



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 59/PUU-XVIII/2020

Concerning

The Involvement of the Regional Representatives Council in the
Establishment of the Mineral and Coal Mining Law

Petitioner	: Kurniawan, and Arif Zulkifli
Type of Case	: Formal Review of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU 3/2020) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter	: Formal Review of Law 3/2020 against the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition in its entirety
Date of Decision	: Wednesday, October 27, 2021
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens who work as researchers and academics/lecturers that consider that their constitutional rights have the potential to be impaired in carrying out their profession as researchers and academics.

Regarding the authority of the Court, because of the petition of the Petitioners regarding the Formal Review of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Deadline for Submitting the Petition, because Law 3/2020 was promulgated on June 10, 2020, so the deadline for submitting the petition was July 25, 2020, and the petitions of the Petitioners were received by the Court on July 10, 2020 based on the Deed of Receipt of Petition Document Number 141/PAN.MK/2020, therefore the petition of the Petitioners is still within the time limit for submitting a petition for a formal review of a law.

Whereas in relation to the completion of the formal judicial review of the law at the Court as required in the Constitutional Court's decision Number 79/PUU-XVII/2019, dated May 4, 2021, according to the Court, because the *a quo* case was in the trial period when the Court's decision Number 79/PUU-XVII/2019 was declared, then the *a quo* case is not included in the category that is bound by the requirement of a period of 60 (sixty) business days from the time it is recorded in the BRPK to be resolved by the Court because the Constitutional Court Decision Number 79/PUU-XVII/2019, was declared and began to have binding legal force on May 4, 2021 so that it cannot be applied retroactively to the *a quo* petition.

Regarding the legal standing of the Petitioners, the Petitioners are researchers and academics who have concerns on the Mineral and Coal Mining Law and have provided many inputs to the Government and the DPR (House of Representatives) regarding the Mineral and Coal Mining issue. The Petitioners have given their sovereignty to their representatives in the Regional Representative Council (DPD) through the 2019 Election,

so that the DPD should be involved in the establishment of laws relating to regional autonomy, central and regional relations, the formation, expansion, merging of regions, management of natural resources and other economic resources, balancing of central and regional finances and giving consideration to the DPR on the draft of State Revenue and Expenditure Budget Laws and Draft of Laws relating to Taxes, Education and Religion. The Petitioners assume that the DPD is not involved in the establishment of the Mineral and Coal Mining Law, resulting in the inclusion of normative provisions that are detrimental to the community, one of which is the provision of Article 169A of the Mineral and Coal Mining Law.

In its consideration, the Court considered the legal standing of the Petitioners to file the *a quo* petition and states that the Petitioners have a legal standing to file the *a quo* case.

Whereas in relation to the subject matter of the petition, namely the absence of the DPD, the Court in its legal considerations stated that the DPD had been involved in the discussion of the draft of Mineral and Coal Mining Law, this was particularly evidenced by the DPD RI Decree Number 32/DPD RI/III/2019-2020 concerning the Views and Opinions of the DPD RI on the Draft of Law on Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining, dated May 12, 2020. Therefore, the Petitioners' argument regarding the discussion of Law 3/2020 not involving the DPD is unreasonable according to law.

In addition, according to the Court, in relation to the petition of the Petitioners regarding the formal review of the constitutionality of the establishment of Law 3/2020, at the same time another case has also been reviewed, namely the Case Number 60/PUU-XVIII/2020 which also reviewed the formal constitutionality of the establishment of Law 3/2020, filed by different Petitioners. Therefore, since the substance of the petition for a formal review submitted by the Petitioners is principally related to the constitutionality of the establishment of Law 3/2020, the legal considerations for the Decision of the Constitutional Court Number 60/PUU-XVIII/2020 which have been declared previously, and the Court has declared that the establishment of Law 3/2020 is not in contrary with the 1945 Constitution, therefore the legal considerations in the Decision of the Constitutional Court Number 60/PUU-XVIII/2020 *mutatis mutandis* shall become part of the legal considerations of the *a quo* Constitutional Court Decision Number 59/PUU-XVIII/2020, as long as it relates to the Petitioners' argument related to the involvement of the DPD.

Based on the legal considerations above, according to the Court, the procedure for the establishment of Law 3/2020 is in accordance with the 1945 Constitution, so the petition of the Petitioners in the *a quo* case regarding the formal review of the constitutionality of Law 3/2020 must also be declared unreasonable according to law.

Therefore, the Court issued a decision which verdict is to dismiss the petition of the Petitioners in its entirety.

DISSENTING OPINIONS

In relation to the *a quo* decision of the Constitutional Court, 3 (three) Constitutional Justices, namely Constitutional Justice Wahiduddin Adams, Constitutional Justice Suhartoyo, and Constitutional Justice Saldi Isra have dissenting opinions regarding the petition for a formal review of Law 3/2020 as follows:

Whereas against the arguments of the Petitioners' petition, although in the trial legal facts was obtained that the discussion of the Mineral and Coal Mining Bill had received consideration from the DPD (vide evidence of DPD's statement dated October 21, 2020) but as we have emphasized above, the assessment of the validity of the formalities of the establishment of the law is the validity of all stages or the fulfilment of all standards

presented above. In this case, if one stage or one standard is not met from all stages or all existing standards, then a law can be said to be formally flawed in its establishment. That means, a formal defect of a law does not need to be proven that there has been a defect in all stages or a defect in all standards as long as the defect could be explained with arguments and undoubted evidences, it is sufficient to state that there is a formal defect in the establishment of a law as stated in our opinions in the Constitutional Court Decision Number 60/PUU-XVIII/2020, whereas the establishment of the Mineral and Coal Mining Law has been formally flawed due to the non-fulfilment of the requirement to carry over which is one of the requirements that must be met which cannot be separated from the requirements as argued by the Petitioners in the *a quo* case. Therefore, regarding the *a quo* case, we also think that the establishment of the Mineral and Coal Mining Law is legally flawed.

Whereas based on the above legal considerations, there is no doubt for us to state that the establishment of Law 3/2020 is formally flawed. With convincing evidences that Law 3/2020 is formally flawed, therefore the Court should have declared Law 3/2020 as in contrary to the 1945 Constitution and has no binding legal force.