



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 49/PUU-XVIII/2020

Concerning

Immunity in Policy-Making for the Use of Budget
in the COVID-19 Impact Mitigation Law

- Petitioner** : H. Damai Hari Lubis
- 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 the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Review of Article 27 paragraph (1), paragraph (2) and paragraph (3) of Attachment to Law 2/2020 against the 1945 Constitution.
- Verdict** : 1. To declare that the Petitioner's petition as long as 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 Petitioner's petition for the rest/remainder.
- Date of Decision** : Thursday, October 28, 2021.
- Overview of Decision** :

The Petitioner is an individual Indonesian citizen who works as an advocate and also as a registered taxpayer, who feels that his constitutional rights have been impaired by the existence of Article 27 of Attachment to Law 2/2020. The Petitioner feels aggrieved because of the enactment of Article 27 of Attachment to the *a quo* Law has the potential to eliminate the Petitioner's constitutional rights related to the

accountability of the law on the use of state money (APBN) from authorized officials, as the principle of popular sovereignty has been stated in Article 1 paragraph (2) of the 1945 Constitution. Because, with the enactment of *a quo* Article 27, the Petitioner as an individual/Indonesian citizen loses his right to exercise legal control through criminal, civil and state administrative legal remedies, if the Petitioner finds allegations of irregularities in the use of funds for handling Covid-19.

Regarding the authority of the Court, since the Petitioner's petition is a judicial review, *in casu* Law 2/2020, the Court has the authority to hear the *a quo* petition.

Whereas with respect to the legal standing of the Petitioner, the Court considers that there is a causal relationship (*causal verband*) between the enactment of Law 2/2020 and the assumption that the Petitioner's impairment is due to the *a quo* Law regulate financial policies in dealing with the impact of the Covid-19 pandemic with the position of the Petitioner as a citizen also affected by the Covid-19 pandemic, the Petitioner has legal standing to act as the Petitioner in the *a quo* petition. Therefore, regardless of whether the Petitioner's argument is proven or unproven regarding the perceived unconstitutionality of the norm proposed in *casu* Article 27 of Attachment to Law 2/2020, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

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

With regard to the judicial review of the norms of Article 27 paragraph (2) of Attachment to Law 2/2020, the Court has considered 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 Petitioner regarding the reasons for reviewing 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, then the legal considerations in the above decision *mutatis mutandis* shall apply to the *a quo* petition, especially with regard to the constitutionality of Article 27 paragraph (2) of Attachment to Law 2/2020. Therefore, the Petitioner's argument regarding the unconstitutionality of Article 27 paragraph (2) of Attachment to Law 2/2020 is unreasonable according to law.

Accordingly, the Court has subsequently issued the following decision:

1. To declare that the Petitioner's petition as long as 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 Petitioner's petition for the rest/remainder.