THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF DECISION
CASE NUMBER 137/PUU-XIII/2015
Concerning
the Cancellation of Regional Regulations

Petitioner	**:**	Association of Indonesian District Governments (*Asosiasi Pemerintah Kabupaten Seluruh Indonesia* - APKASI), et al
Type of Case	**:**	Judicial Review of Law Number 23 of 2014 concerning Regional Government (Regional Government Law) against the Constitution of the Republic of Indonesia of 1945 (UUD 1945).
Subject Matter	**:**	Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2); Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) regarding the phrase "...*cancellation of Regency/Municipal Regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by the decision of the governor as a representative of the Central Government*" which is contrary to Article 18, Article 18A, Article 24A paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution.
Verdict	**:**	To **Grant** the petition of Petitioner II to Petitioner VII, Petitioner IX to Petitioner XVII, Petitioner XX, Petitioner XXII, Petitioner XXV to Petitioner XXXV, and Petitioner XXXVII to Petitioner XXXIX for the examination of Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) regarding the phrase "...*cancellation of Regency/Municipal Regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by the decision of the governor as a representative of the Central Government*" of Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to State Gazette of the Republic of Indonesia Number 5587);
Date of Decision	**:**	Wednesday, April 5th, 2017.

Overview of Decision :

Petitioner I argues that as a forum for the only association of regents as regional heads of regencies throughout Indonesia that is a legal entity, which in its articles of association state that APKASI has the main task of facilitating the implementation of regional autonomy and has the function of being a facilitator in fighting for regional interests and aspirations to the government. Petitioner II, Petitioner XIII, Petitioner XIV, and Petitioner XXX argue that the Regional Government consisting of the Regent and the leaders of the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah* - DPRD) is an integral part of the administration of regional government affairs which the authority of the regional government is attached to it. Petitioners III through Petitioners XII, Petitioners XV to Petitioners XXIX, and Petitioners XXXI to Petitioners XLVI argue that the regional government which in this case are represented by the Regent/Vice Regent/Acting Regent/Acting Regent's Daily Officers is the element of administration of regional administration which according to the applicable laws and regulations it has the duty and authority to represent its area inside and outside of the court and may appoint its legal representative to represent them. Petitioner XLVII argues that as an individual Indonesian citizen who is the same as Petitioner I, he has the duty and function to fight for and guard the regional autonomy;

In relation to the jurisdiction of the Court, since what the Petitioners are asking for is a judicial review of the Law in this case the Regional Government Law against the 1945 Constitution, which is one of the jurisdiction of the Court, based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the jurisdiction to adjudicate the petition *a quo;*

In relation to the legal standing, according to the Court, Petitioner VII, Petitioner XVI, Petitioner XX, Petitioner XXV, and Petitioner XXX have the legal standing to apply for a petition regarding the examination of Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of the Regional Government Law. As for the petition concerning the examination of Article 251 paragraph (2), paragraph (3), and paragraph (8) as well as paragraph (4) regarding the phrase "...*cancellation of Regency/Municipal Regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by the decision of the governor as a representative of the Central Government"* of the Regional Government Law, Petitioner II to Petitioner VII, Petitioner IX to Petitioner XVII, Petitioner XX, Petitioner XXII, Petitioner XXV to Petitioner XXXV, and Petitioners XXXVII to Petitioner XXXIX have legal standing to apply for petition. Meanwhile, Petitioner I and Petitioner XLVII do not have the legal standing to apply for petition *a quo*;

Regarding the constitutionality review of the Laws *a quo* as argued by the Petitioners, the Court is of the opinion as follows:

1) That due to the review of the constitutionality of the provisions concerning the classification of government affairs and concurrent government affairs in the Regional Government Law, the Court has considered in the Constitutional Court Decision Number 87/PUU-XIII/2015 dated October 13th, 2016, therefore the consideration of the above decision shall apply *mutatis mutandis* to the arguments of the Petitioners *a quo*. Likewise, the review of the constitutionality of the provisions concerning the administration of government affairs in the forestry, marine and energy and mineral resources sectors as well as the authority of the

provincial regions in the management of natural resources in the sea is an optional government affair, so that it is substantially the same as the provisions concerning the electricity in the Regional Government Law which has also been considered by the Court in the Constitutional Court Decision Number 87/PUU-XIII/2015 dated October 13th, 2016, therefore the consideration of the decision above shall also apply *mutatis mutandis* to the arguments of the Petitioners *a quo*. Based on the above considerations, the arguments of Petitioner VII, Petitioner XVI, Petitioner XX, Petitioner XXV, and Petitioner XXX for the review of the constitutionality of the classification of government affairs as referred to in Article 9 and concurrent government affairs as referred to in Article 11, Article 12, and Article 13, Article 15, Article 16 paragraph (1) and paragraph (2), Article 17 paragraph (1), paragraph (2), and paragraph (3), and Article 21 of the Regional Government Law as well as the review of the constitutionality of the administration of Government Affairs in the forestry, marine, and energy as well as mineral resources sector as referred to in Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) as well as the authority of the province in managing natural resources at sea as referred to in Article 27 paragraph (1) and paragraph (2) as well as Article 28 paragraph (1) and paragraph (2) of the Regional Government Law, it is not justified according to the law;

2) Whereas Article 251 paragraph (2) and paragraph (3) of the Regional Government Law give authority to the Minister and governors as the representatives of the Central Government to cancel Regency/Municipal Regulations that contradict the provisions of higher laws and regulations, in addition to deviating from the logic and structure of the Indonesian legal state as mandated by Article 1 paragraph (3) of the 1945 Constitution, it also negates the role and function of the Supreme Court as an institution authorized to conduct judicial review to the legislation under the Law in this case the Regency/Municipal Regulations as confirmed in Article 24A paragraph (1) of the 1945 Constitution. Likewise, regarding the public interest and/or decency which is also used as a benchmark in cancelling the Regional Regulations as contained in Article 251 paragraph (2) and paragraph (3) of the Regional Government Law, according to the Court, it is also the domain of the Supreme Court to apply the benchmark, in addition to the provisions of higher laws and regulations, because it has been contained in the law, so that it can also be used as a touchstone by the Supreme Court in adjudicating the judicial review.

3) Whereas the cancellation of the Regency/Municipal Regulations stipulated by the decision of the governor as a representative of the Central Government as referred to in Article 251 paragraph (4) of the Regional Government Law, according to the Court, it is not in accordance with the statutory regime adopted by Indonesia. Article 7 paragraph (1) and Article 8 of Law 12/2011 do not recognize the decision of the governor as one of the types and hierarchies of legislation. Therefore, the position of the decision of the governor is not part of the statutory regime, thus it cannot be used as a legal product to cancel Regency/Municipal Regulations. In other words, according to the Court, there was an error where the Regency/Municipal Regulations as the legal product in the form of regulation (*regeling*) can be cancelled by the decision of the governor as the legal product in the form of a decision (*beschikking*). In addition, the excess of the legal product of cancelling the Regional Regulations in the executive sphere with the legal product of governor decrees as stipulated in Article 251 paragraph (4) of the Regional Government Law has the potential to cause duality in court decisions if the authority to review or to cancel the Regional Regulations lies with the executive and judicial institutions. In the event that the Regency/Municipal Regulations is cancelled through the decision of the governor, the legal remedies that can be taken are through the State Administrative Court (*Pengadilan Tata Usaha Negara* - PTUN) and if such legal remedy is granted, the

Regency/Municipal Regulations which has been cancelled by the decision of the governor shall become valid again. On the other hand, there are legal remedies to review the Regional Regulation through the Supreme Court that can be applied for by the Government, the community in the relevant area or any parties who feel aggrieved by the enactment of the Regional Regulation. For example, if the legal remedy through the Supreme Court is granted, the regional regulation shall be declared invalid. Thus, there has been dualism in the same issue. The dualism potential of court decisions between the PTUN decision and the decision to review the Regional Regulation by the Supreme Court regarding the same substance of case, only differs in terms of legal products, such circumstances shall create legal uncertainty, even though legal certainty is the right of everyone that is guaranteed and protected by Article 28D paragraph (1) of the 1945 Constitution. Therefore, for the sake of legal certainty and to be in accordance with the 1945 Constitution, according to the Court, the review or cancellation of regional regulations is the domain of the constitutional authority of the Supreme Court.

4) Based on the above description, Article 251 paragraph (2), paragraph (3), and paragraph (4) of the Regional Government Law insofar as it concerns the Regency/Municipal Regulations, it is contrary to the 1945 Constitution as argued by Petitioners II to VII, Petitioners IX to XVII, Petitioners XX, Petitioners XXII, Petitioners XXV to Petitioners XXXV, and Petitioners XXXVII to Petitioners XXXIX which have legal grounds. Likewise, Article 251 paragraph (8) of the Regional Government Law which regulates the mechanism for filing any objections to the cancellation of Regency/Municipal Regulations as stipulated in Article 251 paragraph (2), paragraph (3), and paragraph (4) of the Regional Government Law which the Court has declared is contrary to 1945 Constitution, so that Article 251 paragraph (8) of the Regional Government Law loses its relevance, therefore Article 251 paragraph (8) of the Regional Government Law insofar as it concerns the Regency/Municipal Regulations, it must also be declared contrary to the 1945 Constitution.

5) That because Perkada is one of the types of legislation based on Article 8 paragraph (2) of Law 12/2011, but because it is formed only by the head of the region as a unit *rubestuur* in order to implement the regulations and mandatory government affairs as specified in the Regional Government Law, thus within the framework of the unitary state, the Central Government as the higher unit *bestuur* has the authority to cancel Perkada. The cancellation and the mechanism for filing any objections to the cancellation of Perkada in the Regional Government Law is part of the supervision mechanism from the President or Minister and Governor as a representative of the Central Government to the Regional Government or in other words as a form of supervision, not judicial review, in the *bestuur* environment by the higher unit *bestuur* to the lower *bestuur*. The previous Regional Government Laws, both Law Number 22 of 1999 and Law Number 32 of 2004, did not have any provisions governing the cancellation of Perkada and the mechanism for filing any objections to its cancellation, unlike the Regional Regulations. The mention of Perkada uses 2 (two) terms of regional head regulation and/or regional head decision [see Article 146 of Law Number 32 of 2004 on Regional Government] or only with the term regional head decision [vide Article 72 of Law Number 22 of 1999 concerning Regional Government]. In its development, the Regional Government Law regulates the cancellation of Regional Regulations and the mechanism for filing any objections to their cancellations as regulated together with the Regional Regulations. Based on these developments, according to the Court, the Legislators establish Perkada as a regional head decision or also called a state

administrative decision, even though the legal product is in the form of a regent/mayor regulation, so that the control mechanism by the government above it can be carried out and is not contrary to the 1945 Constitution. The government control mechanism above it is the scope of state administration functions (*bestuursfunctie*). Based on the above description, the arrangement of cancellation of Perkada in this case regent/mayor regulation and the mechanism for filing any objections to its cancellation as regulated in Article 251 paragraph (2), paragraph (3), paragraph (4), and paragraph (8) of the Regional Government Law according to the Court is not contrary to the 1945 Constitution, therefore Petitioner II to Petitioner VII, Petitioner IX to Petitioner XVII, Petitioner XX, Petitioner XXII, Petitioner XXV to Petitioner XXXV, and Petitioner XXXVII to Petitioner XXXIX insofar as it concerns the regent/mayor regulation, it is not justified according to law.

Whereas based on the entire description of the considerations above, according to the Court, the subject matter of the petitions of Petitioners II to VII, IX to XVII, XX, XXII, XXV to XXXV, and XXXVII to XXXIX insofar as it concerns the request for examination of Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) regarding the phrase "...*cancellation of Regency/Municipal Regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by the decision of the governor as a representative of the Central Government*" of the Regional Government Law, it is justified according to the law. Therefore, the Court has subsequently rendered the following verdicts:

1. To state that the petition of Petitioner I, Petitioner VIII, Petitioner XVIII, Petitioner XIX, Petitioner XXI, Petitioner XXIII, Petitioner XXIV, Petitioner XXXVI, Petitioner XL to Petitioner XLVII, **are unacceptable**;
2. To state that the petition of Petitioner II to Petitioner VI, Petitioner IX to Petitioner XV, Petitioner XVII, Petitioner XXII, Petitioner XXVI to Petitioner XXIX, Petitioner XXXI to Petitioner XXXV, and Petitioner XXXVII to Petitioner XXXIX insofar as it concerns the examination of Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of Law Number 23 of 2014 concerning the Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587), **are unacceptable**;
3. To **grant** the Petitioner II to Petitioner VII, Petitioner IX to Petitioner XVII, Petitioner XX, Petitioner XXII, Petitioner XXV to Petitioner XXXV, and Petitioner XXXVII to Petitioner XXXIX insofar as it concerns the examination of Article 251 paragraph (2), paragraph (3), and paragraph (8) and paragraph (4) regarding the phrase "...*cancellation of Regency/Municipal Regulations and regent/mayor regulations as referred to in paragraph (2) shall be stipulated by the decision of the governor as a representative of the Central Government*" of Law Number 23 of 2014 concerning the Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587);
4. To state the phrase "*Regency/Municipal Regulations and*" in Article 251 paragraph (2) and paragraph (4), the phrase "*Regency/Municipal Regulation and/or*" in Article 251 paragraph (3), and

the phrase "*Regency/Municipal Regional Government administrators cannot accept the decision to cancel Regency/Municipal Regulations and*" and the phrase "*Regency/Municipal Regulations* or" in Article 251 paragraph (8) Law Number 23 of 2014 concerning the Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587) are contrary to the 1945 Constitution of the Republic of Indonesia and do not has binding legal force;

5. To **dismiss** the petition of Petitioner VII, Petitioner XVI, Petitioner XX, Petitioner XXV, and Petitioner XXX insofar as it concerns the examination of Article 9; Article 11; Article 12; Article 13; Article 14 paragraph (1), paragraph (2), paragraph (3), and paragraph (4); Article 15; Article 16 paragraph (1) and paragraph (2); Article 17 paragraph (1), paragraph (2), and paragraph (3); Article 21; Article 27 paragraph (1) and paragraph (2); Article 28 paragraph (1) and paragraph (2) of Law Number 23 of 2014 concerning the Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244 and Supplement to the State Gazette of the Republic of Indonesia Number 5587);
6. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate;

In relation to this Court's decision insofar it concerns the Regency/Municipal Regulations, there are 4 (four) Constitutional Justices namely Arief Hidayat, I Dewa Gede Palguna, Maria Farida Indrati, and Manahan MP Sitompul who have dissenting opinions which in essence state that the Regional Government Law which gives the President the authority (through the Minister and governor) to cancel regional regulations and regional head regulations is not intended to replace or take over the authority of judicial review in the hands of the holder of judicial or judiciary power. In other words, the Regional Government Law does not hinder or eliminate the rights of any parties who feel aggrieved by the enactment of any regional regulation or regional head regulation to petition for judicial review.