



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

**SUMMARY OF DECISION
FOR CASE NUMBER 18/PUU-XX/2022**

Concerning

Cut-Off of the Term of Office of Regional Heads

- Petitioner** : Frans Manery and Muchlis Tapi Tapi
Type of Case : Examination of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of the Government in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
Subject Matter : Article 201 paragraph (7) of Law 10/2016 is in contrary to Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution.
Verdict : To dismiss the Petitioners' petition in its entirety.
Date of Decision : Wednesday, April 20, 2022.
Overview of Decision :

The Petitioners are individual Indonesian citizens who serve as Regents and Vice Regents argue that their constitutional rights as guaranteed in Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution has been prejudiced, according to their opinion, by the promulgation of the provisions of Article 201 paragraph (7) of Law 10/2016. According to the Petitioners the *a quo* norms reduce the term of office of the Petitioners as Regents and Vice Regents from what should have been 5 (five) years to 3 (three) years and 6 (six) months, so that the promulgation of the *a quo* Article in fact is counterproductive in making the government administration system more efficient in realizing the vision and mission of the Petitioners as regional heads, therefore it is in contrary to the principle of fair legal certainty.

Regarding the authority of the Court, because the Petitioner petition for a judicial review of the Law *in casu* Article 201 paragraph (7) of Law 10/2016, which is one of the authorities of the Court, based on Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, the Petitioners have explained their qualifications and the loss of their constitutional rights as individual Indonesian citizens who serve as Regents and Vice Regents, the right to obtain guarantees, protection and fair legal certainty and the right to obtain equal opportunities in government as stipulated in Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. The Petitioners believe that the promulgation of the norms being petitioned for review shall create the loss because the norms reduce the term of office of the regent and vice regent inappropriately. Therefore, it is counterproductive in realizing the vision and mission of the Petitioners as Regent and Vice Regent. Therefore, it is evident that there is a causal relationship between the Petitioner's assumption regarding the loss of constitutional rights that are considered to be prejudiced and the promulgation of the legal norms for which the review is petitioned, so that if the petition is granted, such loss/potential loss will not occur. Therefore, regardless of whether the Petitioners' argument

is proven or not regarding the unconstitutionality of the legal norms being petitioned for review, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas because the issue of the Petitioners' petition is deemed by the Court to be sufficiently clear, there is no urgency and relevance for the Court to request the statements and/or minutes of meetings in relation to the Petitioners' petition to the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioners' petition in relation to the cut off or reduction of the term of office of the regional head which is no longer for 5 (five) years as referred to in Article 201 paragraph (7) of Law 10/2016, the Court considers the following:

1. Whereas the existence of paragraph (7) cannot be separated from other paragraphs in Article 201 of Law 10/2016 which as a whole is a transitional provision so that the implementation of the policy for the election of governors, regents, and mayors can be carried out simultaneously nationally throughout the territory of the Unitary State of the Republic of Indonesia on November 2024 [*vide* Article 201 paragraph (8) of Law 10/2016]. For this reason, the timing of the simultaneous elections for governors, regents and mayors will be carried out in stages in 2015, 2017, and 2018 and 2020 according to the expiration of the terms of office of governors and vice governors, regents and vice regents, as well as mayors and vice mayors [*vide* Article 201 paragraph (1) to paragraph (7) of Law 10/2016]. For governors and vice governors, regents and vice regents, as well as mayors and vice mayors who were elected in 2020 and inaugurated in 2021 whose terms of office were supposed to end in 2026 shall be subjected to a cut off, so that their terms of office are not 5 (five) years, but they must expire in 2024. With this arrangement, all provinces and regencies/cities (except the Governor and Vice Governor of the Special Region of Yogyakarta) will hold the elections for governors, regents and mayors at the same time in November 2024. Subsequently, the elections shall be held every 5 (five) years simultaneously in all territory of the Unitary State of the Republic of Indonesia as stipulated in Article 3 paragraph (1) of Law 10/2016. Regarding the simultaneousness, the Court is of the opinion that it does not only refer to the voting time, but also to the inauguration time, which also need to be regulated and synchronized in order to create effective and efficient development policies between the regions and the capital;
2. Whereas regarding the policy of formulating the election of governors, regents, and mayors including the cut off or reducing the term of office of regional heads as stipulated in Article 201 of Law 10/2016, it is transitional or temporary and shall occur once (*einmalig*) for the sake of holding simultaneous national elections in 2024. So that subsequently, the terms of office of governors and vice governors, regents and vice regents, and mayors and vice mayor shall expire at the same time and the election for governors, regents and mayors shall be held every 5 (five) years simultaneously nationally. The cut off of the term of office is not in contrary with the concept of human rights. As a political right, the right shall be categorized as a derogable right which means that the fulfilment of these rights may be reduced and limited by the state based on the reasons as stated in Article 28J paragraph (2) of the 1945 Constitution. The Court is of the opinion that the right to equal opportunities in the government, *in casu* the terms of office of governors and vice governors, regents and vice regents, as well as mayors and vice mayors due to certain circumstances or reasons may be reduced, including in this case in the context of fulfilling the national simultaneous election policy for governors, regents and mayors. The terms of office have also been cut off under the law, namely Article 201 paragraph (7) of Law 10/2016 which is transitional and shall apply to all governors and vice governors, regents and vice regents, as well as mayors and vice mayors, elected from of the 2020 election of governors, regents, and mayors, therefore it is also not discriminatory;
3. Whereas based on the Decision of the Constitutional Court Number 22/PUU-VII/2009

dated November 17, 2011, the term of office of the Petitioners has fulfilled as one period because if it is calculated from the time the Petitioners were sworn in on July 9, 2021 [vide the summary of the court hearing of Case Number 18/PUU-XX/ 2022 dated March 8, 2022 page 3] until November 2024, the term of office of the Petitioners is 3 years and 4 months or they have served for more than half of the terms of office as regent and vice regent;

4. Whereas as a transitional provision, Article 201 of Law 10/2016 is intended to avoid a legal vacuum and guarantee the legal certainty and is transitional in nature in the context of holding simultaneous national elections for governors, regents, and mayors in 2024, so that the Court is of the opinion that it has complied with the requirements of the transitional provisions as stipulated in Point 127 Appendix II of Law Number 12 of 2021 concerning the Establishment of Laws and Regulations (Law 12/2011). Regarding the legal certainty, it has been explicitly regulated in Article 201 paragraph (7) of Law 10/2016, so that within reasonable reasoning the provisions for reducing or cut off of the terms of office of governors and vice governors, regents and vice regents, as well as mayors and vice mayors have previously known by each candidate. If it is associated with the *a quo* normative legal fiction, such matter is irrelevant to be questioned after the Petitioners were elected and inaugurated as Regent and Vice Regent of North Halmahera. Moreover, the term of office of less than 5 (five) years is also experienced by all governors and vice governors, regents and vice regents, as well as mayors and vice mayors elected from the 2020 election of governors, regents and mayors. The Court also did not find evidence of the provisions for the cut off or reducing the terms of office experienced by the Petitioners as regent and vice regent elected from the 2020 election of governors, regents, and mayors has caused the Petitioners to not be able to carry out their supposed vision and mission because they would be outlined in the regional development plans and budget allocations and shall also be adjusted to the previously known term of office. Meanwhile, the form of legal protection given to regional heads and vice regional heads whose terms of office are not 5 (five) years, they shall be given compensation. Regarding such matter, Article 202 paragraph (4) of Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (Law 1/2015) states the form of compensation to be obtained by regional heads and vice regional heads whose term of office ended in 2018 shall be in the form of money equal to the basic salary multiplied by the number of remaining months and pension rights for one period. Furthermore, regarding the holding of simultaneous national elections for governors, regents, and mayors in 2024, the compensation received by regional heads and vice regional heads whose terms of office have been reduced shall follow the provisions of Article 202 of Law 8/2015 which states, "Governors and Vice Governors, Regents and Vice Regents, as well as Mayors and Vice Mayors who do not reach one period as a result of the provisions of Article 201 shall be given compensation in the form of money equal to the basic salary multiplied by the number of remaining months and pension rights for one period."

Based on all the aforementioned legal considerations, the Court is of the opinion that Article 201 paragraph (7) of Law 10/2016 is not in contrary to the principles of legal certainty and justice and it does not prevent equal opportunities in government as stipulated in Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution, the petition of the Petitioners is legally unjustifiable in its entirety.

Accordingly, the Court subsequently issued a decision which verdict states that the Petitioners' decision is entirely dismissed.