



DECISION

Number 15/PUU-V/2007

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a Decision in the case of petition for judicial review of Law Number 32 Year 2004 on Regional Government against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **Toar Samuel Tangkau**, occupation: entrepreneur, having his address at Jalan Rambutan RT. 004/003, Utan Kayu Utara Sub-District, Matraman District, East Jakarta, based on a Special Power of Attorney dated May 16, 2007 granting power of attorney to Duma Barrung, S.H., Vaison Siahaan, S.H., Nikson Gans Lalu, S.H., Nurdin Siregar, S.H., all of them being Advocates at the Legal Aid Centre of the Law Faculty of the Indonesian Christian University (*Pusat Bantuan Hukum Fakultas Hukum Universitas Kristen Indonesia*), domiciled at Jalan Diponegoro Nomor 86 Central Jakarta, Telephone 021-3904419; Hereinafter referred to as **the Petitioner**;

[1.3] Having read the petition of the Petitioner;

Having heard the statement of the Petitioner;

Having heard and read the written statement of the Government;

Having heard and read the written statement of the People's Legislative Assembly of the Republic of Indonesia;

Having examined the evidence.

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the *a quo* petition shall be to conduct judicial review of Article 58 Sub-Article d of Law Number 32 Year 2004 concerning Regional Government (hereinafter referred to as the Regional Government Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

[3.2] Considering whereas prior to considering the substance of the *a quo* petition, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account.

1. Whether the Court has the authority to examine, hear and decide upon the *a quo* petition;
2. Whether the Petitioner has the legal standing as Petitioner before the Court in the *a quo* petition;

In respect of the foregoing two issues, the Court is of the following opinion:

Authority of the Court

[3.3] Considering whereas pursuant to Article 24C Paragraph (1) of the 1945 Constitution, the authority of the Court, among other things, shall be to hear at the first and final level, the decision of which shall be final, to conduct judicial review of laws against the 1945 Constitution. This provision is further reaffirmed in Article 10 Paragraph (1) Sub-Paragraph a of Law Number 24 Year 2003 on the Constitutional Court (hereinafter referred to as the Constitutional Court Law).

[3.4] Considering whereas the *a quo* petition is a petition for judicial review, *in casu*, of Article 58 Sub-Article d of the Regional Government Law against the 1945 Constitution so that based on the considerations as described in paragraph [3.3] above, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

Legal Standing of the Petitioner

[3.5] Considering whereas, based on the provision of Article 51 Paragraph (1) of the Constitutional Court Law, a person or a party whose legal standing is recognized as Petitioner before the Court in a petition for judicial review of law against the 1945 Constitution shall be a person or a party who deems that his/her/its constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

- a. Individual Indonesian citizens;
- b. units of customary law communities insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as provided for in law;
- c. public or private legal entities; or
- d. state institutions " .

Therefore in order for a person or a party to qualify as a Petitioner in a petition for a judicial review of law against the 1945 Constitution, pursuant to the provision of Article 51 Paragraph (1) of the Constitutional Court Law, that person or party must first explain:

- a the person's/party's qualification in the petition, whether as an individual Indonesian citizen, a unit of customary law community, a public or private legal entity, or a state institution;
- b the impairment of the party's constitutional rights and/or authorities due to the coming into effect of the law petitioned for judicial review;

[3.6] Considering, it has become the Court's opinion that for the existence of impairment of constitutional rights and/or authorities, the following requirements must be met:

- a. the Petitioner must have constitutional rights granted by the 1945 Constitution;
- b. the Petitioner believes that such constitutional rights have been impaired by the coming into effect of a law;
- c. the impairment of such constitutional rights and/or authorities shall be specific and actual in nature or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. there is a causal relationship (*causal verband*) between the impairment of such constitutional rights and/or authorities and the law petitioned for review;
- e. If the petition is granted, it is expected that, the impairment of constitutional rights and/or authorities argued will not or does not occur any longer;

[3.7] Considering, based on the description of the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the requirements of constitutional rights and/or authorities impairments as described above, the Court will subsequently consider the Petitioner's legal standing in accordance with the Petitioner's description in the Petition and the submitted evidence;

[3.8] Considering whereas in the Petitioner's opinion, the constitutional rights which have been impaired by the coming into effect of Article 58 Sub-

Article d of the Regional Government Law are constitutional rights which are regulated in:

- Article 18 Paragraph (4) of the 1945 Constitution which stipulates that *"Governors, Regents and Mayors, as the respective heads of the provincial, regency and municipal government shall be elected democratically"*.
- Article 27 Paragraph (2) of the 1945 Constitution which stipulates that *"Every citizen shall have the right to work and to a living befitting human beings"*.
- Article 27 Paragraph (3) of the 1945 Constitution which stipulates that *"Every citizen shall have the right and duty to participate in the efforts of state defense"*.
- Article 28C Paragraph (1) of the 1945 Constitution which stipulates that *"Every person shall have the right to develop him/herself through the fulfillment of their basic needs, shall have the right to obtain education and to enjoy the benefits of science and technology, arts and culture, for the enhancement of the quality of their life and for the welfare of humankind."*
- Article 28C Paragraph (2) of the 1945 Constitution which stipulates that *"Every person shall have the right to improve him/herself in striving for his/her rights collectively for building his/her society, nation, and state"*.

- Article 28D Paragraph (3) of the 1945 Constitution which stipulates that *"Every citizen shall have the right to obtain equal opportunities in government"*.
- Article 28J Paragraph (1) of the 1945 Constitution which stipulates that *"Every person shall be obligated to respect the human rights of another person in the orderly life of the community, nation and state"*.

Meanwhile, the intended Article 58 Sub-Article d of the Regional Government Law, which the Petitioner argues to have impaired his constitutional rights stipulates that *"Candidates for Region Heads and the Deputy Region Heads shall be Indonesian citizens who meet the following requirements:*

- a. ...
- b.
- c.
- d. *Being at least 30 (thirty) years of age*
- e. *...etc"*;

[3.9] Considering whereas, in accordance with written evidence in the form of Resident's Identity Card, the Petitioner was born on June 9, 1980. Therefore, at the time the *a quo* case was examined before the Court, the Petitioner was 27 (twenty seven) years old;

[3.10] Considering whereas, in accordance with the Petitioner's description in his Petition, the Petitioner intends to run for the Southeast Minahasa's Regent

candidacy, but is constrained by the minimum age requirement, which is being at least 30 (thirty) years of age, as stipulated in Article 58 Sub-Article d of the Regional Government Law;

[3.11] Considering whereas based on the foregoing description, the requirement of the Petitioner's constitutional right impairment, as far as it concerns with the assumption of the existence of impairment of the Petitioner's constitutional rights as regulated in Article 28D Paragraph (3) of the 1945 Constitution, according to the Court, has been met, so that *prima facie* the Petitioner has the legal standing to file the *a quo* petition. Whereas the assumption of the existence of impairment to the Petitioner's other constitutional rights as described in paragraph **[3.8]**, will be considered together with the considerations on the Principal Issue of the Petition;

[3.12] Considering whereas because the Court has the authority to examine, hear and decide upon the *a quo* Petition and that the Petitioner has the legal standing to act as Petitioner, then the Court shall continue to consider the Principal Issue of the Petition;

Principal Issue of the Petition

[3.13] Considering whereas the principal issue in the *a quo* petition is whether it is true that the provision of Article 58 Sub-Article d of the Regional Government Law, which requires a minimum age of 30 (thirty) years to become a region head, is contrary to Article 18 Paragraph (4), Article 27 Paragraph (2),

Article 27 Paragraph (3), Article 28C Paragraph (1), Article 28C Paragraph (2), Article 28D Paragraph (3), Article 28J Paragraph (1) of the 1945 Constitution, as argued by the Petitioner;

[3.14] Considering whereas in order to support his arguments, the Petitioner has submitted written evidence (Exhibits P-1 through P-2). Meanwhile, in the hearing on September 11, 2007, the Court gave an opportunity to the Petitioner to present experts and/or witnesses, however the Petitioner said that he would not presented any expert or witness;

[3.15] Considering also, whereas the Court gave an opportunity to the Petitioner to submit a conclusion in the hearing on November 1, 2007 (*vide* Registrar's Letter Number 335.15/PAN.MK/2007 dated October 25, 2007), but the Petitioner did not use the opportunity as he should have, instead he asked for a time to deliver his conclusion in the next hearing (*vide* the petitioner's Letter dated October 31, 2007), whereas the Court had declared that the hearing for examination of the *a quo* petition was deemed sufficient (*vide* Minutes of the Hearing dated November 1, 2007). Therefore, the Court is of the opinion that the Petitioner is consistent with his position as described in his petition;

[3.16] Considering whereas the Court heard the statements of the People's Legislative Assembly (DPR) and the Government in the hearing of September 11, 2007. The Court has also asked written statements of the People's Legislative Assembly and the Government;

[3.17] Considering whereas the People's Legislative Assembly, in the hearing as mentioned in paragraph **[3.16]** above and in its written statement as completely described in the Facts of the Case part of this decision, basically explains the following matters:

- Whereas a minimum age requirement to be eligible for appointment and or to become a candidate for a particular position is a commonly stipulated in a regulation to determine that someone with a particular age limit is deemed as having good capacity/competency from the aspects of intellectuality, spiritual intelligence, emotional intelligence, as well as the aspect of mature behavior in holding and performing a particular position, so that when holding a particular position, a candidate is expected to perform his/her duty and obligation wisely and accountably towards the society, the nation and the state;
- Whereas the law that stipulates a minimum age limitation as a standard to evaluate someone's capacity/competency from the aspects of intellectuality, spiritual intelligence, emotional intelligence, as well as the aspect of mature behavior in holding and performing a particular position cannot be said to be a provision that hinders someone's right to run for a particular position;
- Whereas the minimum age limitation of someone for holding a particular position is among the matters that are allowed to be regulated in a law provided it is not discriminatory namely being solely made based on

discrimination on grounds of tribe, religion, race, ethnic, group, sex, social status, language, economic status, and political belief as mandated by Article 1 Sub-Article 3 *juncto* Article 73 of Law Number 39 Year 1999 concerning Human Rights;

- Whereas in case of election of region head and deputy region head conducted directly (democratically) as mandated by Article 18 Paragraph (4) of the 1945 Constitution, it is necessary to determine the criterion and requirements for a candidate of a region head and deputy region head to be at the minimum age of 30 (thirty) years for a leader who would shoulder the responsibility of managing the Regional Government. Therefore, in order to have the best man of the nation who is considered qualified by the state in terms of age (both from the intellectuality as well as personal maturity aspects), then a candidate is expected to be capable of performing his/her duties and obligations optimally, wisely, and accountably towards the society, the nation and the state when holding the position of region head or deputy region head in the future;
- Whereas therefore, Article 58 Sub-Article d of the Regional Government Law does not deprive someone of his/her constitutional right to become a candidate for Region Head or Deputy Region Head, but provides a requirement that must be fulfilled and which is constitutionally justified. In other words, the Petitioner's constitutional right to run for Region Head or Deputy Region Head candidacy is not impaired by the coming into effect

of Article 58 Sub-Article d of the Regional Government Law. However, the State (the President and the People's Legislative Assembly of the Republic of Indonesia as state organs), that has the authority in legislation, deems it necessary to provide a minimum age limitation, namely the minimum age of 30 (thirty) years;

[3.18] Considering whereas in the hearing as referred to in paragraph **[3.16]** above as well as in its written statement through its proxy, namely the Minister of Laws and Human Rights as completely described in the Facts of the Case part of this decision, the Government basically explains as follows:

- Whereas the Election of Region Head and the Deputy Region Head implemented democratically based on the principles of direct, general, free, confidential, honest and fair election, is expected to obtain good leaders who have integrity and adequate moral capability, who receive trust from the people and their environment, who have mature way of thinking and conduct, which in turn can create government leadership stability in the region;
- Whereas to get the Region Head and Deputy Region Head as mentioned above, particular criteria and requirements are needed. Such matter is a necessity and standard requirement for someone who wants to nominate him/herself as a Region Head or Deputy Region Head candidate as well as to hold particular positions, because it will be impossible for an underage (not mature yet) or a child or a child under the age of five years

to participate as a Region Head or Deputy Region Head candidate. Therefore, a regulation concerning minimum age requirement is necessary;

- Whereas the provision of Article 58 Sub-Article d of the Regional Government Law which requires Region Head and Deputy Region Head candidates to be at the minimum age of 30 (thirty) years, is targeted to get leaders who have a mature way of thinking and mature conduct, emotional control capability. It becomes very important because Region Head and Deputy Region Head have very strategic roles, namely in the context of implementing the state's duties in the region, particularly in order to protect the interest of the public (majority of the people) having heterogeneous cultural backgrounds, traditional customs backgrounds that must be respected and upheld;
- Whereas in addition to that, the provision that regulates age limitation, namely the minimum age of 30 (thirty) years for a person to be able to hold or to fill particular positions *in casu* the positions of Region Head and Deputy Region Head, cannot be interpreted as shutting off or depriving the citizen's (the Petitioner's) constitutional right provided it is conducted through a mechanism and procedure that binds every person who will become a candidate of the Region Head and Deputy Region Head. In other words, the *a quo* provision shall apply to every person (including the Petitioner) who wants to become a Region Head or Deputy Region Head

candidate, who must fulfill the requirements (cumulatively) as regulated in Article 58 of the Regional Government Law;

- Whereas a law is a form of manifestation of implementation of the mandate of the constitution (the 1945 Constitution), which among other things mandates that one of the state's duties is to maintain state life balance (between the people and the state administrator). This is in accordance with the state's objective as set forth in the preamble of the 1945 Constitution of the State of the Republic of Indonesia "*...shall protect the entire Indonesian nation and the entire Indonesian motherland, and in order to promote general welfare, to develop the intellectual life of the nation, and to partake in implementing world order based upon independence, eternal peace and social justice*". Therefore, the limitation as provided for in Article 58 Sub-Article d of the Regional Government Law, is a form of protection of the public interest by the state;

[3.19] Considering whereas based on the entire description above and after carefully examining the Petitioner's description in the petition, the Petitioner's statement in the hearing, the written evidence submitted by the Petitioner, the written statement of the People's Legislative Assembly, and the written statement of the Government, the Court will declare its opinion on the *a quo* petition as described below;

Opinion of the Court

[3.20] Considering whereas Article 58 Sub-Article d of the Regional Government Law which the Petitioner has argued to be contrary to the 1945 Constitution, contains a provision stating that one of the requirements to become a Region Head or Deputy Region Head candidate is the minimum age of 30 (thirty) years. The arguments presented by the Petitioner are as follows:

1. Whereas Article 58 Sub-Article d of the Regional Government is contrary to Article 18 Paragraph (4) of the 1945 Constitution which stipulates that, *"Governors, Regents and Mayors, as the respective heads of the provincial, regency and municipal government shall be elected democratically"*. The Petitioner deems that the provision of Article 18 Paragraph (4) of the 1945 Constitution means that every person can be elected as a region head. The word "democratically" shall be interpreted in terms of personal quality of a person as well as in terms of an opportunity or a right to participate in an election of region head and age is not the main parameter because the most important matter is the quality such as intellectual, emotional, spiritual intelligence and moral integrity and also national commitment and partiality toward the people who will be led.

With regard to this argument of the Petitioner, the Court is of the opinion that the provision of Article 18 Paragraph (4) of the 1945 Constitution does not directly contain a regulation on citizens' constitutional rights but on the procedures to fill the position of region heads (Governors, Regents, Mayors). This statement does not mean that a law, *in casu* the Regional

Government Law, cannot be petitioned for judicial review against Article 18 Paragraph (4) of the 1945 Constitution. The Regional Government Law can still be petitioned for judicial review against the 1945 Constitution, but such judicial review shall not be based on the existence of impairment of constitutional right of an Indonesian individual citizen as argued by the Petitioner;

There are two substantive points mandated by the Constitution set forth in the said Article 18 Paragraph (4) of the 1945 Constitution. **First**, whereas the filling of the position of region head must be made through an election. In other words, the filling of the position of region head cannot be made through a procedure other than an election, for instance by way of appointment or designation. **Second**, the election must be held democratically, meaning that it must fulfill the principles of democracy. Article 18 Paragraph (4) of the 1945 Constitution does not oblige the legislators (the People's Legislative Assembly together with the President) to use a particular procedure or election mechanism, either directly or indirectly. The matter is completely left to the legislators provided that the principles of democracy have been fulfilled;

Therefore, the Petitioner's argument that the minimum age requirement for a region head or deputy region head candidate has impaired the constitutional right based on Article 18 Paragraph (4) of the 1945 Constitution is groundless;

1. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 27 Paragraph (2) of the 1945 Constitution which stipulates that, "*Every citizen shall have the right to work and to a living befitting human beings*". According to the Petitioner, the provision of Article 27 Paragraph (2) of the 1945 Constitution contains an understanding that every citizen has the right to become a region head, and therefore it is irrelevant if it is stipulated that the citizen must be at least 30 years old;

With regard to this argument of the Petitioner, the Court is of the opinion that the Petitioner has mixed up the requirement for a public office *in casu* the requirement to become a region head/deputy region head with the requirement to obtain a job (*beroep*). Although it is true that in daily understanding, those two matters are not distinguished, but in human rights categorization as part of the constitutional rights, the two matters are under different categories. The right of a citizen who has met particular requirements to occupy a public office is part of civil and political rights. Meanwhile, the right to work and to a decent living is part of the economic, social, and cultural rights. Therefore, the argument of the Petitioner that Article 58 Sub-Article d of the Regional Government Law that regulates the requirement to occupy a public office (*in casu* the office of region head and deputy region head) is contrary to the right to work and to a decent living, is not appropriate;

3. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 27 Paragraph (3) of the 1945 Constitution which stipulates that, "*Every citizen shall have the right and duty to participate in the efforts of state defense*". According to the Petitioner, the term "state defense" has the meaning that being a region head is automatically a form of participation in state defense in a broad sense of the term;

With regard to this argument of the Petitioner, the Court is of the opinion that the provision in Article 27 Paragraph (3) is related to the provision of Article 30 Paragraph (1) of the 1945 Constitution. The substance is the same, namely the right to defend the state which is a part of the citizen's rights. The scope of the right to defend the state shall include the state defense and state security, as regulated in a more detailed manner in Article 30 Paragraph (2), Paragraph (3), Paragraph (4), and Paragraph (5) of the 1945 Constitution. Meanwhile, the substance questioned by the petitioner is the requirement to fulfill the office of region head and deputy region head which is outside the scope of defense, and also outside the definition scope of security as intended by the 1945 Constitution. Even if it is correct, *quod non*, that being a region head is included in the meaning of state defense as argued by the Petitioner, it does not mean that the regulation on citizens' participation in state defense cannot require minimum age. Therefore, the Petitioner's argument, as far as it is concerned with the constitutionality of Article 58 Sub-Article d of the

Regional Government Law against Article 27 Paragraph (3) of the 1945 Constitution, is inappropriate;

4. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28C Paragraph (1) of the 1945 Constitution which stipulates that, *"Every person shall have the right to develop him/herself through the fulfillment of their basic needs, shall have the right to obtain education and to enjoy the benefits of science and technology, arts and culture, for the enhancement of the quality of their life and for the welfare of humankind."* According to the Petitioner, "develop himself/herself" is the right of every person, without having to be limited by age. Through such self-development, the concerned person can fulfill his/her basic needs, such as education, work, housing and health;

With regard to this argument of the Petitioner, the Court acknowledges that the Petitioner indeed has the constitutional right as regulated in Article 28C Paragraph (1) of the 1945 Constitution. However, the Petitioner's interpretation on the meaning of the right to develop himself/herself in Article 28C Paragraph (1) of the 1945 Constitution, has gone beyond the context of the right as intended by the article. The purpose of the Petitioner's interpretation is to state that the right to develop himself/herself is related to work, while according to the Petitioner, being a region head or deputy region head is a work (an occupation). Whereas Article 58 Sub-Article d of the Regional Government Law which regulates

the minimum age requirement to become region head or deputy region head is within the scope of civil and political rights. Meanwhile, the provision of Article 28C Paragraph (1) of the 1945 Constitution regulates the rights which are part of the economic, social, and cultural rights. The argument developed by the Petitioner in this item 4 does not have any difference with the Petitioner's argument as described in item 2 above, namely that the office of the region head or deputy region head is an occupation and therefore the minimum age requirement cannot be set. Hence, the Court's considerations as described in item 2 above shall apply *mutatis mutandis* to the Petitioner's argument in this item 4, so that the Petitioner's argument in this case is also groundless;

1. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28C Paragraph (2) of the 1945 Constitution which stipulates that, *"Every person shall have the right to improve himself/herself in striving for his/her rights collectively for building his/her society, nation, and state"*. According to the Petitioner, the term "develop himself/herself" has the meaning that every person is entitled to improve his/her quality through whatever process without having to be limited by age;

With regard to this argument of the Petitioner, the Court is of the opinion that the Petitioner has made his own interpretation of Article 28C Paragraph (2) of the 1945 Constitution so that it gets beyond its context.

Article 28C Paragraph (2) of the 1945 Constitution regulates the right to self-development. Those included in this right to self development, among other things are the right to fulfillment of basic needs, the right to education, the right to obtain benefit from science and technology, arts and culture, etc. In other words, the rights which are included in the category of the rights to develop oneself have no relation with the right of every citizen to participate in government. Meanwhile, Article 58 Sub-Article d of the Regional Government Law whose constitutionality is questioned by the Petitioner is connected with his right to participate in government, which is part of civil and political rights. Therefore, it is of no relevance to question the constitutionality of Article 58 Sub-Article d of the Regional Government Law against Article 28C Paragraph (2) of the 1945 Constitution, so that consequently, the Petitioner's argument in this regard is also groundless;

6. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28D Paragraph (3) of the 1945 Constitution which stipulates that, *"Every citizen shall have the right to obtain equal opportunities in government"*. The right to obtain equal opportunities in government has been interpreted by the Petitioner to mean that every person has the right to become a region head so that the state is obligated to provide an opportunity to every citizen who wants to become a region head;

With regard to this argument of the Petitioner, the Court is of the opinion that in this connection the Court has repeatedly stated (for the most recent one *vide* Decision Number 19/ PUU-V/2007) that the fulfillment of the right to obtain equal opportunity in government does not mean that the state cannot regulate and stipulate the requirements, provided such requirements are objectively a need required for the relevant office or governmental activities and do not contain element of discrimination. Therefore, the question relevant to the *a quo* petition is whether the requirement of minimum age of 30 years to become a region head or deputy region head as stipulated by Article 58 Sub-Article d of the regional Government Law is an objective need for a region head or deputy region head. In this regard, the Court has reaffirmed that government offices and activities are varied, so that the need and criteria demanded are also varied among various government offices and activities. With regard to the age criterion, the 1945 Constitution does not stipulate a particular minimum age limitation as a criterion that applies generally to every office or activity. This means that the 1945 Constitution leaves the stipulation of the age requirement to the legislators to regulate. In other words, the 1945 Constitution has deemed the matter as part of the legislators' legal policy. Therefore, the minimum age requirement for each office or activity of the government is regulated differently in various laws and regulations. For example, the minimum age requirement to become a Constitutional Justice is 40 years [*vide* Article 16 Paragraph (1) Sub-Paragraph c of the

Constitutional Court Law], the minimum age requirement to become a Supreme Court Justice is 50 years [*vide* Article 7 Paragraph (1) Sub-Paragraph d of Law Number 5 Year 2004 concerning the Amendment to Law Number 14 Year 1985 concerning the Supreme Court], the minimum age requirement to vote in a general election is 17 years or having already been married or having once been married [*vide* Article 7 of Law Number 23 Year 2003 concerning the General Election of President and Vice President and Article 13 of Law Number 12 Year 2003 concerning the General Election of the Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Legislative Assembly]. It is possible that the minimum age requirement for the citizens' participation in state administration offices or activities is changed anytime by the legislators in accordance with the existing need. It is absolutely the authority of the legislators that is not prohibited. Moreover, even if a law does not stipulate a minimum (or maximum) age requirement for a citizen to be able to fulfill a particular state administration office or to participate in a particular government activity, and leaves the stipulation to the regulations inferior to law, such matter is also the authority of the legislators and is not contrary to the 1945 Constitution. Therefore, the Petitioner's argument which states that Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28D Paragraph (3) of the 1945 Constitution is also groundless;

7. Whereas Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28J Paragraph (1) of the 1945 Constitution which stipulates that, *"Every person shall be obligated to respect the human rights of another person in the orderly life of the community, nation and state"*. In this regard, the Petitioner states that human rights are basic rights granted by God, and no one has the right to revoke such human rights and every person including the legislator is obligated to respect such human rights. The wish of the Petitioner to become a region head is the Petitioner's human right, but the Petitioner's has been indirectly deprived of his wish by Article 58 Sub-Article d of the Regional Government Law;

With regard to this argument of the Petitioner, the Court is of the opinion that Article 28J Paragraph (1) of the 1945 Constitution regulates the obligation of every person to respect other person's human rights. Hence, this article is not relevant to be used to conduct judicial review on the minimum age requirement as intended in Article 58 Sub-Article d of the Regional Government Law. This has been reaffirmed in the Decision Number 19/PUU-V/2007, which among other things states that, *"...Article 28J Paragraph (1) of the 1945 Constitution does not regulate constitutional right but regulates the obligation of every person to respect other person's human rights. The essence of the provision of Article 28J Paragraph (1) of the 1945 Constitution is a confirmation that in every right, an obligation is always attached, at least the obligation not to misuse the*

right. In other words, Article 28J Paragraph (1) of the 1945 Constitution confirms that, in addition to the limitation as stated in Article 28J Paragraph (1) of the 1945 Constitution, a limitation on human rights is also manifested in the form of an obligation to respect the same human right possessed other people. It is a consequence of human nature as a social creature. Implementation of a person's human rights that does not pay attention to the same right possessed by other person will certainly create distraction in the human social life, so that order in such social life cannot be established. Therefore, a limitation is automatically attached to a person's human rights because of the existence of the same right possessed by other person and therefore an obligation is also attached to respect the same human right possessed by the other person". Therefore, the Petitioner's argument which states that Article 58 Sub-Article d of the Regional Government Law is contrary to Article 28J Paragraph (1) of the 1945 Constitution is groundless;

4. CONCLUSION

Based on all the above considerations, the Court has come to the following conclusion:

[4.1] Whereas it is evident that the provision requiring the minimum age of 30 (thirty) year to be become a region head or deputy region head candidate as regulated in Article 58 Sub-Article d of the Regional Government Law is not contrary to Article 18 Paragraph (4), Article 27 Paragraph (2) and Paragraph (3),

Article 28C Paragraph (1) and Paragraph (2), Article 28D Paragraph (3), and also Article 28J Paragraph (1) of the 1945 Constitution as argued by the Petitioner;

[4.2] Whereas because Article 58 Sub-Article d of the Regional Government Law is not contrary to Article 18 Paragraph (4), Article 27 Paragraph (2) and Paragraph (3), Article 28C Paragraph (1) and Paragraph (2), Article 28D Paragraph (3), and also Article 28J Paragraph (1) of the 1945 Constitution as argued by the Petitioner, then this Petitioner's petition shall be declared rejected.

5. RULINGS

In view of Article 56 Paragraph (5) of Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316);

Passing the Decision:

To reject the Petitioner's petition;

Hence the decision was made in the Consultative Meeting attended by 9 (nine) Constitutional Court Justices on Monday, November 26, 2007 and was pronounced in the Plenary Session of the Constitutional Court open for public on this day, Tuesday, November 27, 2007 by us Jimly Asshiddiqie as the Chairperson and concurrent Member, Soedarsono, H. Mukthie Fadjar, I Dewa Gede Palguna, H.M. Laica Marzuki, H.A.S. Natabaya, and H. Achmad

Roestandi, respectively as Members, assisted by Cholidin Nasir as Substitute Registrar and in the presence of the Petitioner/the Petitioner's attorneys, the People's Legislative Assembly or its representative, the Government or its representative, and the Government or its representative.

CHIEF JUSTICE,

SIGNED.

Jimly Asshiddiqie

JUSTICES,

SIGNED.

Soedarsono

SIGNED.

I Dewa Gede Palguna

SIGNED.

H.A.S Natabaya

SIGNED.

H. Abdul Mukthie Fadjar

SIGNED.

H.M Laica Marzuki

SIGNED.

H. Achmad Roestandi

SUBSTITUTE REGISTRAR,

SIGNED.

Cholidin Nasir