



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 15/PUU-XX/2022

Concerning

**Appointment of State Civil Apparatus (*Aparatur Sipil Negara* or ASN)
as Substitute for Regional Heads Whose Term of Office Has Ended**

- Petitioner** : Dewi Nadya Maharani, et al
Type of Case : Examination of Law Number 10 of 2016 concerning the Second Amendment to 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 10/2016) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter : Examination of Article 201 paragraph (10) and paragraph (11) of Law 10/2016 against Article 1 paragraph (2), Article 18 paragraph (4), Article 27 paragraph (1) and Article 28D paragraph (1) 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 respectively work as students, educators and entrepreneurs, and have played an active role in the election of Regional Heads and Vice Regional Heads in DKI Jakarta (Applicant I to Petitioner V) and in West Java (Applicant VI).

Regarding the authority of the Court because the Petitioners petition for the review of Article 201 paragraph (10) and paragraph (11) of Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the petition of the Petitioners;

Regarding the legal standing of the Petitioners, which in principal argue that the norms of Article 201 paragraph (10) and paragraph (11) of Law 10/2016 have made the Petitioners worried because of the replacement of the regional heads by appointing State Civil Apparatus (*Aparatur Sipil Negara* or ASN) officials who are not necessarily able to make policies that are suitable for the regional community, also not necessarily able to improve and continue the programs that have been carried out by the previous regional head. Therefore, the Petitioners wishes that the Regional Heads and Vice Regional Heads elected from the Regional Head Election (*Pilkada*) who have ended their terms of office to continue serving until a definitive Regional Head and Vice Regional Head are elected. Regarding the arguments of the Petitioners, the Court is of the opinion that the Petitioners, each of whom had played an active role by exercising their right to vote in the election of Regional Heads both in DKI Jakarta and in West Java, have been able to specifically describe the existence of a causal relationship (*causal verband*) of the perceived loss of the constitutional rights of the Petitioners as voters in the election of the regional heads in their respective regions, with the promulgation of the norms of Article 201 paragraph (10) and paragraph (11) of Law 10/2016 because the voters should get the regional heads as a result of elections, and not appointed officials, thus making them worry about the implementation of policies that are suitable with the needs of the community. Therefore, the Court is of the opinion that the Petitioners have specifically explained the perceived

loss of their constitutional rights that occurred with the promulgation of the norms of the law for which the judicial review is petitioned for. Therefore, the Petitioners have the legal standing to act as Petitioners in the *a quo* petition;

Whereas because of the *a quo* petition is clear, then the Court is of the opinion that there is neither urgency nor need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioners' petition, which in principal argues that Article 201 paragraph (10) and paragraph (11) of Law 10/2016 are in contrary to Article 1 paragraph (2), Article 18 paragraph (4), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution because Article 201 paragraph (10) and paragraph (11) of Law 10/2016 have violated the meaning of people's sovereignty. The government no longer acts wisely in the public interest because it injures the choice of the people as leaders in each region by making unilateral decisions, namely by replacing the leaders in each region without holding another the Regional Head and Vice Regional Head Elections (*pilkada*), instead the government appointed officials directly from the ASN structure. Regarding the arguments of the Petitioners' petition, the Court in principal considers the following:

- a. Whereas the article petitioned for review by the Petitioners is a part of the "Transitional Provisions" which has been amended three times, originally regulated in Law 1/2015, then amended by Law 8/2015 and lastly amended by Law 10/2016. By referring to Law Number 12 of 2011 concerning the Establishment of Legislation (Law 12/2011), it is stated in Appendix II regarding "Transitional Provisions" as stated in number 127.
- b. Whereas the regional heads who have been elected by the Petitioners and whose term of office ended in 2022 and 2023 and are not appointed as acting regional heads to fill the legal vacancy in the office of regional heads until the 2024 national simultaneous regional heads elections as argued by the Petitioners, is not a matter of the constitutionality of norms. This is due to the fact that the term of office of the elected regional head has ended. Moreover, the regional heads whose terms of office end in 2022 and 2023 and the voters have known from the beginning the design of the national simultaneous regional head elections as stipulated in the transitional provisions from Law 1/2015 which was then amended by Law 8/2015 and lastly amended by Law 10/ 2016. As a transitional or temporary provision, if the transitional provisions have been implemented, then for the next regional head elections, the general provisions for the implementation of the regional head elections shall be re-applied, including the determination of the term of office which shall return to the provisions of Article 162 of Law 10/2016, which shall be 5 (five) years and thereafter may be re-elected to the same office for only one more term. Likewise, if the regional head and/or vice regional head are unable to hold a position so that a vacancy occurs, the normal mechanism for filling the vacant position will no longer use the transitional provisions [*vide* Article 173, Article 174, Article 175, and Article 176 of Law 1/ 2015 which was amended by Law 8/2015 and lastly amended by Law 10/2016]. In addition, the filling of acting regional heads in the transitional period until the 2024 national simultaneous regional head elections by *madya* ranking leadership officials for the governor positions [*vide* Article 201 paragraph (10) of Law 10/2016] and by *pratama* ranking leadership officials for the regent/mayor positions [*vide* Article 201 paragraph (11) of Law 10/2016] is a law-making policy. The Court can understand the policy because in principle the term of office of the elected regional head has ended in accordance with the provisions of the law.
- c. Whereas the provisions stipulated in Law Number 5 of 2014 concerning State Civil Apparatus have opened up opportunities for non-PNS (non-civil servant) structures to fill certain *madya* ranking leadership positions as long as they have the approval of the President and their filling shall be carried out openly and competitively and stipulated in a Presidential Decree [*vide* Article 109 paragraph (1) of Law 5/2014]. In addition to what has been determined above, Law 5/2014 also opens up opportunities to TNI (military) soldiers and Polri (national police) members to fill high-ranking leadership positions after resigning from their active service if needed and are in accordance with the competencies as determined through an open and competitive process [*vide*

Article 109 paragraph (2) of Law 5/2014]. The high-ranking leadership positions as referred to can be in the form of the chief-ranking leadership, *madya* ranking leadership and *pratama* ranking leadership [*vide* Article 19 paragraph (1) of Law 5/2014]. That means, as long as a person is serving as a *madya* ranking leadership official or a *pratama* ranking leadership official, such person can be appointed as acting regional head.

- d. Whereas it is very important to note that the appointment of acting regional heads to fill the vacant positions of governors/regents/mayors shall not be allowed to appoint officials who do not have a complete understanding of the ideology of Pancasila and the Unitary State of the Republic of Indonesia as well as a good understanding of national politics. In addition, such person must also have a good governance managerial competence, so that in carrying out his duties as a temporary regional leader he can fulfil the expectations and wishes of the people in their respective regions so that the community can appreciate the leadership of the official even though his leadership is only temporary. Moreover, the acting governor/regent/mayor must be able to cooperate with the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah*). Therefore, in the process of appointing acting regional heads as referred to in Article 201 paragraph (10) and paragraph (11) of Law 10/2016, the government must first map out the real conditions of each region and the needs of acting regional heads who must fulfil the requirements as acting regional heads and must pay attention to the regional interests and such matters can be evaluated at any time periodically by the authorized official. Therefore, it will produce quality Regional Officials in leading their respective regions for a temporary period until there is a definitive regional head and vice regional head based on the results of the 2024 national simultaneous regional heads elections. This has also been considered by the Court in Sub-paragraph **[3.14.3]** of the Decision of the Constitutional Court Number 67/PUU-XIX/2021, dated April 20, 2022.
- e. Whereas the Petitioners' doubts regarding the acting regional heads appointed to replace the regional heads and vice regional heads whose terms of office have ended could not make regional development plans, namely whether or not they are suitable with the vision and mission of the regional RPJP and also suitable with the regional needs, such concerns can be understood by the Court. Therefore, the appointment of acting regional heads must be conducted carefully so that the relevant officials are able to carry out the relevant regional development plans that are suitable with the vision and mission of such regional RPJP. Moreover, the appointed regional heads shall have the same authority as the definitive regional heads. Therefore, the Court is of the opinion that the leadership of the acting regional heads in accordance with the transitional provisions is still in line with the agenda to achieve the development in the relevant regions.

Whereas based on all the aforementioned legal considerations, the Court is of the opinion that Article 201 paragraph (10) and paragraph (11) of Law 10/2016 are in line with the principles of people's sovereignty, democratic elections, equality of position, and fair legal certainty as guaranteed by 1945 Constitution.

Accordingly, the Petitioners' petition is entirely legally unjustifiable, and subsequently the Court has issued a decision which verdict state that the Petitioners' petition is entirely dismissed.