CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION FOR CASE NUMBER 164/PUU-XXI/2023

Concerning

Determination of Tariffs and Payment of Annual Compulsory Fees and Land Utilization Agreements Regarding Management Rights

Petitioners	:	**Anisitus Amanat and Budi Winarno Soejanto**
Type of Case	:	Judicial Review of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
Subject Matter	:	Article 136 paragraph (2) letter c and Article 138 of Law 6/2023 are contrary to Article 28 of the 1945 Constitution.
Verdict	:	To dismiss the Petitioners' petition in its entirety.
Date of Decision	:	Wednesday, January 31, 2024
Overview of Decision	:	

The Petitioners consist of Petitioner I who is an individual Indonesian citizen who works as a notary who was given an authority under a verbal power of attorney to take care of the renewal of 750 (seven hundred and fifty) expired Building Use Rights (*Hak Guna Bangunan* or HGB) certificates which are part of the land from the Management Rights (*Hak Pengelolaan* or HPL) on behalf of the Central Java Provincial Government and Petitioner II who is also an individual Indonesian citizen who stated that he owns a certificate for the HBG land that he purchased which was apparently given on an HPL land. The Petitioners argue that they have constitutional rights to obtain recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as guaranteed in Article 28D paragraph (1) of the 1945 Constitution which are injured by the enactment of the norms of Article 137 paragraph (2) letter c and Article 138 of Law 6/2023 because they have not received income due to the delays in the renewal of 750 (seven hundred and fifty) expired HGB certificates entrusted to Petitioner I and Petitioner II is required to make a land use agreement and pay the UWT (*Uang Wajib Tahunan* or Annual Compulsory Fees) for the land obtained under the sale and purchase agreement.

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of the norms of law, *in casu* Article 136 paragraph (2) letter c and Article 138 of Law 6/2023 against 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, the Petitioners have described their specific rights which they believe are injured actually or at least potentially according to reasonable reasoning would certainly occur because of the enactment of Article 137 paragraph (2) letter c and Article 138 of Law 6/2023. In addition, it has also been proven that there is a causal relationship

between the presumed injury of the Petitioners' constitutional rights and the norms of Article 137 paragraph (2) letter c and Article 138 of Law 6/2023 being petitioned for review. Therefore, if the *a quo* petition is granted by the Court, the presumed 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 Petitioners is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas since the *a quo* petition is clear, then pursuant to 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 intended in Article 54 of the Constitutional Court Law.

Furthermore, regarding the subject matters of the Petitioners' petition which questions the determination of UWT tariffs and payments as well as the existence of land use agreements as stipulated in the norms of Article 137 paragraph (2) letter c and Article 138 of Law 6/2023, therefore the Petitioners petition for the Court to declare it conditionally constitutional, the Court considers as follows:

1) whereas the management rights over land or what is often called HPL are not land rights such as Ownership Rights (*Hak Milik* or HM), Business Use Rights (*Hak Guna Usaha* or HGU), Building Use Rights (*Hak Guna Bangunan* or HGB), and Use Rights (*Hak Pakai* or HP) as regulated in Law Number 5 of 1960 concerning the 1960 Basic Agrarian Principles Regulations (Agrarian Law). HPL is a portion of state land where the authority to implement State Control Rights (*Hak Menguasai Negara* or HMN) is delegated to the HPL holder. In this case, the authority to implement HPL is partially delegated to the management rights holders. The state as the holder of rights and the government as the executor of state power organizations may grant the land in the form of HPL. The said HPL is given to the extent that the main duties and functions are directly related to the land management. The regulations of HPL come from the desire to realize the provisions of Article 33 paragraph (3) of the 1945 Constitution which states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In the context of land in Indonesia, the state has the right to control the land and then to regulate the designation, use, utilization and supervision of that land. In accordance with this, the HPL land cannot be transferred into ownership rights under the sale and purchase agreement, but it can only be granted business use rights, building use rights, and/or use rights in accordance with the provisions of the laws and regulations. Therefore, if the rights on the said HPL land have ended, the land will return to management land;

2) whereas currently HPL is accommodated in Law 6/2023 but the implementing regulations still use the Government Regulation 18/2021. In this case, Article 136 of Law 6/2023 states that, "Management rights are control rights from the state whose implementation authority is partly delegated to the right holder". Furthermore, in accordance with Article 137 paragraph (2) letter c of Law 6/2023, it is determined that the management right gives the authority to determine the tariffs and to receive income/compensation money and/or annual mandatory fees from third parties in accordance with the agreement. In the case of handing over the use of part of the land with management rights to a third party, this must be carried out under a land use agreement [*vide* Article 138 paragraph (1) of Law 6/2023]. As for HPL regulations by third parties, it is also regulated that business use rights, building use rights and/or use rights can be attached to HPL to the extent that they do not result in the transfer of these rights into private rights in accordance with the provisions of the laws and regulations. In the event that a building use right is granted, an extension and renewal of the said right may be granted if it has been used and/or utilized in accordance with the purpose for which the right was granted. Meanwhile, the supervision and control over the use and/or exploitation of HPL is under the authority of the Central Government. The next regulation is related to the expiration of land rights over

management rights land, subsequently, the land returns to HPL land [*vide* Article 138 paragraph (2) to paragraph (5) of Law 6/2023].

3) whereas from the above provisions, one of which regulates the state's authority to determine the fees that should be paid as contained in the agreement for the management of state land by third parties, as questioned by the Petitioners, the Court is of the opinion that it constitutes a form or part of the strengthening of HPL arrangements to provide a guarantee of legal protection and certainty. Because, for the land with management rights, other parties (third parties) who use HPL land should pay the tariffs and/or UWT in accordance with the purpose of its utilization. Likewise, if the person using the land is an HPL holder, the payment of tariffs and/or UWT would also be their obligation. Therefore, the tariffs and/or UWT are the obligations of any party who uses HPL land, not the HPL holder. For this reason, in the event that the utilization is carried out by another party (third party), it is carried out with a land utilization agreement, not a sale and purchase agreement (transfer of rights) as argued by Petitioner II when obtaining the HGB whose validity period has expired. In this regard, without the Court intending to assess the concrete case as experienced by Petitioner II, regarding the expired HGB certificates which have not been immediately extended, the land will automatically return to the HPL holder or return to the state if the HPL rights have expired. In relation to state owned land, it may be designated as land that is granted management rights, without the Court intending to assess the legality of Government Regulation 18/2021, a land that is granted management rights cannot be used as collateral for a debt and encumbered with mortgages and cannot be transferred or assigned to another party (third party), unless it is released for public purposes in accordance with the provisions of the laws and regulations [*vide* Article 12 paragraph (1), paragraph (2), and paragraph (3) of Government Regulation 18/2021]. Therefore, the existence of provisions that require land utilization agreements by third parties, including which contain the tariffs and/or UWT that are adjusted to the purpose of the utilization, is intended to provide legal protection and certainty between the HPL holder and any other party as HPL user, including on the HPL land to which the HGB is attached.

4) whereas the legality of Government Regulation 18/2021 may not affect the application of the norms of Article 137 paragraph (2) letter c and Article 138 of Law 6/2023 as higher regulations. Moreover, by looking closely at the *petitum* of the Petitioners' petition, namely *petitum* number 2 and number 3 which substantially petition for the Court to declare the norms in Article 137 paragraph (2) letter c and Article 138 of Law 6/2023 as conditionally constitutional, if the *a quo* petition of the Petitioners is granted, it would actually give rise to injustice and legal uncertainty. Because, apart from simply accommodating the concrete cases experienced by the Petitioners which are falling under the category of norms implementation, it will also give rise to other problems due to the emergence of a new interpretation of the application of the norms of the *a quo* Article. Therefore, regarding the UWT tariff not being determined or the delay in the extension/renewal of the HGB certificate carried out by Petitioner I or owned by Petitioner II, as argued, this is an issue of norms implementation, not an issue of the constitutionality of norms.

Pursuant to the entire description of the legal considerations above, Article 137 paragraph (2) letter c and Article 138 of Law 6/2023 have apparently not violated the rights to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law guaranteed in Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioners. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety