



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 43/PUU-XVIII/2020

Concerning

Formal Review and Material Review
(Budget Deficit Limits and Immunity Rights)

- Petitioner** : H. Ahmad Sabri Lubis, et al.
- Type of Case** : Review of Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (UU 2/2020) against 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Formal Review and Material Review of Article 2 paragraph (1) letter a number 1, number 2, and number 3 as well as Article 27 paragraph (1), paragraph (2), and paragraph (3) of Attachment to Law 2/2020 against the 1945 Constitution
- Verdict** : **In Formal Review:**
To dismiss the Petitioner's petition in its entirety;
In Material Review:
1. To declare the petition of the Petitioner in accordance with Article 27 paragraph (1) and paragraph (3) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is inadmissible;
 2. To dismiss the Petitioners petition for the rest/remainder
- Date of Decision** : Thursday, October 28, 2021

Overview of Decision :

The Petitioners are Indonesian citizens who have lost the right to monitor the use of the APBN (State Budget) periodically through the DPR (House of Representatives) as people's representatives.

Whereas in relation to the authority of the Court, the petition of the Petitioners is a request for a formal review and although the Petitioners do not mention that the norms petitioned for the review are contained in Attachment to Law 2/2020, the Court can understand that what is meant

by the Petitioner in the *a quo* petition is the petition to examine the constitutionality of the Article norms contained in the attachment to the law, *in casu* Law 2/2020 against the 1945 Constitution. Therefore, in this decision, the Petitioners' *a quo* petition further considered by the Court as a petition for the review of Article 2 paragraph (1) letter a number 1, number 2, and number 3, as well as Article 27 paragraph (1), paragraph (2) and paragraph (3) of the Attachment to Law 2/2020. Based on these considerations, the Court has the authority to adjudicate the *a quo* petition.

Whereas in relation to the formal review period, Law 2/2020 was promulgated on May 18, 2020 and the Petitioners submitted the petition to the Court on June 10, 2020 based on the Deed of Receipt of Petition Files Number 103.2/PAN.MK/2020. Therefore, the petition for a formal review of Law 19/2019 is submitted within the specified time limit. Furthermore, in relation to the time limit for completing the formal review, because the *a quo* case was in the trial review period when the Constitutional Court Decision Number 79/PUU-XVII/2019 was declared, then the *a quo* case was not included in the category of cases that are bound by the requirements of a period of 60 (sixty) business days from the time they are recorded in the e-BRPK to be resolved by the Court because the Constitutional Court Decision Number 79/PUU-XVII/2019 was declared and has binding legal force on May 4, 2021 so it cannot be applied retroactively in the *a quo* case. Likewise, the procedures for reviews that can be carried out separately or *splitsing* between formal review and material review in the *a quo* petition could not yet be implemented.

Whereas in relation to the legal standing of the Petitioners, according to the Court, the Petitioners have been able to describe a direct linkage relationship with the petitioned law and describe specifically the existence of a causal relationship between the petition of the norms in Article 2 paragraph (1) letter a number 1, number 2, and number 3 and Article 27 paragraph (1), paragraph (2), and paragraph (3) of Attachment to Law 2/2020 with the assumption that the Petitioners' constitutional losses are regulated in Article 1 paragraph (3), Article 24 paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), Article 28G paragraph (1), and Article 28H paragraph (1) of the 1945 Constitution, namely the Petitioners consider that their constitutional rights have the potential to be impaired in terms of taking legal resistance to protect their property and other civil rights, as well as other legal resistance in criminal law and state administration through an independent judiciary. Moreover, the Petitioners are citizens who are directly affected by the State's financial policies as regulated in Attachment to Law 2/2020. The potential constitutional impairment as referred will not occur again if the *a quo* petition of the Petitioners is granted. Therefore, the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas in relation with the formal review, with regard to the argument for virtual attendance at the DPR Plenary Meeting, it has been declared as unreasonable according to law by the Court, therefore the legal considerations shall apply *mutatis mutandis* as legal considerations for the Constitutional Court Decision Number 43/PUU-XVIII/2020. Furthermore, with regard to the determination, discussion and approval of the DPR regarding Perpu 1/2020 which is in contrary to Article 22 paragraph (2) of the 1945 Constitution, the phrase "the following trial" in Article 22 paragraph (2) of the 1945 Constitution must be interpreted if the Perpu is submitted during a DPR recess period. Therefore, if the Perpu is submitted during the time span of the DPR session as regulated in the 2020 DPR Code of Conduct, the phrase "the following trial" must be interpreted as a decision-making trial by the DPR immediately after the Perpu is stipulated by the President and submitted to the DPR. This means that even though the Perpu is stipulated and submitted by the President during the current DPR session (not during a recess), then the DPR must evaluate the Perpu Draft Bill at the decision-making session during the ongoing DPR session. Meanwhile, if the Perpu is stipulated and submitted by the President during a recess, then the DPR must give approval or not give approval to the Perpu at the decision-making session during the DPR session after the recess period ends. This is so important considering that the essence of the issuance of the Perpu is due to a state of urgency that compels as an absolute requirement. So that the longer the period of time for the DPR to give approval or not give approval regarding the Perpu proposed by the President, this will eliminate the essence of the issuance of the relevant Perpu. Moreover, the regulation regarding the time for the DPR

to give approval or not give approval with regard to the issuance of the Perpu, provides more guarantees of legal certainty both on the validity and sustainability of the Perpu, considering that the Perpu was formed based on matters of urgency, which in this case is the Covid-19 pandemic, which not only threatens health but also safety and the national economy. So, anticipatory steps are needed as a joint effort to deal with the pandemic. With such considerations and facts, the Petitioners' argument which basically states that the determination, discussion, and approval of the DPR regarding Perpu 1/2020 is in contrary to Article 22 paragraph (2) of the 1945 Constitution is without unreasonable according to law. Whereas in relation to the material review of the norms of Article 2 paragraph (1) letter a number 1, number 2, and number 3 of Attachment to Law 2/2020, it has been considered by the Court in Sub-Paragraph **[3.18.1]** of the Constitutional Court Decision Number 37/PUU-XVIII/2020, dated October 28, 2021. Therefore, since the constitutional issues raised by the Petitioners regarding the reasons for reviewing Article 2 paragraph (1) letter a number 1, number 2, and number 3 of Attachment to Law 2/2020, in essence, it is the same as the constitutional issue as considered by the Court in the *a quo* Constitutional Court Decision Number 37/PUU- XVIII/2020 and it has been declared unreasonable according to law, therefore the considerations in the Decision *mutatis mutandis* shall also apply to the *a quo* petition, especially in relation to the constitutionality of Article 2 paragraph (1) letter a number 1, number 2, and number 3 of Attachment to Law 2/2020. Therefore, the arguments of the Petitioners regarding the unconstitutionality of Article 2 paragraph (1) letter a number 1, number 2, and number 3 of Attachment to Law 2/2020 are unreasonable according to law.

Whereas in relation to Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020, it has been considered by the Court in the Decision of the Constitutional Court Number 37/PUU- XVIII/2020, dated October 28, 2021. With the Court's Decision, then in relation to Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020, the Court has considered its constitutionality and it has declared the terms of the constitutional meaning of the *a quo* norms. Therefore, since the decision was declared, although there were 3 (three) Constitutional Justices who submitted dissenting opinions, namely Constitutional Justice Anwar Usman, Constitutional Justice Arief Hidayat, and Constitutional Justice Daniel Yusmic P. Foekh with respect to Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020, the constitutional meaning of Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020 is as the Verdict in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020, therefore it is no longer a complete norm as petitioned for review by the Petitioners. With this decision, the norms of Article 27 paragraph (1) and paragraph (3) of Attachment to Law 2/2020 which are argued as unconstitutional by the Petitioners, have lost their object so that they are irrelevant for further consideration.

Whereas in relation to the material review of the norms of Article 27 paragraph (2) of Attachment to Law 2/2020, it has been considered by the Court in the Sub-Paragraph **[3.19.3]** of the Constitutional Court Decision Number 37/PUU-XVIII/2020, dated October 28, 2021. Because the constitutional issues raised by the Petitioners regarding the reasons for reviewing the Article 27 paragraph (2) of Attachment to Law 2/2020 are basically not much different from the constitutional issues as considered by the Court in the *a quo* Constitutional Court Decision Number 37/PUU-XVIII/2020, therefore the legal considerations in the decision above *mutatis mutandis* shall apply to the *a quo* petition, particularly in relation to the constitutionality of Article 27 paragraph (2) of Attachment to Law 2/2020. Therefore, the Petitioners' arguments regarding the unconstitutionality of Article 27 paragraph (2) of Attachment to Law 2/2020 is unreasonable according to law.

Whereas based on the entire description of the considerations above, according to the Court, the Petitioners' petition has no legal basis in its entirety.

Accordingly, the Court has subsequently issued the following decision:

In Formal Review:

To dismiss the Petitioner's petition in its entirety;

In Material Review:

1. To declare the petition of the Petitioner in accordance with Article 27 paragraph (1) and paragraph (3) of Attachment to Law Number 2 of 2020 on the Stipulation of the Government Regulation in Lieu of Law Number 1 of 2020 regarding the State's Financial Policy and Fiscal Stability for the Mitigation of the Coronavirus Disease 2019 (Covid-19) Pandemic and/or in Order to Face Threats That Endanger the National Economy and/or the Stability of the Financial System into Law (State Gazette of the Republic of Indonesia of 2020 Number 134, Supplement to the State Gazette of the Republic of Indonesia Number 6516) is inadmissible;
2. To dismiss the Petitioners' petition for the rest/remainder.