



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 31/PUU-XX/2022

Concerning

**Inauguration of the Replacement of the Leader of the Regional
People's Representative Council (*Dewan Perwakilan Rakyat Daerah*)**

- Petitioner** : H. Hasanuddin
- Type of Case** : Examination of Law Number 23 of 2014 concerning Regional Government (Law 23/2014) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 112 paragraph (4) of Law 23/2014 is in contrary to Article 28D paragraph (1) of the 1945 Constitution.
- Verdict** : 1. To grant the Petitioner's petition in part;
2. To declare that the phrase "inaugurated under the Ministerial decree" in Article 112 paragraph (4) Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587) is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted **"must be followed up administratively as long as the internal processes of political parties and the Regional People's Representative Council (DPRD) have been fulfilled in accordance with the provisions of the laws and regulations"**;
3. To dismiss the Petitioner's petition for the remainder;
4. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate.
- Date of Decision** : Tuesday, May 31, 2022.

Overview of Decision :

The Petitioner is an individual Indonesian citizen who is currently a member of the Regional House of Representatives (*Dewan Perwakilan Rakyat Daerah* or DPRD) of East Kalimantan Province, the Golkar Party Faction for the 2019-2024 period who has obtained approval from his party and has obtained a decision from the DPRD of East Kalimantan Province regarding the replacement of the Chairman of the DPRD of East Kalimantan Province in the remaining term of office for 2019-2024 period and has also submitted a letter regarding this matter to the Minister of Home Affairs (*Menteri Dalam Negeri* or Mendagri) through the Governor of East Kalimantan. According to the Petitioner, the Petitioner has not yet been inaugurated by the Minister of Home Affairs as the Chairman of the DPRD of East Kalimantan Province in the remaining term of office for the 2019-2024 period which is the right of the Petitioner due to the promulgation of Article 112 paragraph (4) of Law 23/2014 along the phrase "inaugurated under the Ministerial decree". Therefore, the Petitioner considers that such a situation certainly does not fulfil the sense of justice and legal certainty that should be guaranteed as regulated in Article 28D paragraph (1) of the 1945 Constitution.

Regarding the authority of the Court, because the Petitioner petition for a judicial review of the Law, *in casu* Article 112 paragraph (4) of Law 23/2014 against the 1945 Constitution, which is one of the authorities of the Court, therefore 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 Petitioner, in his qualifications as an individual Indonesian citizen who is currently a member of the DPRD of East Kalimantan Province, the Golkar Party Faction for the 2019-2024 period, has been able to explain specifically the loss of his constitutional rights which according to the Petitioner has occurred, namely the right to obtain legal certainty as referred to in Article 28D paragraph (1) of the 1945 Constitution. According to the Petitioner, the promulgation of the norms of Article 112 paragraph (4) of Law 23/2014 along the phrase "inaugurated under the Ministerial decree" shall cause the Minister of Home Affairs to reassess or reconsider the proposal of Replacement of Chairman and Determination of Candidate for the Chairman Substitute for the DPRD of East Kalimantan Province for the remaining 2019-2024 term of office. Therefore, regardless of whether or not the Petitioner's argument is proven regarding the unconstitutionality of the legal norms petitioned for review, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Regarding the subject matter of the petition, because it is deemed by the Court to be clear enough, there is no urgency and relevance for the Court to request statements and/or minutes of meetings in relation to the Petitioner's petition to the parties as referred to in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioner's petition, along the phrase "inaugurated under the Ministerial decree" in Article 112 paragraph (4) of Law 23/2014 which causes the Petitioner to have not been determined or it may even occur that the Petitioner shall not be appointed as the Chairman of the DPRD of East Kalimantan Province through the mechanism of interim replacement of the Chairman of the DPRD of East Kalimantan Province for the remaining 2019-2024 period, the Court considers the following:

1. Whereas based on Article 36 paragraph (2) and paragraph (3) of Government Regulation Number 12 of 2018 concerning Guidelines for the Preparation of Code of Conduct for the Regional People's Representatives in the Provincial, Regency and Municipal Level (PP 12/2018) which is the implementing rule of the provisions of Article 132 paragraph (1) and Article 186 paragraph (1) of Law 23/2014, without the Court intending to assess the legality of the PP 12/2018, the termination as the chairman of the DPRD other than through the mechanism of ethical assessment by the honorary body, can also be conducted through the internal mechanism of a political party that belongs to the Chairman of the DPRD who is terminated. In other words, the political party shall also have the right to terminate any member who is assigned or appointed as the Chairman of the DPRD. However, sometimes there are objections to the decision of a political party to terminate and replace the Chairman of the DPRD, so that it becomes a political party dispute. According to Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Law 2/2011), political party disputes must be resolved internally through the court of political parties and if the resolutions are not achieved, the next process shall be to bring the disputes to the district court, whose decision can only be appealed to the Supreme Court [*vide* Article 32 and Article 33 of Law 2/1011]. Therefore, in the event that there is a legal process regarding the termination and replacement of the Chairman of the DPRD, it must be completed before the political process is carried out through a plenary session of the DPRD;
2. Whereas both the termination and replacement of the Chairman of the DPRD must be carried out in a plenary meeting to be determined through a DPRD resolution. Regarding such decree, the Chairman of the DPRD in the provincial level shall submit the decree to the Minister through the governor for the termination or replacement of the Chairman of the DPRD in the provincial level and the Chairman of the DPRD in the regency/municipal

level shall submit the decree to the Governor through the regent/mayor for the termination or replacement of the DPRD in the regency/municipal level [*vide* Article 38 paragraph (1) to paragraph (4) and Article 39 paragraph (2) to paragraph (4) of PP 12/2018];

3. Whereas the phrase “inaugurated under the Ministerial decree” in Article 112 paragraph (4) of Law 23/2014 is a phrase commonly used for the validity of every decision and/or action that must be determined or inaugurated by an authorized government agency or official [*vide* Article 8 paragraph (1) of Law Number 30 of 2014 concerning Government Administration]. In the context of the *a quo* case, The Minister of Home Affairs has the authority to inaugurate the Chairman of the DPRD in the provincial level based on the resolution of the provincial DPRD plenary meeting. This shall also apply to filling the positions in other state institutions;
4. Whereas in determining the termination or replacement of the Chairman of the DPRD through the DPRD plenary meeting, which shall be used as the basis for the Minister or the Governor to issue a decree on the termination or replacement, it shall be based on the resolution of the political party belongs to the Chairman of the relevant DPRD. This means that political rights are not only for proposing the termination of the Chairman of the DPRD but also for proposing a replacement for the Chairman of the DPRD to be announced in a plenary meeting and then determined by a DPRD resolution. Therefore, in the context of the termination and replacement of the Chairman of the DPRD, there is no reason for the Minister of Home Affairs not to follow up on the administrative process of terminating and replacing the Chairman of the DPRD as long as it has been carried out in accordance with the provisions of the laws and regulations;
5. Whereas the protracted process of replacing the Chairman of the DPRD will of course create legal uncertainty. These conditions can lead to a situation of justice delayed justice denied. Based on these legal considerations, the Court is of the opinion that the phrase “inaugurated under the Ministerial decree” in Article 112 paragraph (4) of Law 23/2014 is conditionally in contrary to the 1945 Constitution as long as it is not interpreted as “must be followed up administratively as long as the internal processes of the political parties and the DPRD have been fulfilled in accordance with the provisions of the laws and regulations”. Therefore, in order to create a non-disrupted process of administering regional government and for the sake of legal certainty, such interpretation requires that the *a quo* administrative action must be implemented immediately in accordance with the provisions of the laws and regulations;
6. Whereas although in principal both the Petitioner’s petition and the Court’s opinion are similar that the phrase as referred to must be interpreted as conditionally unconstitutional, however, the Court has differences in formulating the terms for its unconstitutionality.

Based on all the aforementioned legal considerations, the Court is of the opinion that the subject matter of the Petitioner’s petition is legally justifiable in part. Accordingly, the Court subsequently issued a decision which verdicts state as follows:

1. To grant the Petitioner’s petition in part;
2. To declare that the phrase “inaugurated under the Ministerial decree” in Article 112 paragraph (4) Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587) is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted “**must be followed up administratively as long as the internal processes of political parties and the Regional People’s Representative Council (DPRD) have been fulfilled in accordance with the provisions of the laws and regulations**”;
3. To dismiss the Petitioner’s petition for the remainder;
4. To order the recording of this Decision in the State Gazette of the Republic of Indonesia as appropriate.