 concerning Income Tax (Income Tax Law) as contained in Article 3 number 1 of Law 7/2021 against the 1945 Constitution.
Verdict	: To dismiss the Petitioner's petition in its entirety.
Date of Decision	: Tuesday, January 16, 2024
Overview of Decision	:

Whereas the Petitioner is an individual Indonesian citizen who has previously worked and has the potential to work and is a tax payer who has suffered injury due to the enactment of the norms of the *a quo* article, namely the Elucidation to Article 4 paragraph (1) letter a of Law Number 36 of 2008 concerning Income Tax (Income Tax Law) as contained in Article 3 number 1 of Law 7/2021 against the 1945 Constitution.

Regarding the authority of the Court, since the Petitioner petitions for a review of Law 7/2021 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Petitioner is an Indonesian citizen who is a taxpayer as proven by a tax ID number (*Nomor Pokok Wajib Pajak* or NPWP), the Petitioner has worked and has the potential to work again and he believes that his constitutional rights is impaired due to the enactment of the Elucidation to Article 4 paragraph (1) letter a of Law 7/2021, specifically in relation to the health services and medical expenses which are also subject to or the objects of income tax. However, according to the Petitioner, health facilities and medical expenses should be tax objects that are exempt from being taxed as regulated in the previous Income Tax Law before it is amended in the Harmonization of Tax Regulations Law. In its legal considerations, in relation to the legal standing, the Court is of the opinion that there appears to be a causal relationship between the Petitioner's presumption of injury of constitutional rights and the enactment of the *a quo* Elucidation, therefore if the petition is granted, such injury will not occur. Therefore, regardless of whether the Petitioner's argument regarding the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Furthermore, regarding the subject matter of the petition, the Court in its consideration states the following:

- Whereas the norms of Article 4 paragraph (1) letter a of the Income Tax Law as contained in Article 3 number 1 of Law 7/2021 in principle equalize the treatment of income tax in the form of refund or compensation in connection with employment in the form of money or in kind and/or enjoyment. The norms of the *a quo* article must be understood comprehensively in relation to other norms. Even though the norm of Article 4 paragraph (1) letter a determines that any compensation in the form of in kind and/or enjoyment shall be considered as income and shall be a tax object, however not all compensation in the form of in kind and/or enjoyment are tax objects as argued by the Petitioner. In this regard, Article 4 paragraph (3) letter d number 5 of Income Tax Law as contained in Article 3 number 1 of Law 7/2021 also determines that any in kind and/or enjoyment of certain types and/or limits are exempted tax objects. This is stated in the norms of Article 4 paragraph (3) letter d of Income Tax Law as contained in Article 3 number 1 of Law 7/2021 which substantially determines the exempted tax objects, including refund or compensation in connection with employment or service in kind and /or enjoyment, including:
 1. food, food ingredients, beverage ingredients, and/or beverages for all employees;
 2. in kind and/or enjoyment provided in certain areas;
 3. in kind and/or enjoyment that must be provided by the employer in carrying out the work;
 4. in kind and/or enjoyment from or financed by the State Revenue and Expenditure Budget, Regional Revenue and Expenditure Budget, and/or Village Revenue and Expenditure Budget; or
 5. in kind and/or enjoyment with certain types and/or limitations.
- Whereas the Petitioner's petition requesting exemption on health and medical facilities has been accommodated in the provisions of Article 4 paragraph (3) letter d number 5 of Income Tax Law as contained in Article 3 number 1 of Law 7/2021. The regulation of exemption on objects in kind and/or enjoyment which are taxable aims to make the imposition of tax on refund or compensation in the form of in kind and/or enjoyment fairer and more targeted.
- Whereas regarding the Petitioner's argument that the collection of in-kind taxes is the Government's effort to discipline any companies that try to avoid taxes by providing facilities to their employees. This means that providing facilities to employees in the form of enjoyment (in kind) may add to the company's economic value. According to the Petitioner, the Government should not be of the view that health facilities are in-kind and/or enjoyment which add to the company's economic value, or for any other reasons, because any basis for the classification of health facilities as in-kind and/or enjoyment and thus tax objects cannot be justified and is unreasonable. Regarding the Petitioner's argument, the Court is of the opinion that the establishment of Law 7/2021 is the Government's effort to increase economic growth and accelerate economic recovery while still prioritizing the principles of justice and legal certainty. This change is also carried out as a form of optimizing state income which has an impact on the economy, welfare and livelihood of the Indonesian people. The main thing that concerns the Court in relation to the constitutionality issue of the norms of the *a quo* Article is whether there is any injustice or inequality that arises as a result of the regulation of such in kind and/or enjoyment. By looking at the fact that there are unexempted in kind and/or enjoyment provided to employees at high management levels, but in practice, they are not considered as tax objects, therefore they do not subject to income tax, whereas in reality, such in kind and/or enjoyment are able to

increase the welfare of the recipients, *in casu* the employees at high management levels. This will surely give rise to legal uncertainty for other workers who are not at high management levels, in the end it will result in violation of Article 28D paragraph (1) of the 1945 Constitution. The Court is of the opinion that justice does not always mean treating everyone the same, justice may also mean treating the same things in the same way and treating different things differently. Therefore, it would actually be unfair if different things were treated the same, *in casu* between the employees at high management levels and other employees who are not at high management levels.

- Whereas in connection with the above legal considerations and without any intention of the Court to review the legality of Minister of Finance Regulation 66/2023 which further regulates Law 7/2021, it has been determined that in kind and/or enjoyment with certain types and/or limitations which are exempted from the Income Tax objects, the types and/or restrictions of which are specified, among others as follows, the enjoyment of health and medical facilities from the employer to the extent that they are received or obtained by the employee and in the context of dealing with any work accidents, work-related illnesses, life-saving emergencies, or outpatient care and treatment as a result of work accidents and/or work-related diseases, are exempted from income tax objects (non-taxable). This is also to answer the Petitioner's concerns, that health service facilities and medical expenses provided by employers as income tax objects are inappropriate because health service facilities do not add to the taxpayer's economic value. This means that the Petitioner's concerns regarding the absence of exemption on the regulation of income tax objects have been answered. In this case, including the Petitioner's concerns regarding the wish that employees or workers are not charged any income tax for health facilities and medical expenses, such tax should be borne by the employer or entrepreneur. Therefore, the argument of the Petitioner is legally unjustifiable.
- Whereas pursuant to the entire description of the legal considerations above, the Elucidation of Article 4 paragraph (1) letter a of the Income Tax Law as contained in Article 3 number 1 of Law 7/2021 has evidently not created fair legal uncertainty as guaranteed in Article 28D paragraph (1) of the Constitution 1945 as argued by the Petitioner. Therefore, the Petitioner's argument is entirely legally unjustifiable.

Accordingly, the Court subsequently handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.