



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASE NUMBER 3/PUU-XVIII/2020

Concerning

Process of Assets Transfer in the Establishment of Sungai Penuh City and the Allocation of State Budget Only to the Sungai Penuh City is a Flaw and Discriminative

- Petitioner** : **H. Jarizal Hatmi, et al.**
- Case** : Judicial Review Number 25 of 2008 on the Establishment of Sungai Penuh City of the Jambi Province (Law 25/2008) Against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Case of Lawsuit** : Testing Assets Transfer utilized by the Sungai Penuh City as referred to under Article 13 paragraph (7) point a and Allocation of State Budget only to the Sungai Penuh City as referred to under Article 14 paragraph (1) Law 25/2008 is against the guarantee on the rights and proper law enforcement as referred to under Article 28D paragraph (1) Law 1945, guarantee on the rights to freedom from discrimination as referred to under Article 28I paragraph (2) UUD 1945
- Injunction** : Announced that the Petitioners' case is not admissible
- Date of Decision** : Wednesday, 25 November 2020
- Decision Overview** :

The Petitioner I to the Petitioner I are Indonesian Citizen, they are retired Government Worker and representatives of Kerinci Regality, retired member of Kerinci Regality House of Representatives,

Lecturers and religious leaders of Kerinci Regality, Head of KNPI Branch Office of Kerinci Regality youth. The Petitioner X to the Petitioner XIII is the Regal of Kerinci, the Chair and the Vice of Kerinci Regality House of Representatives;

On the Court authority, for the case which challenged the constitutionality of law norms, in this case Article 13 paragraph (7) paragraph a and Article 14 paragraph (1) Law 25 of 2008 on the Establishment of Sungai Penuh City (Law 25/2008) on UUD 1945 the Court is competent to decide the case;

In relation to the Petitioner's legal Standing, the Court adjudicated that their legal standing will be acknowledged only after the Court examined the merits of the case. Thereby, the Court considered the legal standing of the Petitioners altogether with the merits of the case;

On the Petitioners' merits of the case the Court adjudicated that the PP 78/2007 had governed the mechanism and implementation of responsibility of each party to the process of constituent unit establishment clearly as referred to under Law 32/2004. In this relation, it is a subject to decision by the former regality/city House of Representatives on approval to potential regality/city establishment, as the implementation of administrative requirements carried out through concluding meeting, it is also a subject to decision of former regal/mayor of the city on approval to regality/city establishment. The decision of the parties above is made in stages, it does not stop at the former regality/city because it is a subject to decision of provincial House of Representatives and the governor as a part of administrative requirements. Decision of the provincial House of Representatives shall also be made through concluding meeting on approval to potential regality/city establishment in which stated; approval to fund assistance which support the government of potential regality/city for a period at least two years in a row as of the official recognition as a regal/city; approval to fund assistance which support the election to elect the head

of the region for the first time in the regality/city; approval to the name of potential regality/city, the size of potential regality/city and their potential capital; and approval to assets transfer of the province such as office facilities for government and public services in the regality/city which will be included of the potential province. Whereas other assets such as land and/or buildings intended for other services than public services could be acquired by compensation or swap. Whereas, the substance of governor decision on the establishment of potential regality/city including; approval to fund assistance which support the government of the potential regality/city for a period at least two years in a row as of the official recognition as a regal/city; approval to fund assistance which support the election to elect the head of the region for the first time in the regality/city; approval to the name of potential regality/city, the size of potential regality/city and its potential capital; and approval to transfer the personnel from the province and in coordination with the Government, governor and regal/mayor with respect to the personnel in its region which will be transferred to the new regality/city (see Article 5 paragraph (2) point a, point b, point c, and point d and Interpretation of PP 78/2007). Lastly, administrative requirements on the establishment of new regality/city is recommendation from the Minister of Interior that had been reviewed by the specially established team for the purposes (see Article 5 point e PP 78/2007). On the recommendation of the Minister on the proposal of such establishment shall obtain response in writing from the Regional Autonomy Review Board (DPOD) in the DPOD meeting. In the event of the DPOD deemed it is necessary to clarify and conduct further investigation on the proposal, the DPOD assign DPOD Technical Team to clarify and conduct investigation. After which the proposal is submitted to the President in consideration of advise and findings of the DPOD clarification and investigation. Having complied to all administrative requirements, technical requirements, and its geographic as described above the President may approve to draft a bill on

(new) autonomous regional establishment as Presidential initiative to be submitted to House of Representatives (DPR). In the event of the bill is the DPR initiative, in this case Law 25/2008, the requirements under PP 78/2007 shall be implemented in stages as of the first process of new regional autonomous establishment proposal.

On the Petitioners' argument which stated that Article 13 paragraph (7) point a Law 25/2008 created damage for the former regality in this case the Kerinci Regality if the wording "and/or" in the phrase "and/or utilized" does not interpreted: "the utilized", the Court adjudicated that on the movable and fixed assets utilized by the Sungai Penuh City formerly belong to the Kerinci Regality that had been transferred to the Sungai Penuh City this is not a case after Law 25/2008 is applied, because the process of constituent unit establishment proposal is in stages in consideration of all requirements for the new constituent unit and its former region. Thereby, consideration on the assets had been made when the Regal of Kerinci and the Kerinci Regality House of Representatives issued Approval on Sungai Penuh City Establishment in which stated the transfer of assets owned or controlled by the regalities. The history of Sungai Penuh city establishment had been stated in the General Interpretation of Law 25/2008.

According to the Court, the process of assets transfer from the Kerinci Regality had been made pursuant to Law 32/2004 and PP 78/2007. Thereby according to Article 13 paragraph (3) Law 25/2008 the transfer of assets and documents of Kerinci Regality shall be made not later than five years as of the official appointment of Sungai Penuh Mayor. The purposes is to create helpful and useful government services, development and public services thereby it could use the government workers, land, office buildings and its equipment and public services facilities formerly available for the Kerinci Regality and now therefore is under the Sungai Penuh City authority. The assets transfer is a legal action pursuant to Law 25/2008. If the process that had mutually agreed did not

realized by the Kerinci Regality it is the responsibility of the Jambi Governor who play the role of Central Government in the region to settle it [see Article 13 paragraph (8) Law 25/2008]. Thereby the process of Sungai Penuh City establishment had complied the applicable laws and regulations and therefore the Petitioners' argument on a flaw on the law is unfounded. Thereby according to the Court nothing can deemed as a case of constitutionality with the wording "and/or" in the phrase "and/or utilized" in the norm of Article 13 paragraph (7) point a Law 25/2008. Thereby the Petitioners' argument is unfounded.

On the Petitioners' arguments on the constitutionality of Article 14 paragraph (1) Law 25/2008 if it is not interpreted "Sungai Penuh City and Kerinci Regality entitled to state budget allocation pursuant to the applicable laws and regulations" according to the Court, Law 25/2008 according to the title which is the Law on Sungai Penuh City Establishment, the city area previously nonexistent furthermore shall be made into existent/established for better services on government, development, and society, and for better capability to utilize the regional potentials (see In Consideration of point C Law 25/2008). Thereby the Law challenged herein is only determine the rights of Sungai Penuh City to obtain state budget allocation pursuant to the Law on Central and Local State Budget Allocation. Even from the first process of Sungai Penuh City potential establishment, the Kerinci Regality Government had stated its commitment to provide monetary grant to support the government of Sungai Penuh City as much as Rp.14,000,000,000 (fourteen billion Rupiah) for the period of three years, and to held the Sungai Penuh City Mayor and Vice first election as much as Rp.2,000,000,000 (two billion Rupiah) (see Article 15 paragraph (1) Law 25/2008).

Thereby the provisions under Article 14 paragraph (1) Law 25/2008 in the principle constitute the realization what the state budget are for which is to assist the local government in funding their

performance, also to reduce any gap of state fund sources between the central and the local government, and to reduce any fund gap of inter constituent units. Sungai Penuh City as a new autonomous region needs some funds to provide its services to the public and to create the welfare of the society. Thereby with the norm under the article challenged herein the Sungai Penuh City could make the above purposes real. Whereas, for the Kerinci Regality without having to request the interpretation on the formulation of norm under Article 14 paragraph (1) Law 25/2008 in the principle as an autonomous region which provide government services and supporting tasks obviously received state budget allocation as referred to under Article 15 paragraph (1) Law 32/2004. As well as under Article 1 paragraph 19 and Article 10 paragraph (1) Law 33 of 2004 on State Budget between the Central and Local Government which stated that state budget comprised of Proceeds Distribution, General Allocation Fund, and Specially Allocated Fund is the funds which sources is the National Budget and allocated to local constituent units for their needs in carrying out decentralization. In addition, as of 2010 through 2015 the Government had allocated Specially Allocated Fund for local infrastructure in the National Budget. In this matter, the Kerinci Regality had received fund allocations as follows: Specially Allocated Fund for Local Infrastructure as much as Rp. 4,591,420,000 (four billion five hundred ninety-one million and four hundred twenty thousand Rupiah) in 2015 (see Appendix to President Regulation Number 36 of 2015 on 2015 National Budget Breakdown). In addition, the Kerinci Regality also received State Budget and Local Incentive in 2018, 2019, 2020 (see President Regulation Number 78 of 2019 on 2020 National Budget Breakdown, President Regulation Number 129 of 2018 on 2019 National Budget Breakdown, President Regulation Number 107 on 2018 National Budget Breakdown). With Specially Allocated Fund and Local Incentive the Kerinci Regality has sufficient fiscal space to refresh its facilities and infrastructure development.

Thereby the issues faced by the Kerinci Regality as the former regality which needs fund to pay its procurement and land acquisition for new potential capital and infrastructure development is related to the financing scheme of new capital development, it is not about the constitutionality of norm because the process for such development is based on the applicable laws and regulations thereby the Petitioners' arguments on the fairness and discrimination is also unfounded. Thereby the Petitioners' arguments which challenged the constitutionality of norm under Article 14 paragraph (1) Law 25/2008 is also unfounded.

After the Court adjudicated on the merits of the case, the Court adjudicated on the Petitioners' legal standing.

The Petitioner I, the Petitioner II, the Petitioner III, the Petitioner IV, the Petitioner V, the Petitioner VI, the Petitioner VII, the Petitioner VIII and the Petitioner IX their qualification are as Indonesian Citizen, even though the Petitioner IV and the Petitioner V stated that they are retired members of Kerinci Regality House of Representative for the period 2014-2019 and the Petitioner VI for the period 2004-2008, and the Petitioner VIII is the Chair of KPNI Branch Office of Kerinci for the period 2019-2022 but does not act in the capacities representing the organization, and the Petitioner IX is involved during assets transfer. However, because the substance of the case in relation to the local government assets transfer and specially allocated fund for local government, which according to the Court it is related to the local government issues as local affairs and having no direct relation to any damage caused by constitutional burdened over citizen. The Court by the Court Decision Number 70/PUU-XII/2014, dated 6 November 2014 decided that to file the case which challenged the constitutionality of a law on local interests before the Court it shall be filed by the local government. Thereby the Petitioner I, the Petitioner II, the Petitioner III, the Petitioner IV, the Petitioner V, the Petitioner VI, the Petitioner VII, the Petitioner VIII, and the Petitioner IX,

even though they argued on concern with respect to the Kerinci Regality, yet they are not entitled to represent the Kerinci Regality. Thereby according to the Court, the Petitioner I, the Petitioner II, the Petitioner III, the Petitioner IV, the Petitioner V, the Petitioner VI, the Petitioner VII, the Petitioner VIII, and the Petitioner IX did not constitutionally burdened thereby incapable to take legal actions as the Petitioner for the case.

The Petitioner X as the Kerinci Regality for the Period 2019-2024 and the Petitioner XI, the Petitioner XII, and the Petitioner XIII as the Chair and Vice of House of Representatives for the Period 2019-2024 acting in the capacities as members of Kerinci Regality House of Representatives, jointly qualified themselves as the Government of Kerinci Regality. The Court held that to represent local government in a case which challenge the constitutionality of norm on local government affairs is the government itself. The Court under the Court Decision Number 87./PUU-XIII/2015 expressly stated that on authority jointly performed by the local government and the House of Representatives as the parties who provide government services at the local level is the parties constitutionally burdened by the Law challenged herein in relation to the local affairs is the Local Government. In addition, it is expressly stated that the definition on local government is the Head of Local Government jointly with the House of Representatives. The provisions on this matters is stated under Article 1 paragraph 2 Law 23 of 2014 on Local Government (Law 23/2014) which stated that the Local Government is the parties who run the government by the local government and the house of representatives according to the autonomy principle and supporting roles according to the broadest sense of autonomy principle under the system and principle of The Republic Of Indonesia pursuant to UUD 1945. In addition, Article 57 Law 23/2014 also stated that the parties who run provincial government and regality/city comprised of the head of the local government and the House of Representatives with Local Instruments

supports. From this point the parties entitled to file the case representing the local government is the Head of Local Government jointly with the House of Representatives which is the Governor jointly with the Provincial House of Representatives for the government of Provincial or Regality/City or the Regal/Mayor jointly with the House of Representatives for the Local Government of Regality/City.

Thereby according to the Court because the norm under Article 13 paragraph (7) point a and Article 14 paragraph (1) Law 25/2008 challenged herein in relation to the local government jointly run by the head of local government and the House of Representatives, thereby the parties entitled to file constitutionality case for the article challenged herein is the Kerinci Regal jointly with the Kerinci Regality House of Representatives which constitute the entire Government of Kerinci Regality.

Beforehand the Court in the Preliminary meeting dated 16 January 2020 had gave advise to the Petitioner on the legal standing of the Petitioner, in relation to the merits of the case filed by the Petitioner pertaining to local government which is the House of Representatives and the head of local government. In the revision to the Petitioners' submission the Petitioner had included the Kerinci Regal and several members of the Kerinci Regality House of Representatives as the Petitioner X to the Petitioner XIII however it is positioned severally not jointly as the Government of Kerinci Regality. Furthermore, this adjudication applies to each of additional power of attorney granted by the Regal and the House of Representatives. Even though it is permissible, however the Regal and the House of Representatives in the case shall be under a single representation, viz the Government of Kerinci Regality.

In addition, the Petitioner also adduced evidence P-41 which is a Minutes of Concluding Meeting of Kerinci Regality House of Representatives with the Regal of Kerinci. However, the Concluding Meeting was held on the date 18 March 2020, when the Plenary Meeting to Examine the

Petitioner's Case had been started. On evidence P-41 the Court by the Constitutional Court Decision Number 24/PUU-XVI/2018, dated 13 March 2019, support its decision that to file the case which challenge the constitutionality of a Law on the rights and obligations of local government, the House of Representatives shall obtain approval in Concluding Meeting before the case filed with the Constitutional Court. Thereby the Court announced that evidence P-41 is not admissible.

Thereby, in consideration of the foregoing adjudication according to the Court the Petitioner X, the Petitioner XI, the Petitioner XII and the Petitioner XIII did not jointly file the case as the local government therefore their qualification falls somewhere but local government, which is the Government of Kerinci Regality. Furthermore, the Petitioner did not adduce any evidence on the Concluding Meeting of the House of Representatives that had been started before the case was filed with the Constitutional Court, thereby the Court adjudicated the Petitioner X, the Petitioner XI, the Petitioner XII and the Petitioner XIII are not entitled to the legal standing to file the case. In consideration of the foregoing adjudication the Court announced that the Petitioners are not admissible in the case. Even if all is well the Petitioners are entitled to the legal standing to file the case which challenge Article 13 paragraph (7) point a and Article 14 paragraph (1) Law 25/2008, nonetheless, the Petitioners' case is unfounded. Thereby the Court decided to announce that the Petitioners case is not admissible.