



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 117/PUU-XXI/2023**

Concerning

**Acquisition of Land and/or Building Rights in the Form
of Transfer of Rights Due to Separation of Rights in Inheritance,
When Land and/or Building Rights Acquisition Fees are Owed Regarding
Sale and Purchase and Testamentary Grants, and Proof of Inheritance
Beneficiaries**

- Petitioner** : **Budi Wibowo Halim**
- Type of Case** : Judicial Review of Law 1 of 2022 concerning Financial Relations Between the Central Government and Regional Government (Law 1/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Phrases in Article 44 paragraph (2) letter a number 7, and Article 49 letter a, letter b and letter c of Law 1/2022 are contrary to Article 28D paragraph (1), Article 28G paragraph (1), and Article 28H paragraph (4) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Thursday, 12 September 2024
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen, he is one of the heirs and the maker of the testamentary grant. In addition, the Petitioner also works as a Notary who usually makes deeds of separation and distribution of inheritance and certificates of inheritance rights. According to the Petitioner, the validity of the phrases in Article 44 paragraph (2) letter a number 7, and Article 49 letters a, letter b and letter c of Law 1/2022 are contrary to Article 28D paragraph (1), Article 28G paragraph (1), and Article 28H paragraph (4) of the 1945 Constitution.

Regarding the authority of the Court, pursuant to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Article 10 paragraph (1) letter a of the Constitutional Court Law, Article 29 paragraph (1) of the Judicial Power Law, and Article 51 paragraph (3) of the Constitutional Court Law, because the Petitioner petitions for a formal review of the law, *in casu*, Law Number 1 of 2022 concerning Financial Relations Between the Central Government and Regional Government (State Gazette of the Republic of Indonesia of 2022 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 6757, hereinafter referred to as Law 1/2022) against the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the *a quo* petition;

Whereas regarding the legal standing of the Petitioner, the Court considers that the Petitioner has been able to describe his alleged constitutional loss, specifically and actually. The Petitioner believes his rights have been violated by the enactment of the phrase in the norm of Article 44 paragraph (2) letter a number 7 and Article 49 letters a, letter b and letter c of Law 1/2022. The Petitioner has also been able to describe the causal relationship (*causal verband*) between the alleged constitutional loss and the enactment of the legal norms being petitioned for review. Therefore, the Petitioner has the legal standing to act as Petitioner in the *a quo* Petition.

Regarding the Petitioner's argument that the phrase "separation of rights resulting in transfer" in the norm of Article 44 paragraph (2) letter a number 7 of Law 1/2022 is unconstitutional if it is not interpreted as "separation of rights resulting in transfer, not including separation and distribution of inheritance in the form of land rights to one or more heirs, pursuant to a deed of inheritance distribution made by an authorized official", according to the Petitioner, the acquisition of land rights due to inheritance for which BPHTB (fees for acquiring land and building rights) payments must be made is unfair to be re-imposed due to the transfer of land rights. It is important for the Court to emphasize that in this connection there is a difference between on the one hand a legal event - namely an undesirable event that occurs, for example due to death - and the occurrence of inheritance from the testator to the heirs. On the other hand, there are legal acts desired or planned by the parties, *in casu*, the heirs who intend to transfer the inheritance to one or more parties for joint ownership of the inheritance, *in casu*, the inherited land. Because the subsequent transfer of rights is a legal act that is desired or agreed upon by the parties, it gives rise to an obligation for the party who will obtain the rights to the land and/or building to make the BPHTB payment. This means that the Petitioner's *petitum* is not in line with the intended purpose of imposing BPHTB. Because the Petitioner requested that the following legal actions after the inheritance distribution must be considered as one series with the inheritance process, for which BPHTB payment has been made, where the land rights certificate for the inheritance has attached the names of all the heirs, then if all the heirs will transfer the rights to the inherited land to one or more heirs, this is already included in the category of legal acts of transfer/assignment of rights to the land. Therefore, there is no double payment of BPHTB as argued by the Petitioner. Therefore, the argument of the Petitioner who requested that the phrase "separation of rights resulting in transfer" in the norms of Article 44 paragraph (2) letter a number 7 of Law 1/2022 is legally unjustifiable;

Regarding the Petitioner's argument that the phrase "on the date of the making and signing of the sale and purchase agreement for the sale and purchase" in the norm of Article 49 letter a of Law 1/2022 is unconstitutional if it is not interpreted as "on the date of the making and signing of the sale and purchase deed before the Land Titles Registrar", according to the Petitioner, the regulation in the norm of the *a quo* Article has caused losses, in the form of the imposition of baseless BPHTB payment, because BPHTB should only be paid if the rights have been acquired. Meanwhile, pursuant to the PPJB (*Perjanjian Pengikatan Jual Beli* or sale and purchase agreement), there has been no acquisition of rights because the Petitioner in his position as a buyer pursuant to the PPJB does not receive the same treatment as a buyer in accordance with the Sale and Purchase Deed (*Akta Jual Beli* or AJB) made by the Land Titles Registrar. Therefore, the Petitioner in the *petitum* petitions that the maturity time of the BPHTB payment for the sale and purchase of land and/or buildings in the norm of Article 49 letter a of Law 1/2022, for it to have legal certainty, is interpreted as "on the date of the making and signing of the sale and purchase deed before the Land Titles Registrar". Regarding what is petitioned by the Petitioner in his *petitum*, this is the same as re-enacting the provisions of Article 90 paragraph (1) letter a of Law 28/2009 which was revoked by Law 1/2022;

Whereas the regulations related to the determination of when a BPHTB payment is outstanding in Law 28/2009 have also been regulated in the previous law, namely Law 21/1997. In fact, with the aim of optimizing tax revenue from BPHTB, the provisions of Article 9 paragraph (1) letter a of Law 21/1997 are accompanied by certain conditions and obligations for Land Titles Registrars/Notaries who can only sign a deed of transfer of rights to land and/or buildings after the taxpayer submits a proof of payment of his/her tax. To enforce this

obligation, it is also followed by the regulation of administrative sanctions aimed at the Land Titles Registrar and the head of the state auction office. The provisions stipulated in Law 21/1997 have apparently been referred to in Law 28/2009, including the imposition of administrative sanctions. However, it is not easy to enforce the regulation of these sanctions because it requires intensive supervision from the authorities to be able to effectively detect real conditions (in the field) regarding the actual sale and purchase transaction price of each land and/or building transaction that will be bound by the AJB (sale and purchase deed) of the Land Titles Registrar. In its development, Law 1/2022 does not regulate sanctions as in the two previous laws because the *a quo* law regulates financial relations between the central government and regional governments. Subsequently, as a further implementation of the provisions in Law 1/2022, Government Regulation Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Retributions (PP 35/2023) has been issued. Furthermore, regarding the regulation of responsibilities, obligations and sanctions for the Land Titles Registrars or notaries, and the heads of state auction offices in managing BPHTB, these matters are accommodated in the provisions of Article 60 of PP 35/2023;

Whereas with the amendment in the norms of Article 49 letter a of Law 1/2022, it will help reduce the sale and purchase transactions of land and/or building that are often detrimental to buyers because the BPHTB payment has been made since the PPJB (sale and purchase agreement) was signed, therefore from the start the government (tax office) may know about the transaction process through the PPJB as an initial agreement. Moreover, in relation to the taxpayer compliance, there is an obligation for notaries/Land Titles Registrar to report the PPJB that has been paid to the regional head. Regardless of the issue of encouraging taxpayer compliance, the determination that BPHTB is outstanding from the time the PPJB is signed, it will also encourage buyers to be more careful in purchasing property or conducting land and/or building sales transactions;

Whereas, in the future, in formulating the norms related to Article 49 letter a of the *a quo* Law 1/2022, the legislators must also consider the protection of constitutional rights for the citizens who are actually has limited ability to obtain land and/or building rights directly which may be stated in a sale and purchase deed made by a Land Titles Registrar, such as for the first buyer of land and/or buildings who in good faith is financially unable to purchase the land and/or buildings in cash and therefore must pay in instalments, and for the buyer of certain land and/or buildings whose certificate has not been divided or is still "controlled" by a third party because the certificate is used as collateral for debt, or for other things that may cause the transfer of rights not to be stated in a sale and purchase deed. Therefore, the land and/or building objects to be acquired cannot be paid in full or cannot be handed over to the purchaser/beneficiary of the acquisition rights to the land and/or building. Thus, the legal subject should still be given legal protection to be exempted from the obligation to pay BPHTB at the time the PPJB is made as intended in the provisions of Article 49 letter a of Law 1/2022, instead the legal subject may pay BPHTB after the PPJB has been paid in full and the transfer of the land and/or building objects that are the objects of the said transfer of rights has occurred;

Meanwhile, regarding the issue of BPHTB that has already been paid but the PPJB is then cancelled, the taxpayer is entitled to a tax refund (restitution). This provides legal certainty and protection for the taxpayer against any losses due to undue taxation. Regarding restitution, the Court emphasizes that the technical aspects of the return must be carried out through a simple and fast process so as not to disadvantage the taxpayers. In addition, in relation to the Petitioner's argument requesting that the BPHTB should be outstanding at the time the sale and purchase deed is signed, it is evident that this has been accommodated in the regulations in PP 35/2023. Therefore, the Petitioner's argument regarding the unconstitutionality of the phrase "on the date of the making and signing of the sale and purchase agreement for the sale and purchase" in the norm of Article 49 letter a of Law 1/2022 is legally unjustifiable;

Regarding the Petitioner's argument that the phrase "testamentary grant" in the norm of Article 49 letter b of Law 1/2022 is unconstitutional to the extent that it is not interpreted as "whereas regarding the testamentary grant, on the date the transfer of rights is registered to the

land office for a testamentary grant", the Court is of the opinion that a testamentary grant is only executed when the testator passes away so that the will may be opened to be read out and the parties who receives the rights from the testator may know the contents, therefore there would be no lawsuit from the heirs regarding *the legitime portie*;

Whereas the Petitioner's *petitum* stating that "on the date the transfer of rights is registered to the land office for a testamentary grant" was once used as a norm formulation in Law 21/1997 *jo.* Law 20/2000 when the said law was in force. However, in its development, Law 28/2009 amended the regulation that determines when BPHTB is outstanding for a testamentary grant, such formulation was then reused in Law 1/2022, namely "on the date the testamentary grant deed is made and signed". This is the starting point for the determination that the beneficiary of land and/or building rights in a testamentary grant is obliged to pay BPHTB when the deed is signed because the legal subject (taxpayer) and the object of BPHTB can be determined clearly and definitely pursuant to the testamentary grant deed. The provisions regarding the maturity time of BPHTB for the above testamentary grant are also intended to provide convenience for the beneficiary of the testamentary grant or the heir to immediately complete the application process of changing the ownership of the said land and/or buildings to the land office without having to go back and forth, instead the heir may immediately carry out the process of changing the ownership after paying the BPHTB. Law 1/2022 is only related to *an sich* taxation, so it does not regulate any matters relating to inheritance;

Whereas in the event that the heir (taxpayer) later denies the testamentary grant or revokes the testamentary grant deed, the taxpayer is also entitled to a refund (restitution) for the BPHTB that has been paid. Moreover, regarding the Petitioner's argument which in principle is concerned about the potential difficulty in getting the BPHTB restitution if he intends to revoke the testamentary grant, this is not a constitutionality issue of the norm but rather it is related to the implementation of the norm as has previously emphasized by the Court;

Whereas regarding the constitutionality issue disputed by the Petitioner, it is also important for the Court to remind that regarding the formulation of the norm of Article 49 letter b of Law 1/2022, in the future, the legislators must also provide legal protection for the beneficiaries of testamentary grants who is in good faith to be exempted from the obligation to pay BPHTB after the legal acquisition of the testamentary grant rights has been actually received, namely at least after the testamentary grant deed has valid legal force, that is after the testator passes away. Thus, it is not appropriate to impose BPHTB at the time the deed of gift-will is made, because there is a possibility that the said deed of gift-will has problems due to any formal or substantial requirements not being fulfilled, for example there may be a violation of *legitime portie* right and so forth. Therefore, the Petitioner's argument questioning the unconstitutionality of the phrase "testamentary grant" in the norm of Article 49 letter b of Law 1/2022 is legally unjustifiable;

Regarding the Petitioner's argument that the phrase "separation of rights resulting in transfer" in the norm of Article 49 letter b of Law 1/2022 is unconstitutional if it is not interpreted as "separation of rights resulting in transfer, not including the separation and distribution of inheritance in the form of land rights to one or more heirs, pursuant to a deed of inheritance distribution made by an authorized official", the Court is of the opinion that the phrase questioned by the Petitioner is still part of the provisions governing the determination of when BPHTB is outstanding. In Article 1 Point 32 concerning the amendment to Article 111 of the Agrarian Ministerial/Head of National Land Agency Regulation 3/1997, it is essentially regulated that registration of inherited assets may be carried out by making a deed regarding the distribution of inheritance that has been agreed upon between the heirs. Under the said provisions, the heirs may enter into an agreement on the parties who will be listed in the inheritance of rights to land and/or buildings, then it will be followed by an initial registration of the said inheritance of rights to land and/or buildings. In accordance with the agreement of the heirs on the name to be recorded in an inheritance of rights to land and/or building, whether a collective name of all heirs or only one or some of the heirs will be registered, then only the Inheritance BPHTB will be imposed. However, if at a later date the rights to the land and/or

building are transferred to another party, another BPHTB will still be imposed. Therefore, the Petitioner's argument questioning the unconstitutionality of the phrase "separation of rights that results in transition" in the norm of Article 49 letter b of Law 1/2022 is legally unjustifiable;

Regarding the Petitioner's argument that the phrase "inheritance beneficiary" in the norm of Article 49 letter c of Law 1/2022 is unconstitutional to the extent that it is not interpreted as "the inheritance beneficiary as evidenced by:

1. a will made before a notary, accompanied by a Will Certificate from an agency authorized to record the making of wills;
2. Court Decision, accompanied by a Will Certificate from an agency authorized to record the making of wills;
3. Decision made by of the judge/chief judge of court, accompanied by a Will Certificate from an agency authorized to record the making of wills;
4. A Declaration of Heirs made by the heirs witnessed by 2 (two) witnesses and acknowledged by the village head/sub-district head and sub-district head where the testator lived prior to his death, accompanied by a Will Statement from an agency authorized to record the making of wills;
5. Deed of Inheritance Rights made by a Notary, accompanied by a Will Certificate from an agency authorized to record the making of wills; or
6. Certificate of Inheritance Rights made by the Estates Office, accompanied by a Will Certificate from an agency authorized to record the making of wills." The Court is of the opinion that regarding the evidence as a beneficiary (heir), the Agrarian Ministerial/Head of National Land Agency Regulation 3/1997 which was later amended by the Agrarian Ministerial/Head of National Land Agency Regulation 16/2021 has determined the scope of evidence that can be used to prove that a person is a beneficiary (heir);

Whereas the law being petitioned by the Petitioner is not a law that specifically regulates inheritance but rather a law that generally regulates financial relations between central and regional government. Regarding the argument of the Petitioner who believes that the *a quo* Ministerial Regulation only applies specifically to inheritances in the form of the rights to land and/or buildings and not to any other type of inheritances, the Court is of the opinion that the norm of Article 49 letter c of Law 1/2022 is concerning the obligation to pay BPHTB that is imposed on the legal subject in the case on the ground of his/her inheritance, specifically the acceptance of the heir on the rights to land and/or buildings, so it is unsuitable for the *a quo* Article to include arrangements regarding the proof of beneficiary for all types of inheritance. Even if it is true that there are legal issues regarding proving someone as an heir, *quod non*, then it should be sufficient to only amend the related technical regulations. Moreover, proof of beneficiary for all types of inheritance is basically subject to inheritance law, property law in the Civil Code, and related technical regulations. Therefore, there is no issue on the unconstitutionality of the phrase "inheritance beneficiary" in the norm of Article 49 letter c of Law 1/2022, thus the Petitioner's argument must also be declared to be legally unjustifiable.

Pursuant to the above considerations, the Court then passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.