



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 155/PUU-XXI/2023**

Concerning

The Establishment of the Ministry of Taxes

Petitioner	: Sangap Tua Ritonga
Type of Case	: Judicial Review of Law Number 39 of 2008 concerning State Ministries (Law 39/2008) and Law Number 17 of 2003 concerning State Finance (Law 17/2003) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Material review of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008, and Article 6 paragraph (1) and paragraph (2) of Law 17/2003 against the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition entirely.
Date of Decision	: Wednesday, January 31, 2024
Overview of Decision	:

Whereas the Petitioner is an individual Indonesian citizen who works as a tax consultant with practice permit Number 4532/IP.A/PJ/2019. Moreover, the Petitioner also works as a Tax Attorney with permit Number Kep/739/PP/IKH/2022. The Petitioner describes that the enactment of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008, and Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 has caused the Directorate General of Taxes (DGT) to only be subordinate to the Ministry of Finance. This results in the DGT being ineffective and inefficient in carrying out its duties and authority. Moreover, this makes the DGT unable to work independently, inefficient, and ineffective so that it has direct implications as a cause of the suboptimal performance of the state income tax ratio from the tax sector, which results in the injury of the Petitioner's constitutional rights as an individual taxpayer. Moreover, the enactment of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008, and Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 causes the mechanism for resolving investigation cases and tax payments on tax criminal investigations, which cannot be resolved only through the DGT's Civil Servant Criminal Investigators (PPNS) but must be based on a prior request from the Minister of Finance to the Attorney General, resulting in no legal certainty for the Petitioner.

Regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of the norms of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008, and Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal position, the Court is of the opinion that the Petitioner has been able to describe specifically his constitutional rights which, according to him, have been injured by the enactment of the norms being petitioned for review, namely the norms of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008 and the norms of Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003. The assumption regarding the constitutional injury is specific and actual or at least has the potential to occur. Therefore, the assumption regarding the injury of constitutional rights as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the norms of the law being petitioned for review. If the *a quo* petition is granted, the injury of constitutional rights as described will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal position to act as a Petitioner in the *a quo* petition.

Whereas since the *a quo* petition is evident, then under Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas before further considering the arguments of the *a quo* the Petitioner's petition, the Court will first consider the Petitioner's petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (PMK 2/2021), so that the *a quo* norms may be resubmitted for review;

Whereas regarding this issue, the Court considers that the provisions of Article 5 paragraph (2) of Law 39/2008 previously have been submitted and decided in Constitutional Court Decision Number 42/PUU-XI/2013 which was pronounced in a plenary session open to the public on 10 September 2013, in which the verdict was, "To declare that the Petitioners' petition is inadmissible." Furthermore, regarding the judicial review of Article 15 of Law 39/2008, this case has been submitted before but the *a quo* case was withdrawn by the Petitioner and the withdrawal request was determined to be legally justifiable by the Court through Constitutional Court Decree Number 30/PUU-XVIII/2020 which was pronounced in a plenary session open to the public on 23 June 2020, in which the verdict was, among others, "To grant the withdrawal of the Petitioner's petition." Meanwhile, regarding the provisions of Article 6 paragraph (1) of Law 17/2003, previously they have been submitted and decided in Constitutional Court Decision Number 28/PUU-IX/2011 which was pronounced in a plenary session open to the public on 31 July 2012, in which the verdict was, "To declare to dismiss the Petitioner's petition entirely." Furthermore, after careful study, it is evident that Case Number 42/PUU-XI/2013 has the review bases of Article 1 paragraph (3), Article 24A paragraph (1), Article 27 paragraph (1), Article 28 paragraph (1), and Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution, while Case Number 28/PUU-IX/2011 has the review basis of Article 24 paragraph (1) of the 1945 Constitution, and the Petitioner's petition has the review bases of Article 17 and Article 23A of the 1945 Constitution. In addition, regarding the constitutional reasons used in Case Number 42/PUU-XI/2013, the phrase "law" in law and human rights gives the meaning of lack of certainty due to the phrase of law and phrase of human rights in the 1945 Constitution cannot specifically be used as a constitutional umbrella for government affairs. Meanwhile, the constitutional reason in the *a quo* petition is regarding the exclusion of the "tax" nomenclature as government affairs. Meanwhile, the constitutional reason used in Case Number 28/PUU-IX/2011 is that the phrase

“as Head of Government” has downgraded the position of the Supreme Court to be subordinate to the President as Head of Government. *Meanwhile*, the constitutional reason in the *a quo* petition is that the "tax" nomenclature in Article 23A of the 1945 Constitution is interpreted to be the management of tax as the "state revenue" by the President in his position as Head of State;

Whereas pursuant to the description above, the review bases in the petitions of Case Number 42/PUU-XI/2013 and Case Number 28/PUU-IX/2011 and the review basis in the *a quo* petition are different. Moreover, the constitutional reasons in the petitions of Case Number 42/PUU-XI/2013 and Case Number 28/PUU-IX/2011 and the constitutional reason in the *a quo* petition are different. Therefore, regardless of whether the Petitioner's petition is legally justifiable or not, under the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, the *a quo* petition may be re-submitted. Meanwhile, regarding Article 6 of Law 39/2008 and the norms of Article 6 paragraph (2) letter a of Law 17/2003, the Court considers that there is no relevance to relate them with the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021 because the *a quo* norms have never been reviewed at the Court.

Merits of the Petition

Whereas after the Court has carefully read the Petitioner's petition, examined the evidence submitted, and considered the Petitioner's arguments, the Court will then consider the merits of the Petitioner's petition as follows:

1. Whereas after the Court carefully examined the Petitioner's petition, as fully contained in the section of facts of the case, the constitutional issue that the Court must answer is whether the placement of the DGT subordinate to or under the Ministry of Finance as stated in the norms of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008 and the norms of Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 is contrary to the 1945 Constitution. This issue is very relevant because up to now the DGT has been part of the Ministry of Finance. As argued by the Petitioner, in order to increase professionalism, independence, transparency, and accountability for the success of tax ratio improvement, there is an interest in establishing a special ministry-level institution that has the authority to collect taxes/state revenues separately from the Ministry of Finance;
2. Whereas the governing powers of the state as contained, among other things, in CHAPTER III of the 1945 Constitution are an illustration of strengthening the presidential system of government. Among the efforts to strengthen the presidential system is to reorganize state institutions and the functions of state institutions in accordance with the mandate of changes to the 1945 Constitution. One of the reorganizations of state institutions is regarding the sovereignty of the people as stated in the provisions of the norms of Article 1 paragraph (2) of the 1945 Constitution. Prior to the amendment to the 1945 Constitution, the provisions of Article 1 paragraph (2) stated "Sovereignty shall be vested in the hands of the people and be executed by the People's Consultative Assembly (MPR)." After the amendment to the 1945 Constitution, the provisions of Article 1 paragraph (2) state, "Sovereignty shall be vested in the hands of the people and be executed according to the Constitution". This means that there has been a shift from the supremacy of the MPR to the supremacy of the constitution which has also created a legal rule for all state institutions in carrying out their functions, duties, and authorities under the constitution. Apart from the provisions above, the strengthening of the presidential system of government is also reflected in the provisions of the norms of Article 4 paragraph (1) of the 1945 Constitution which states, "The President of the Republic of Indonesia shall hold the governing powers according to the Constitution." In carrying out governmental powers, the President is assisted by state ministers who are appointed and dismissed by the President. These ministers are in charge of certain

government affairs in state ministries whose formation, change, and dissolution are regulated by law;

3. Whereas as a country with the people's sovereignty, in accordance with the law, and carrying out state government under the constitution, the state financial management system must be in accordance with the fundamental rules stipulated in the 1945 Constitution. In the 1945 Constitution Chapter VIII regarding financial matters, among other things, it is stated that the state budget of revenue and expenditure shall be stipulated every year by law, and taxes and other levies of compelling character for purposes of the state and the denomination and value of the currency shall be regulated by laws. Other matters regarding state finances under the mandate of Article 23C shall be stipulated by laws;
4. Whereas, regarding the Petitioner's argument that the placement of the DGT subordinate to or under the Ministry of Finance as contained in the norms of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008 and the norms of Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 is contrary to the 1945 Constitution, so there is an interest in establishing a special ministry-level institution that has the authority to collect taxes/state revenues separately from the Ministry of Finance, this matter is, in the Court's opinion, the legislators' open legal policy as contained in the provisions of Article 17 paragraph (4) and Article 23A of the 1945 Constitution. Such matter can be changed at any time following the demands of situation development or developments in the scope of government affairs, or can also be done through a legislative review. Moreover, the formation of state ministries and the provisions regarding taxes that are stipulated in laws actually illustrate that the mechanism of checks and balances against state powers, *in casu* the President is in place institutionally by the DPR. In addition, to the extent that these norms are not actually contrary to the 1945 Constitution, do not exceed the legislators' authority, do not constitute an abuse of authority, and are a mandate from the formulation of norms in the articles of the 1945 Constitution, there is no reason to the Court, as the guardian of the 1945 Constitution, to cancel or interpret the norms of the Article as stated in the Petitioner's *petitum* in the *a quo* petition. Therefore, the Petitioner's argument is legally unjustifiable.

Whereas pursuant to all the descriptions and legal considerations above, in the Court's opinion, it is evident that the norms of Article 5 paragraph (2), Article 6, Article 15 of Law 39/2008 and the norms of Article 6 paragraph (1) and paragraph (2) letter a of Law 17/2003 as argued by the Petitioner are not contrary to Article 17 paragraph (4) and Article 23A of the 1945 Constitution. Therefore, the Petitioner's petition is entirely legally unjustifiable.

The Court subsequently passed down a decision in which the verdict was to dismiss the Petitioner's petition entirely.