



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 19/PUU-XXII/2024**

Concerning

**Classification and Determination of Tariffs for Steam Bath/Spa Taxes
within Art and Entertainment Services**

- Petitioners** : **The Central Leadership Council of the Perkumpulan Pengusaha Husada Tirta Indonesia represented by Margaretha Maria Valentina Lianywati Batihalm as General Chairperson, the Central Leadership Council of Perkumpulan ASTI represented by Kusuma Dewi Sutanto as General Chairperson, et al.**
- Type of Case** : Judicial Review of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and the Regional Government (Law 1/2022) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 55 paragraph (1) letter I and Article 58 paragraph (2) of Law 1/2022 are contrary to Article 28D paragraph (1), Article 28G paragraph (1), Article 28H paragraph (1), and Article 28I paragraph (1) of the 1945 Constitution
- Verdict** :
1. To grant the Petitioners' petition in part
 2. To declare that the phrase "and steam bath/spa" in Article 55 paragraph (1) letter I of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and the 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) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "part of traditional health services"
 3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate
 4. To dismiss the remainder of the Petitioners' petition
- Date of Decision** : Friday, January 3, 2025
- Overview of Decision** :

Petitioner I and Petitioner II are legal entities, namely associations engaged in the spa business. Petitioner III to Petitioner IX are legal entities, namely business entities engaged in the business of spa services. Petitioner X to Petitioner XXII are individual Indonesian citizens

as business actors/workers in the business of traditional spa health services. The Petitioners believe that their rights are violated by the enactment of Article 55 paragraph (1) letter I and Article 58 paragraph (2) of Law 1/2022, causing social and financial losses, including a decline in the number of cultural tourists who use steam bath/spa services and the emergence of negative perceptions toward therapists and the spa industry in general.

With respect to the authority of the Court, 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 petition *a quo*.

Whereas with respect to the legal standings of the Petitioners, the Court is of the opinion that Petitioner I and Petitioner II as associations, and Petitioner III to Petitioner IX as business entities have been able to prove that their interests are represented by the parties authorized to represent them in accordance with their Articles of Association/Bylaws and the requirements imposed on a business entity. Likewise, Petitioner X to Petitioner XXII have also been able to prove that they are individual Indonesian citizens. Petitioner I to Petitioner XXII have been able to describe the assumed loss of constitutional rights, specifically and in actual fact, the constitutional rights are violated by the enactment of the phrase “and steam baths/spa” in the norms of Article 55 paragraph (1) letter I and Article 58 paragraph (2) of Law 1/2022. In addition, Petitioner I to Petitioner XXII have also been able to describe their loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms of the law being petitioned for review. Accordingly, Petitioner I to Petitioner XXII have the legal standings to submit the petition *a quo*.

With respect to the Petitioners’ argument regarding the phrase “and steam baths/spas” in Article 55 paragraph (1) letter I and Article 58 paragraph (2) of Law 1/2022 which are classified in the same category as discotheques, karaoke venues, nightclubs, and bars, should in fact be treated differently, because steam baths/spas fall within the category of traditional health services, the Court is of the opinion that the regulations governing the formulation of entertainment tax has existed long before the enactment of Law 1/2022, namely in the Elucidation to Article 2 paragraph (2) letter b of Law 18/1997, Elucidation to Article 2 paragraph (1) letter c of Law 34/2000, and Article 1 number 24 and number 25 of Law 28/2009. When Law 28/2009 came into force, the entertainment tax objects were classified into 10 (ten) groups as regulated in the provisions of Article 42 paragraph (2) of Law 28/2009, compared with the previous regulations, the current framework changes the classification of entertainment tax objects, including steam baths/spas, which are now categorized as part of art and entertainment services for tax purposes. In fact, steam baths/spas are substantially different from entertainment services such as discotheques, karaoke, nightclubs and bars.

Whereas the regulations regarding traditional health services were initially regulated in Law Number 36 of 2009 concerning Health (Law 36/2009). Pursuant to the provisions of Article 1 number 16 of Law 36/2009, the definition of traditional health services is treatment and/or care using methods and remedies based on empirically inherited knowledge and skills that are accountable and practiced in accordance with prevailing social norms. Traditional health services are an integral part of the national health system that has a strong foundation in local wisdom. Regulations regarding traditional health services that include promotive, preventive, curative, rehabilitative, and palliative aspects show that these services are not only complementary, but also a legitimate and recognized alternative in meeting the health needs of the community. This further emphasizes the position of traditional health services, such as steam baths/spas, which should be seen as part of traditional-based health efforts. In this context, services such as steam baths/spas that have health benefits based on local traditions should be considered as part of traditional health services. Upon further examination, and

without the Court intending to assess the legality of Minister of Health Regulation Number 8 of 2014 concerning Spa Health Services, it is evident that spas are classified under health services. The Regulation defines spa health services as holistic health services that combine various traditional and modern treatments using water, supported by other therapies such as herbal massage, aromatherapy, physical exercise, color therapy, music therapy, and dietary treatments, all of which provide therapeutic effects through the five senses to achieve balance of body, mind, and spirit, thereby ensuring optimal health.

Whereas pursuant to the legal facts above, placing “steam baths/spas” in the same category as discotheques, karaoke venues, nightclubs, and bars effectively classifies them as forms of entertainment, performances, games, recreational activities, or gatherings meant for amusement, which is not in line with traditional health services, and has resulted in harm to the Petitioners, including the imposition of negative stigma. Therefore, the phrase “and steam baths/spas” in the norm of Article 55 paragraph (1) letter I of Law 1/2022 is conditionally contrary to the 1945 Constitution of the Republic of Indonesia if it is not interpreted as “part of traditional health services”. Therefore, the argument of the Petitioners is legally justifiable. However, since the Court’s interpretation is different from the one stated in the petition of the Petitioners, the Petitioners’ petition is legally justifiable in part.

With respect to the Petitioners’ argument concerning the phrase “and steam baths/spas” in Article 58 paragraph (2) of Law 1/2022, which imposes a tax rate of at least 40 percent and up to 75 percent and places steam baths/spas in the same category as discotheques, karaoke venues, nightclubs, and bars, the Petitioners argue that such classification constitutes an act of injustice and discrimination. With respect to discrimination, the Court has established certain parameters, including in Constitutional Court Decision Number 024/PUU-III/2005, which has been reaffirmed in subsequent cases, most recently in Decision Number 35/PUU-XXII/2024. In these decisions, the Court emphasized that under Article 1 number 3 of Law Number 39 of 1999 on Human Rights, an act is considered discriminatory if it involves distinctions based on religion, ethnicity, race, group, class, social or economic status, gender, language, or political beliefs. In other words, these discrimination criteria do not relate to the determination of tax rates or the categories of businesses subject to tax.

Whereas with respect to the imposition of the highest tax rate of 75% (seventy-five percent) on certain types of businesses, this rate has in fact been in place since the enactment of Law 28/2009. Subsequently, with the reclassification of 5 (five) consumption-based taxes into a single type of tax, the previously fixed maximum rate of 75% (seventy-five percent) was changed into a graduated tax structure, as provided in Article 58 paragraph (2) of Law 1/2022. In this context, the Court is of the opinion that the minimum rate of 40% (forty percent) and the maximum rate of 75% (seventy-five percent) stipulated in Article 58 paragraph (2) of Law 1/2022 fall within the authority of the legislature, in accordance with the mandate of Article 23A of the 1945 Constitution of the Republic of Indonesia. With respect to the tariff amounts to be imposed in each region, these must be determined through regional regulations, taking into account the diversity of resources, characteristics, social conditions, and societal dynamics as part of the region’s authority to formulate local taxes (local taxing power).

With regards to the Petitioners’ objections to the tariff on Certain Goods and Services Tax, in addition to Law 1/2022 granting regional heads the authority to provide reductions, relief, exemptions, and postponements of payment of principal taxes and/or tax sanctions, the Law also provides for tax facilities intended to support business climate and investment growth in the regions. In this regard, Article 96 of Law 1/2022 is reinforced by Article 101 of Law 1/2022, which affirms the existence of a fiscal incentive scheme in the form of reductions, relief, exemptions, or elimination of principal taxes, principal levies, and/or sanctions. Fiscal incentives may be granted either upon the taxpayer’s request or on the initiative of the regional head, based on the following considerations: 1) the taxpayer’s ability to pay; 2) specific conditions of the tax object; 3) support and protection for micro and ultra-micro business actors;

4) alignment with regional policies and priority programs; 5) alignment with government policies to achieve national priorities. Furthermore, in granting fiscal incentives, the following factors must also be considered: 1) the taxpayer's compliance in paying and reporting taxes over the past 2 (two) years; 2) the continuity of the taxpayer's business; 3) the contribution of the taxpayer's business and investment to the regional economy and employment; 4) other factors determined by the regional head. To facilitate the implementation of the intended fiscal incentives, Government Regulation 35/2023 has been established as a concrete form of fiscal decentralization, enabling regions to exercise discretionary and responsible authority in setting priorities for managing their finances in a disciplined, efficient, productive, and accountable manner. The existence of regulations on fiscal incentives has already been utilized by several regions, including in the implementation of the Certain Goods and Services Tax, by imposing a lower limit (at least 40 percent) as stipulated in regional regulations. Under these incentive regulations, tax payments can in fact be reduced. For example, Buleleng Regent Regulation 1/2024 provides a 75% (seventy-five percent) reduction on the principal tax payable for steam baths/spas, thereby lowering the Certain Goods and Services Tax paid by consumers. Such incentive arrangements should be optimized by regions in accordance with their potential, including in relation to steam bath/spa tax objects.

Furthermore, to encourage and facilitate business/investment activities in the regions, the government, in line with national priority programs, may adjust tax policies set by regional authorities. This reflects the implementation of national fiscal policy, whereby the government can set nationally applicable tax rates and supervise and evaluate regional tax regulations that may hinder the investment ecosystem and the ease of doing business. The determination of nationally applicable tax rates includes rates for provincial and district/city taxes, as referred to in Article 4 of Law 1/2022. Accordingly, before a region enacts its tax regulations, the draft regulations must undergo evaluation by the government prior to implementation. In the event of rejection, the said draft tax regulations must be immediately revised. This mechanism is a part of preventive supervision so that no issue would arise from the enactment of any regional tax regulations. These provisions are fundamentally intended to establish consistent fiscal policies, support investment, and provide legal certainty for both local governments and business actors. Accordingly, with respect to the steam bath/spa tax rate questioned by the Petitioners, the determination of this rate falls within the authority of the lawmakers, as mandated by Article 23A of the 1945 Constitution of the Republic of Indonesia. Therefore, the argument *a quo* of the Petitioners is legally unjustifiable.

With respect to the Petitioners' argument on the classification of the 40% (forty percent) minimum and 75% (seventy-five percent) maximum tax imposed on steam baths/spas, which allegedly could result in double taxation affecting the sustainability of traditional health service businesses, the Court has given its considerations in Constitutional Court Decision Number 30/PUU-XI/2013 and Constitutional Court Decision Number 64/PUU-XI/2013, double taxation is defined as the imposition of tax more than once on the same tax subject for the same tax object. A closer examination of Law 1/2022 shows that the legal subject of the Certain Goods and Services Tax is the consumer of the taxed goods or services, while the taxpayer is the individual or entity that sells, delivers, and/or provides such goods or services. The taxable object is the steam bath/spa services. This means that the tax subjects are the consumers who use these services, whereas the Petitioners are taxpayers as steam bath/spa business operators, therefore, no double taxation occurs. Furthermore, with respect to the Petitioners' argument *a quo*, *in casu* as entrepreneurs in the steam bath/spa health service sector, the individual Petitioners face additional financial burdens that are not imposed on other traditional health service providers.

Whereas pursuant to Chapter IV of Value Added Tax Article 4A paragraph (3) letter h of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Law 7/2021) and the implementing regulations of Law 7/2021, namely Article 3 of the Regulation of the Minister of Finance Number 70/PMK.03/2022 concerning Criteria and/or Details of Food and Beverages,

Arts and Entertainment Services, Hotel Services, Parking Space Provision Services, and Catering Services that are Not Subject to Value Added Tax, regional tax objects and regional levies that include types of arts and entertainment services are exempt from the imposition of Value Added Tax (VAT). Accordingly, there is no double taxation as argued by the Petitioners. Therefore, the argument *a quo* of the Petitioners is legally unjustifiable.

Pursuant to all the legal considerations above, the Court in its verdict states,

1. To grant the Petitioners' petition in part.
2. To declare the phrase "and steam baths/spas" in Article 55 paragraph (1) letter I of Law Number 1 of 2022 concerning Financial Relations Between the Central Government and the 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) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "part of traditional health services."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioners' petition.