



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA**

**SUMMARY OF THE DECISION
CASE NUMBER 26/PUU-XIX/2021**

Concerning

**Authorities of the Indonesian Audit Board in Conducting Investigative Audits
of Pertamina Pension Funds**

Petitioner: Muhammad Helmi Kamal

Type of Case : Review over Law Number 15 of 2006 regarding the Indonesian Audit Board (Law 15/2006) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)

Subject Matter : Review over the phrase "any other institution or agency which manages the state finance" in Article 6 paragraph (1) in conjunction with the phrase "any other institution or agency which administer the management of the state finance" in Article 10 paragraph (1) of Law 15/2006 in contradiction with Article 1 paragraph (3), Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.

Verdict : To dismiss the Petitioner's petition in its entirety.

Decision : Wednesday, September 29th, 2021

Overview of Decision:

The Petitioner is an Indonesian citizen who believes that he has suffered damages from the phrase "any other institution or agency which manages the state finance" in Article 6 paragraph (1) in conjunction with the phrase "any other institution or agency which administers the management of the state finance" in Article 10 paragraph (1) of Law Number 15 of 2006 regarding the Indonesian Audit Board (Law 15/2006) due to multiple interpretations regarding the scope of the state assets and/or the state finance which had caused the Pertamina Pension Fund (DP Pertamina) to be scrutinized by the Indonesian Audit Board and the Petitioner as the President Director of DP Pertamina was eventually convicted in a corruption case;

Whereas in relation to the authority of the Constitutional Court (Court), given that the petition requested a formal review over a law, in this case Law 15/2006, the Court has the jurisdiction to hear the petition in this case.

In relation to the legal standing of the Petitioner, in this matter the Petitioner declares himself as an Indonesian citizen whose constitutional rights are potentially prejudiced by the application of the phrase "any other institution or agency which manages the state finance" in Article 6 paragraph (1) in conjunction with the phrase "any other institution or agency which

organizes the management of the state finance” in Article 10 paragraph (1) of Law 15/2006. The Petitioner was also capable of establishing the existence of a causal relationship (*causal verband*) between the alleged potential constitutional damage which will be suffered and the application of the norms of the provision for which the review had been requested. Therefore, regardless of whether or not the argument in the Petitioner's petition which relates to the conflicting norms in the phrase "any other institution or agency which manages the state finance" in Article 6 paragraph (1) in conjunction with the phrase "any other institution or agency which administers the management of the state finance” in Article 10 paragraph (1) of Law 15/2006, for which the review over the petition has been requested, is proven, the Court is in the opinion that the Petitioner has the legal standing to act as Petitioner under the petition in this case.

Whereas considering that the Court has the jurisdiction to hear the petition in this case and the Petitioner has the legal standing to act as Petitioner under the petition in this case, the Court subsequently examines the subject matter of the Petitioner's petition.

Whereas given the clarity of the petition in this case, in reliance of Article 54 of the Constitutional Court Law, it is not urgent or necessary to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

The Petitioner essentially maintains the unconstitutionality of the phrase "any other institution or agency which manages the state finance" in Article 6 paragraph (1) in conjunction with the phrase "any other institution or agency which organizes the management of the state finance” in Article 10 paragraph (1) of Law 15/2006 on the ground that a subsidiary of a state-owned enterprise/regionally-owned enterprise (BUMN/BUMD) whose capital is not sourced from the state budget/regional budget or the equity participation of BUMN/BUMD and which has not received/used any facilities from the state, does not constitute a state finance. The capital of a subsidiary of BUMN/BUMD is sourced from BUMN/BUMD instead of the state assets. Therefore, the Indonesian Audit Body should not have conducted any investigative audit of DP Pertamina.

Whereas in relation to the Petitioner's argument in this case, the Court is of the opinion that prior to a further examination of the subject matter of the petition in respect of the constitutionality of the norms in question by the Petitioner, since a review over a similar issue had been requested by Muhammad Helmi Kamal Lubis in Case Number 59/PUU-XVI/2018 regarding the judicial review over Law Number 11 1992 regarding Pension Funds, in the proceedings the Petitioner's Attorney recognized the same person who has submitted the petition in this case (Muhammad Helmi Kamal). Furthermore, the Court had considered in the Constitutional Court Decision Number 62/PUU-XI/2013 regarding the review over the phrase "any other party's assets" in Article 2 letter g and letter i of Law Number 17 of 2003 regarding State Finance, and the review over the phrase “State-Owned Enterprises” in Article 6 paragraph (1), Article 9 paragraph (1) letter b, and the phrase “State-Owned Enterprises/Regional Owned Enterprises” in Article 10 paragraph (1) and paragraph (3), as well as Article 11 letter a of Law Number 15 of 2006 regarding the Indonesian Audit Board against Article 23 paragraph (1), Article 23E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution as requested by the Legal Forum for State-Owned Enterprises, et al. Therefore, the Court will first consider whether the petition in this case satisfies the criteria as stipulated in Article 60 of the Constitutional Court Law and Article 78 of the Regulation of the Constitutional Court Number 2 of 2021 regarding Proceedings in Judicial Review Cases (PMK 2/2021). After the Court has examined the basis for the review that has been raised by the Petitioner in the petition, the bases for the review used in the previous petition were Article 23 paragraph (1), Article 23E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution, while the petition in this case is based on Article 1 paragraph (3), Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution. Therefore, as the provisions used as the bases for the review in this case are different from the basis for the review used in the previous case, regardless of whether or not the petition in this case is

substantially grounded, formally the petition in this case based on Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021 may be re-submitted.

Whereas in relation to this case, the Court has declared its stance regarding the definition of the state finance as set forth in the Constitutional Court Decision Number 62/PUU-XI/2013 dated September 18th, 2014, as emphasized in the Constitutional Court Decision Number 59/PUU-XVI/2018 dated 21 May 2019 which essentially stated that with respect to

the definition of the state finance and the scope of authorities of the Indonesian Audit Board in examining the state finance, there is no longer any issue on the constitutionality of norms as questioned by the Petitioner because the matters questioned by the Petitioner are not separate from the Court's legal consideration in those decisions, namely that the Indonesian Audit Board is authorized to conduct any examination of all legal subjects as long as the state finance is managed therein, either directly or indirectly. Furthermore, if there is any allegation of misuse of the state finance, the Indonesian Audit Board has the authorities to conduct an audit.

Whereas if the Petitioner's petition is granted, it will limit the authority of the Indonesian Audit Board in conducting financial audits of other institutions or agencies which manage the state finance, including the authority to assess and/or determine the amount of damages caused by the treasurer of the institution managing state the state finance, so that if the norms in question are changed, it would result in an incomplete, even changing legal construction of the duties and authorities of the Indonesian Audit Board in examining the management of and responsibilities for the state finance, including in conducting financial audits of any other institutions or agencies which manage the state finance. The Petitioner's arguments under the petition in this case indicate the Petitioner's concerns on the involvement of the Indonesian Audit Agency in the examination of the finance of the Pension Fund whose founder is a state-owned enterprise as occurring in the actual case involving the Petitioner. In this regard, the Court is not authorized to determine an actual case. Since substantially there is no new constitutional ground that is fundamentally different for the Court to change its stance on the subject matter related to norms in this case, with regard to the definition of the state finance and the scope of authorities of the Indonesian Audit Body in examining the state finance, the Court remains in its position as stated in previous Court decisions. In the meantime, in relation to any other arguments related to the actual case involving or used as samples by the Petitioner under the petition in that case, it is not the Court's authority to examine it.

Upon all of the foregoing consideration, the Court subsequently issued a decision which in its verdict dismissed the Petitioner's petition in its entirety.