



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 30/PUU-XXII/2024**

Concerning the Constitutionality of Sanctions of Tax Crimes

- Petitioner** : Puguh Suseno
- Type of Case** : Judicial Review of Law Number 39 paragraph (1) letter d of Law Number 28 of 2007 concerning Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (Law 28/2007) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : The act of deliberately submitting a Tax Return and/or Statement Letter whose contents are incorrect or incomplete as regulated in Article 39 paragraph (1) letter d of Law 28/2007 and a fine of a maximum of 4 (four) times the outstanding amount of unpaid or underpaid tax regulated in Article 39 paragraph (1) letter i of Law 28/2007 are contrary to the principles of the rule of law regulated in Article 1 paragraph (3) and guarantee of fair legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution;
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Thursday, March 21, 2024
- Overview of Decision** :

The Petitioner is an Indonesian citizen who is a taxpayer, who believes that his constitutional rights as protected by Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution have been injured due to the enactment of the norms of the article being petitioned for review;

Regarding the Court's authority, because the petition is submitted to review the constitutionality of norms of law, *in casu* Article Law 28/2007 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioner;

Regarding the Petitioner's legal standing, 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 norm being petitioned for review. The Petitioner has also been able to describe the presumed constitutional injury which has a causal relationship (*causal verband*) with the enactment of the legal norms being petitioned for review, namely as an individual Indonesian citizen who is a taxpayer who has paid his tax in 2022. The Court is of the opinion that the Petitioner has a direct interest in the enactment of the legal norms that are the object of the *a quo* petition, because the Petitioner was named a suspect and suspected of violating Article 39 paragraph (1) letter d and letter i of Law 28/2007. Therefore, if the *a quo* petition is granted, the presumed constitutional injury as described will no longer occur. Therefore, regardless of whether 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 Petitioner in the *a quo* petition.

Whereas since the *a quo* petition is clear, 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.

Regarding the Petitioner's argument which states that the criminal sanction against taxpayer who submits Tax Return and/or Statement Letter whose content is incorrect or incomplete which cause losses to state revenues is an excessive sanction and is contrary to legal certainty and expediency, the Court is of the opinion that it cannot be separated from the self-assessment system adopted by the tax collection system in Indonesia. By using this self-assessment system, the taxpayer plays an important role in the success of the implementation of tax collection, including in carrying out the obligation to submit tax Return and/or Statement Letter whose contents are correct and complete, which is a logical consequence of the use of the self-assessment system. If the contents of the reported tax return are incorrect and incomplete, it will potentially cause losses to the state revenues, and this is an indication of tax avoidance and tax evasion. If this is done by a taxpayer, it will fall under the category of tax crime.

The Court is of the opinion that in law, criminal sanction is created as a consequence of an act that is considered detrimental to society and which must be avoided in accordance with the intent of the legal order. With the regulations against tax crime, taxpayers are able to reconsider whether they want to commit a crime, or be more thorough and careful so as not to commit any violation. Therefore, the choice to make an act of crime, *in casu* the act of not submitting a correct and complete tax return, which is detrimental to state revenue, it cannot be said to be excessive or disproportionate. Moreover, tax crimes cause losses to state revenue. Financial losses or state revenue losses, if they occur in massive amounts, will create uncertainty in state revenues and have a broad impact on development and social welfare.

The Petitioner in his petition only requested for the deletion of the act of submitting an incorrect tax return content which was carried out intentionally, but the Petitioner did not request that such act which was carried out due to negligence also be removed as a criminal act. In fact, Article 38 letter b of Law 28/2007 regulates the criminal act of submitting a Tax Return whose contents are incorrect or incomplete, thereby causing losses to state revenue, in the context of if it is carried out due to negligence, however the Petitioner did not petition for the review of the said norms. The Court is of the opinion that if the petition of the Petitioner is granted and the Court deletes Article 39 paragraph (1) letter d of Law 28/2007, then there will only be regulations regarding criminal sanctions for the act of reporting a tax return whose content is incorrect or incomplete due to negligence and there are no sanctions for the act that is carried out intentionally. This will not only create a legal vacuum, but will also create legal uncertainty.

Regarding the criminal sanctions regulated in Article 39 paragraph (1) letter d of Law 28/2007 whether they are proportional or not, including whether or not the act of submitting a Tax Return and/or statement letter whose contents are incorrect or incomplete which cause losses to state revenue needs to be sentenced to criminal sanctions. In several previous decisions, such as in the Decision of the Constitutional Court Number 46/PUU- XIV/2016 which was declared in a plenary session open to the public on 14 December 2017, the Court has stated its stance that regarding the norms of criminal law, the Court must not enter the area of criminal policy or criminal politics. The *a quo* Decision of the Constitutional Court Number 46/PUU-XIV/2016 then became the Court's stance in the subsequent Court decisions, that criminal policy to criminalize or decriminalize, including establishing proportional sanctions and determining criminal sanctions, such matters are under the authority of the legislators (criminal policy) which is a part of the politics of criminal law. Even though after the *a quo* Decision regarding decriminalization, the Court, in its Decision Number 87/PUU-XVII/2018

which was declared in a Plenary Session open to the public on 25 April 2019, has taken the stance that it may assess its constitutionality. However, regarding the norms of Article 39 paragraph (1) letter d of Law 28/2007, the Court considers that there is no constitutionality issue in stipulating that the action of taxpayers as regulated in the *a quo* norms is not an act of crime. Therefore, the Court is of the opinion that the *a quo* argument of the Petitioner is legally unjustifiable

Regarding the Petitioner's argument which questions whether criminal sanctions in the form of a fine of maximum of 4 (four) times the amount of outstanding tax that is unpaid or underpaid is imposed on taxpayers who deliberately do not remit the tax that should have been withheld or collected, it harms the sense of justice and does not provide expediency, the Court first examined the Petitioner's *petitum* number 3 and found the fact that the Petitioner had made a mistake in reading and fully understanding the material contained in Article 39 of Law 28/2007. The norms of Article 39 paragraph (1) letter i of Law 28/2007 should read, "Not remitting tax that should have been withheld or collected". Meanwhile, the part of the sentence "so that it can cause losses to state revenues is punishable by imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of outstanding tax that is unpaid or underpaid and a maximum 4 (four) times the amount of outstanding tax that is unpaid or underpaid", is a stand-alone sentence which is located under letters a to letter i of the norms of Article 39 paragraph (1) of Law 28/2007, therefore this sentence covers all actions which are regulated in letters a to letter i of Article 39 paragraph (1) of Law 28/2007. Therefore, the Petitioner made a mistake in reading and understanding the norms of Article 39 paragraph (1) of Law 28/2007. This mistake is also visible in the *posita* section of the petition on page 15. The Court is of the opinion that the Petitioner's mistake in reading and understanding the norms has made the Petitioner's petition unclear or obscure, which resulted in the Petitioner's petition not fulfilling the formal requirements for petitions as regulated in Article 10 paragraph (2) of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (Constitutional Court Regulation 2/2021). Pursuant to the legal considerations above, the Court is of the opinion that the *a quo* arguments and *petitum* of the Petitioner are unclear, so it has caused the *a quo* petition to be unclear or obscure (*obscur*)

Pursuant to the legal considerations above, Article 39 paragraph (1) letter d of Law 28/2007 has evidently fulfilled the principles of the rule of law and provides legal certainty as regulated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioner. Therefore, the argument of the Petitioner is legally unjustifiable. Meanwhile, the Court is of the opinion that the argument regarding the norms of Article 39 paragraph (1) letter i of Law 28/2007 is an unclear or obscure (*obscur*) argument, so that it does not fulfill the formal requirements for petitions as intended in Article 10 paragraph (2) of the Constitutional Court Regulation 2/2021 and is not considered further.

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