CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 24/PUU-XXII/2024

Concerning

Parties Who May Submit Case Reviews in State Administrative Disputes

Petitioner	:	**Rahmawati Salam**
Type of Case	:	Judicial Review of Law Number 5 of 1986 concerning State Administrative Court (Law 5/1986) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	Judicial Review of Article 132 paragraph (1) of Law 5/1986 against Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	1. To grant the Petitioner's petition in part. 2. To declare that Article 132 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Court (State Gazette of the Republic of Indonesia of 1986 Number 77, Supplement to the State Gazette of the Republic of Indonesia Number 3344) which reads, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent it is not interpreted, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court, except by State Administrative Bodies or Officials," so that the norms of Article 132 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Court (State Gazette of the Republic of Indonesia of 1986 Number 77, Supplement to the State Gazette of the Republic of Indonesia Number 3344) in full reads, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court, except by State Administrative Bodies or Officials"; 3. To order the publication of this Decision in the state gazette of the Republic of Indonesia;

4. To dismiss the remainder of the Petitioner’s petition.

Date of Decision : Wednesday, March 20, 2024

Overview of Decision :

Whereas the Petitioner is an Indonesian citizen. The Petitioner is the plaintiff in a State Administrative (TUN) dispute case at the Jakarta State Administrative Court (PTUN) against the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia.

Whereas regarding the Court's authority, because the Petitioner’s petition is a material review of the constitutionality of norms of Article 132 paragraph (1) of Law 5/1986 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the Petitioner's legal standing, the Petitioner has been able to describe that there is a causal relationship (*causal verband*) between the assumptions regarding the injury of constitutional rights and the enactment of the norms of Article 132 paragraph (1) of Law 5/1986, namely the existence of legal uncertainty and constitutionality issues regarding the unclear limits of the authority of State Administrative bodies or officials to submit a legal remedy of Case Review. Such injury of constitutional rights will no longer occur if the Petitioner's petition is granted. Pursuant to the description of these considerations, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the judicial review of the norms of Article 132 paragraph (1) of Law 5/1986.

Whereas because the *a quo* petition is evident, 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 the purpose of the establishment of the PTUN is to resolve disputes between the government and citizens arising from the implementation or use of government authority carried out in the capacity of the TUN Bodies or Officials which gives rise to conflicts of interest, disagreements, or disputes with citizens. On the one hand, the PTUN, which is also known as the state administrative court and an embodiment of the concept of a rule of law under the Pancasila and the 1945 Constitution, plays a role as an institution that has judicial control on the implementation of executive functions, especially on decisions and actions of the TUN bodies or officials so that they remain within the corridors of legal regulations. On the other hand, the PTUN is also a confirmation instrument for the TUN bodies or officials whose decisions and actions are deemed valid according to the principles of *presumptio rechmatigheid* (presumption of validity) until they are revoked or proven otherwise by the PTUN. This means that the PTUN is a judicial instrument in providing legal protection for citizens which must be carried out in order to prevent potential abuse of the authority of the TUN bodies or officials. Therefore, decisions and actions of the TUN Bodies or Officials are always considered correct, to the extent they are issued by authorized officials, processed according to appropriate procedures, and contain matters that do not conflict with statutory regulations. In such a context, the presence of the PTUN not only confirms the correctness of decisions or actions of the TUN Bodies or Officials who act in accordance with statutory regulations and the general principles of good governance (AUPB) but also their deemed correctness to the extent they are not canceled by the authorized TUN Bodies or Officials or declared invalid by a PTUN judge. Thus, the existence of the PTUN from the start was designed as a legal instrument for the protection of citizens, including protecting administrative and normative rights and the right to obtain fair legal certainty for citizens. In other words, the initial idea of the establishment of the PTUN was not only aimed at being an institution

for the legal protection of citizens, but also to facilitate and become a shield for citizens to avoid acts or actions of the TUN bodies or officials that violate the law (*onrechtmatige overheidsdaad*), exceed authority (*detournement de pouvoir*), and/or act arbitrarily (*dad van willekeur*).

Whereas the implementation of the duties and authority of the TUN Bodies or Officials must be in accordance with the provisions of laws and regulations and the AUPB to prevent the TUN Bodies or Officials from various forms of irregularities such as unlawful acts, abuse of power, and arbitrariness so that the TUN Bodies or Officials can use their authority appropriately and in accordance with the law and the AUPB. The AUPB not only functions as a guide for the government to carry out its duties and authority but also functions as a testing tool for judges in assessing the actions and decisions of the TUN Bodies or Officials, as well as a testing reason/basis for a lawsuit for citizens who feel that they have been prejudiced by decisions or actions of the TUN Bodies or Officials.

Whereas in the event of a TUN dispute, the plaintiff will face the defendant who is a TUN Body or Official. In this position, the position between the plaintiff and the defendant is often unequal, namely the defendant has a psychologically higher level than the plaintiff. This happens because the defendant, apart from having complete information, facilities, and infrastructure, is a body or official that carries out government affairs which of course is the party that has greater power, and is a body or official that carries out government functions (executive). Meanwhile, the plaintiff must first have a clear legal standing to be able to fight for his rights through the PTUN which he does not necessarily have. Moreover, the plaintiff of course is burdened with the burden of proof. Not to mention, in the case of a court decision, it is not necessarily the case that the TUN Body or Official who issued the object of the dispute has the obligation to implement the decision because normative legal remedies in the form of an appeal, cassation by law and case review (PK) are still available. As is the case in civil and criminal cases, a legal case actually has permanent legal force (*inkracht van gewijsde*) if the court decision of the first instance is not appealed by one of the parties. Likewise, a decision of the appellate court is declared to have permanent legal force if no cassation is submitted, as well as the decision of the court of cassation level itself. This means that a case that is tried up to the cassation level at the Supreme Court should have been completed because it has had permanent legal force. Therefore, even if one of the parties submits a Case Review, the decision at the cassation level does not prevent the implementation of the decision (execution) because the decision has had permanent legal force. In other words, after the decision has permanent legal force, *in casu* in the TUN cases, the principle of self-respect should apply, namely there is a requirement for the TUN bodies or officials to implement court decisions that have permanent legal force, which is completely handed over to the authorized bodies or officials, even though there is no authority for the PTUN to impose criminal sanctions. Thus, this situation makes the position of the TUN Bodies or Officials appear stronger than the position of citizens. In fact, Article 27 paragraph (1) of the 1945 Constitution guarantees equality before the law.

Whereas as a form of strengthening, respecting, and encouraging compliance with the PTUN decisions which have permanent legal force (*inkracht van gewijsde*) and at the same time as a form of legal protection for citizens (*rechtsbescherming voor de samenleving*), a petition for Case Review in the PTUN should be interpreted as being able to only be made and granted to a person or civil legal entity, and cannot be granted/made by a TUN Body or Official whose decision and/or action is the object of dispute in the PTUN and has been declared defeated by the PTUN. On this matter, the Court needs to emphasize this because not only that Case Reviews submitted by the TUN Bodies or Officials tend to delay the implementation of PTUN decisions and lead to delays in justice but also is counterproductive for law enforcement efforts in the field of the TUN. Therefore, in the Court's opinion, the obligation of the TUN Bodies or Officials who have been declared defeated to immediately implement the cassation decision and cannot submit a Case

Review is considered to fulfill the citizens' sense of justice, given that the PTUN is a place for defending the people's rights in the field of public law and a place for juridically testing the decisions and/or actions of the TUN Bodies or Officials against statutory regulations and the general principles of good governance. If the TUN Body or Official as the defendant is given the authority to submit a Case Review, even though the defendant has been allowed to take legal action in the form of an appeal and cassation by law but has been declared dismissed by the Panel of Cassation Judges at the Supreme Court, then this is the same as allowing the TUN Body or Official to not implement or to ignore decisions that have permanent legal force. Thus, giving the right/authority to the TUN Body or Official to submit a Case Review is actually counterproductive and creates legal uncertainty and injustice which is intolerable for the plaintiff, *in casu* a person or civil legal entity due to delays in the time for settling a case, which has an impact on delaying the execution or implementation of a decision which has the potential to deny justice itself as per the adage "justice delayed justice denied". In other words, not limiting the authority of the defeated TUN Body or Official to submit a Case Review, in the Court's opinion, has created legal uncertainty and injustice. However, if the *petitum* as desired by the Petitioner is followed, the norms of Article 132 paragraph (1) of Law 5/1986 will become incompatible as single unified norms in the *a quo* Article. So, it is important to interpret the *a quo* Article by adding an exception to the TUN Bodies or Officials. Therefore, in the Court's opinion, the norms of the *a quo* Article should be interpreted "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court, except by State Administrative Bodies or Officials". Thus, because the Court's interpretation is not as petitioned by the Petitioner as stated in the petition *petitum*, the Petitioner's petition is legally justifiable in part.

Pursuant to the entire description of the legal considerations above, Article 132 paragraph (1) of Law 5/1986 is contrary to the protection of the right to fair legal certainty as stated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution as argued by the Petitioner. However, because the Court's verdict is different from the *Petitum* petitioned by the Petitioner, the Petitioner's argument is legally justifiable in part.

Subsequently, the Court passed down a decision in which the verdict was:

1. To grant the Petitioner's petition in part.
2. To declare that Article 132 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Court (State Gazette of the Republic of Indonesia of 1986 Number 77, Supplement to the State Gazette of the Republic of Indonesia Number 3344) which reads, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court", is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent it is not interpreted, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court, except by State Administrative Bodies or Officials," so that the norms of Article 132 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Court (State Gazette of the Republic of Indonesia of 1986 Number 77, Supplement to the State Gazette of the Republic of Indonesia Number 3344) in full reads, "Against a Court decision that has obtained permanent legal force, a petition for case review may be submitted to the Supreme Court, except by State Administrative Bodies or Officials";
3. To order the publication of this Decision in the state gazette of the Republic of Indonesia;
4. To dismiss the remainder of the Petitioner's petition

Against the *a quo* decision, 2 (two) Constitutional Justices, namely Constitutional Justice Suhartoyo and Constitutional Justice Daniel Yusmic P. Foekh, have dissenting opinions.

1. Dissenting Opinion of Constitutional Justice Suhartoyo

Whereas the provisions of Article 132 of the TUN Law are actually in line with the provisions of Article 24 paragraph (1) of the Judicial Powers Law, which basically confirms that "Against a decision that has obtained permanent legal force, relevant parties may submit a case review to the Supreme Court if there are certain things or circumstances specified in laws".

Pursuant to the description of the legal considerations above, I am of the opinion that the Court should dismiss the *a quo* Petitioner's petition.

2. Dissenting Opinion of Constitutional Justice Daniel Yusmic P. Foekh

The Court has never received and decided on a petition for judicial review of Article 132 paragraph (1) of the PTUN Law. Meanwhile, in cases of judicial review, the Constitutional Court Law does not regulate the limitation of the period for deciding petitions for judicial review. Therefore, the Court should first hear statements from the legislators, including the Supreme Court and the Indonesian Judges Association (IKAHI), before deciding the *a quo* petition. In this context, there are several things that the Court needs to investigate further. For example, regarding the basic reasons for granting or not granting the right for the TUN bodies/officials to submit a case review, statistics on case reviews in the TUN cases, which parties use more of the right to submit a case review, and the effectiveness of using the extraordinary legal remedy mechanism in the form of case review. Due to its reluctance to hold a plenary session open to the public, the Court has closed the opportunity to obtain as much information and statement as possible in deciding the *a quo* petition. Moreover, limiting the right of the TUN bodies/officials to submit a case review has fundamentally changed the TUN judicial system.

Pursuant to the considerations above, in my opinion, the *a quo* petition should be declared to be dismissed.