



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 188/PUU-XXII/2024**

**Concerning
Tax Regulations Pursuant to Tax Legislation**

- Petitioners** : PT Gemilang Prima Semesta, represented by Umar Arief as Director of PT Gemilang Prima Semesta and CV Belilas Permai represented by Akhmad Saqowi as Director of CV Belilas Permai
- Type of Case** : Judicial Review of Law Number 7 of 2021 concerning Harmonization of Tax Regulations (Law 7/2021) and Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (Law 42/2009) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 and Article 4 paragraph (1) of Law 42/2009 against Article 23A and Article 28D paragraph (1) of 1945 Constitution
- Verdict** : To dismiss the Petitioners' petition in its entirety
- Date of Decision** : Thursday, August 14, 2025

Overview of Decision

The Petitioners are private legal entities that have a business as agents of Liquefied Petroleum Gas (LPG) and they believe that the enactment of the norms of Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 and Article 4 paragraph (1) of Law 42/2009 have violated their constitutional rights because such norms have created legal uncertainty regarding the imposition of tax on any additional economic capacity received by taxpayers, in this case the Petitioners.

With respect to the Court's authority, because the Petitioners petition for a constitutionality review of the norm of statutory law, *in casu* Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 and Article 4 paragraph (1) of Law 42/2009 against Article 23A and Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

With respect to the legal standing of the Petitioners, as LPG agents, they essentially argue that their constitutional rights have been violated because they were subjected to Income Tax and Value Added Tax for receiving funds in the form of transportation costs for delivering 3-kg LPG cylinders from the agent to the base. The Petitioners are taxed on any additional economic capacity received or obtained, as well

as on the value of their activities, under laws and regulations that do not expressly regulate such taxation. If the Petitioners' petition is granted, the alleged constitutional loss as suffered by the Petitioners will no longer happen. In this matter, the Court is of the opinion that the Petitioners have specifically and actually described their alleged constitutional loss which they believe occurs due to the enactment of the legal norm being petitioned for review. Therefore, the Petitioners have the legal standing to act as Petitioners in the petition *a quo*.

Whereas in principle, the Petitioners argue that the norm of Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 and the norm of Article 4 paragraph (1) of Law 42/2009 have given rise to multiple interpretations and legal uncertainty, which is unfair and therefore contrary to Article 23A and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Regarding the Petitioners' arguments, the Court in principle considers the following:

- (1) Tax collection is an authority of the state derived from the doctrine of the state's special rights as an organization of power that regulates social life. However, in a democratic state based on law (*nomocracy*), and to prevent arbitrary tax collection, the state's authority to impose taxes must be regulated by law in accordance with the fundamental principle of tax law "*nullum tributum sine lege*," which means, no tax may be imposed without a valid legal basis, *in casu*, pursuant to a law. This principle affirms that tax collection may only be carried out pursuant to law. Consequently, all matters relating to taxation, including the type of tax, rates, and tax base, must be clearly and firmly regulated by law. This is consistent with Article 23A of the 1945 Constitution of the Republic of Indonesia, which provides that "Taxes and other compulsory levies for the needs of the state shall be regulated by law." The meaning of the word "compulsory," when accompanied by the phrase "regulated by law," affirms that the imposition of compulsory taxes must be carried out with the approval of the people's representatives in the House of Representatives. This also reflects the principle of no taxation without representation, under which any tax regulation issued by the government must go through a process approved by the people's representatives, in accordance with the principle of popular sovereignty. In other words, although the state possesses special authority to levy taxes and other compulsory charges, such authority may only be exercised for state purposes and solely with the approval of the House of Representatives through the law.
- (2) The norm of Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 explicitly provides that the object of taxation is any additional economic capacity received or obtained by a taxpayer from any source that may be used for consumption or to increase the taxpayer's wealth. The substance of Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 aligns with Article 23A of the 1945 Constitution of the Republic of Indonesia, as it affirms that taxes must be regulated by law and simultaneously refines the regulation of taxable objects compared with prior legislation, which had already detailed the classifications of taxable income. In this context, Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021 provides clarity regarding the meaning of "any additional economic capacity," as it is expressly defined in the Law *a quo* as an object of Income Tax. The clarity of these regulations ensures fair legal certainty in the imposition of Income Tax and upholds the principle of justice by imposing taxes based on economic capacity. By defining "economic capacity," the law reinforces the principle of fair legal certainty as guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.
- (3) With respect to statutory regulations below the level of a law that further implement Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021, the Court considers that such subordinate regulations are issued pursuant to delegation and are intended solely to govern technical and administrative matters. Therefore, there is no taxation on any additional economic capacity that is not prescribed by law. Regulations

issued under the law deal only with procedural and administrative implementation. Meanwhile, provisions on the highest retail price set out in regional regulations have no connection with the regulation of tax objects or the basis for imposing Income Tax. This is because regional regulations cannot expand the scope of Income Tax objects as stipulated in Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021. The norm of the article *a quo*, which defines additional economic capacity as a tax object, includes the profits received by agents or distributors from the sale of 3-kg LPG cylinders through sales margins. Therefore, if the Petitioners' *petitum* were granted by adding the phrase "pursuant to tax laws and regulations" to the wording "... any additional economic capacity received or obtained by the taxpayer" in Article 4 paragraph (1) of Article 3 point 1 of Law 7/2021, it would in fact create legal uncertainty and is contrary to fundamental principles of taxation, which require that tax norms be established by law. This is because such an addition would open the door to differing interpretations, potentially either expanding or narrowing the scope of taxable objects.

- (4) The norm contained in Article 4 paragraph (1) of Law 42/2009 forms part of the VAT regulations, which is an objective tax, its imposition is based on the object, whether a good, condition, action, or event, that gives rise to a tax obligation, without regard to the condition of taxpayers (in relation to the taxpayer's circumstance or capacity) as the subject. VAT is a tax on domestic consumption and is imposed only on goods or services consumed within the Indonesian customs territory. Accordingly, goods or services intended for consumption abroad are not subject to VAT in Indonesia. The imposition of VAT on the delivery of 3-kg LPG is not based on transportation costs. The policy of imposing a certain VAT amount on the delivery of LPG cylinders, *in casu* 3-kg LPG, is related to its status as a government-subsidized commodity, which entitles it to specific VAT facilities for each delivery transaction. This provision is intended to support the smooth functioning of community activities while upholding the principle of justice guaranteed by the constitution. This is because this provision ensures that the VAT payable is lower. Moreover, VAT is imposed only on the portion of the selling price that is not subsidized by the government.
- (5) With respect to the delivery of taxable goods, *in casu* 3-kg LPG, within the customs territory, agents or distributors who have been confirmed as taxable entrepreneurs are subject to VAT. The VAT payable is calculated by multiplying the applicable VAT rate by the tax base, which is the selling price. The selling price refers to the monetary value, including all costs charged or that should be charged by the seller due to the delivery of taxable goods, excluding VAT and any discounts stated on the tax invoice. If the agent's selling price includes transportation or other costs (other than VAT and discounts), such costs form part of the components that make up the selling price. Accordingly, for 3-kg LPG, the VAT base is the selling price, not the transportation cost.
- (6) Regarding statutory regulations below the level of a law that further implement Article 4 paragraph (1) of Law 42/2009, the Court is of the opinion that such subordinate regulations are issued pursuant to the delegation contained in the Law *a quo* and are intended solely to regulate technical administrative matters. Therefore, no tax may be imposed on any activity involving the delivery of goods or services as taxable objects unless it is provided for in the law. Meanwhile, subordinate regulations merely govern implementation procedures of a technical and administrative nature. With respect to technical regulations in the field of taxation, the Court emphasizes that the regulation of tax procedures through subordinate legislation is permissible only under certain conditions, namely: 1) the delegation of authority reflects the policy of the lawmakers; 2) the delegation of authority is expressly provided for by law; and 3) the delegation is limited to elaborating matters already regulated in the law. Adding the phrase "carried out pursuant to tax legislation" to the end of the norm in Article 4 paragraph

(1) of Law 42/2009 would, in fact, create legal uncertainty and be contrary to fundamental principles of taxation, under which the determination of tax objects must be regulated by law. Subordinate legislation, *in casu* regional regulations, may not serve as a legal basis and does not possess sufficient legal force to eliminate or reduce tax obligations that have been expressly established in Law 42/2009.

Pursuant to all the legal considerations above, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passes down a decision which verdict states to dismiss the Petitioners' petition in its entirety.