



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 37/PUU-XX/2022**

Concerning

Appointment of Acting Regional Head in the Regional Head Election Law

- Petitioner** : **A. Komarudin, 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 the Constitutionality of Article 201 paragraph (9) along with its Elucidation, Article 201 paragraph (10) and paragraph (11) of Law 10/2016 against the 1945 Constitution
- Verdict** : To declare that the Petitioners' petition is inadmissible.
- Date of Decision** : Thursday, July 7, 2022
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens from various professions and also voters in the of regional head elections.

Regarding the authority of the Court, because of the Petitioners petition for a Review of Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have clearly outlined their qualifications as individual Indonesian citizens. In addition, the Petitioners also explained their qualifications, those who have domiciles in Jakarta, Jayawijaya and Yapen, as voters. In such qualification, the Petitioners have also specifically explained their constitutional rights, which in their opinion, are prejudiced by the promulgation of the norms petitioned for review, namely the right to vote and to be candidate, the right to participate in a democratic government, the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law, the right to realize an effective government as guaranteed in the 1945 Constitution because the regional heads position shall be filled by appointed officials and not the people's choice. Therefore, it is evident that there is a causal relationship (*causal verband*) between the Petitioners' presumption regarding the potential loss of constitutional rights and the promulgation of the norms of Article 201 paragraph (9) along with its Elucidation and Article 201 paragraph (10) and paragraph (11) as stipulated in Law 10/2016 which are petitioned for review, so that if the petition is granted, such potential loss will not occur. Therefore, regardless of whether or not the arguments of the Petitioners regarding the unconstitutionality of the legal norms being petitioned for review are proven, the Court is of the opinion that the Petitioners has the legal standing to act as the Petitioner in the *a quo* petition.

Whereas because the Court considers the issue of the Petitioners' petition 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.

Meanwhile, regarding the subject matter of the petition, the Court in its consideration states that regarding the issue of legal considerations as cited in Paragraph [3.13] which in principal the constitutionality of the *a quo* case has been considered in the Decision of the Constitutional Court Number 67/PUU-XIX/2021, the Decision of the Constitutional Court Number 15/PUU-XX/2022, and the Decision of the Constitutional Court Number 18/PUU-XX/2022 which have sufficiently clear in answering the constitutional issues as questioned by the Petitioners in the *a quo* case, the Court is of the opinion that the Petitioners should be able to fully understand the three *a quo* decision of the Court so that the concerns of the Petitioners regarding the legal uncertainty and injustice for the Petitioners due to the appointment of the acting Regional Head, will not occur. Because, in principle, the Court has given the guidelines in relation to the mechanism and procedure for the appointment of Regional Heads to be carried out by the Government.

In addition, the Court is of the opinion that even though the Petitioners in explaining their legal standing in submitting the *a quo* petition, they submit it more because of the interests of the Petitioners as voters who cannot oversee the implementation of the democratic appointment of regional heads, there is no legitimacy from the people for the appointment of acting regional heads, there is potential for unsustainable and ineffective regional development due to the appointment of such acting regional heads, there is potential that the term of office of such acting regional heads exceeds the term of office of the definitive regional heads, as well as the potential for not considering the specifications for the acting regional heads appointed in the provinces of Papua and West Papua. However, based on the Court's decisions, the substance of the norms of Article 201 paragraph (9) and its Elucidation, Article 201 paragraph (10) and Article 201 paragraph (11) of Law 10/2016 are precisely to provide legal certainty in terms of filling the vacant regional head positions, in order to ensure the continued fulfilment of public services and the achievement of community welfare in the regions. Therefore, during the transitional period, as one of the substances in the Decision of the Constitutional Court Number 67/PUU-XIX/2021, the Decision of the Constitutional Court Number 15/PUU-XX/2022, and the Decision of the Constitutional Court Number 18/PUU-XX/2022, it is confirmed that the filling of the vacant regional head positions is a necessity in order to ensure the continued fulfilment of public services and the achievement of community welfare in the regions.

In addition, the Court is of the opinion that regarding the filling of the Acting Regional Head during the transition period to the holding of the 2024 National Simultaneous Election, in the Decision of the Constitutional Court Number 67/PUU-XIX/2021, the Decision of the Constitutional Court Number 15/PUU-XX/2022, and the Decision of the Constitutional Court Number 18/PUU-XX/2022, the Court has emphasized several basic things that must be taken into consideration in filling the acting regional heads. This must be executed by the Government by issuing the implementing regulations so that measurable and clear mechanisms and requirements are available. These basic considerations include:

1. The acting regional heads must 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;
2. The appointed officials shall fulfil the qualifications and requirements as stipulated by the law;
3. The authorized officials can evaluate the acting regional heads at any time (continuously) and they can be replaced if he does not have the capability to provide public services;
4. The filling of the positions shall not ignore (and pay attention to) the principles of democracy and the filling shall be implemented in an open, transparent, and accountable manner;
5. The acting regional heads shall be competent leaders, with integrity, in accordance with the regional aspirations and shall work for the people in order to achieve regional

- development;
6. By considering the length of time the region shall be led by acting regional heads, it is necessary to consider granting the same authority to the acting regional heads as the authority of the definitive regional heads;
 7. Acting regional heads must have good managerial competence, so that in carrying out their duties as regional leaders they can fulfil the expectations and desires of the people in their respective regions;
 8. The acting regional heads must be able to cooperate with the Regional People's Representative Council (*Dewan Perwakilan Rakyat Daerah*); and
 9. Prior to filling in for the acting regional heads, a mapping of the real conditions of each region and the needs of the acting regional heads must first be made to meet the requirements of the acting regional heads and to pay attention to the regional interests, so that they are able to carry out the vision, mission, and RPJP of the relevant regions.

Based on the aforementioned considerations of filling in for the acting regional heads, the Court is of the opinion that there is no doubt that the Decision of the Constitutional Court Number 67/PUU-XIX/2021, the Decision of the Constitutional Court Number 15/PUU-XX/2022, and the Decision of the Constitutional Court Number 18/PUU-XX/2022 have comprehensively considered the constitutionality of the transitional regulations for the 2024 National Simultaneous Regional Head Election. Therefore, there is no issue of the constitutionality of norms as argued by the Petitioners.]

Another thing that is also considered by the Court is that in the *Petitum* section of the *a quo* petition. Regarding such matter, the Petitioners in *Petitum* number 2 petitioned for the Court to declare that the phrase "shall be appointed as acting governors, acting regents, and acting mayors until the election of the governors, and vice governors, regents and vice regents, as well as mayors and deputy mayors through national simultaneous elections in 2024" in Article 201 paragraph (9) of Law 10/2016 is in contrary to the 1945 Constitution. Likewise, in *Petitum* number 3, the Petitioners petitioned for the Court to declare that "the Elucidation of Article 201 paragraph (9) of Law 10/2016 is in contrary to the 1945 Constitution. But on the other hand, regarding the Article 201 paragraph (9) of Law 10/2016 and its Elucidation, in *Petitum* number 5 the Petitioners petitioned for the Court to declare that the phrase "shall be appointed as acting governors, acting regents, and acting mayors until the election of the governors, and vice governors, regents and vice regents, as well as mayors and deputy mayors through national simultaneous elections in 2024" in Article 201 paragraph (9) and the Elucidation of Article 201 paragraph (9) is conditionally constitutional as long as it is interpreted as:

- a. shall be appointed through a democratic filling mechanism for the Regional Heads which shall be re-regulated in a Law or Perppu;
- b. The candidates for Acting Regional Heads have the highest legitimacy and acceptance from the community;
- c. Acting Governors and Regents/Mayors shall be from the Papuan Indigenous People for the Regional Head Officials in the Provincial Governments of Papua and West Papua and Regency/City Governments of Papua and West Papua;
- d. Through an assessment process that considers all proposals and recommendations from the Papuan People's Council (*Majelis Rakyat Papua*), Papuan People's Representative Council (*Dewan Perwakilan Rakyat Papua*), DPRD, Indigenous Law Community Institutions, and religious leaders.
- e. There are clear provisions that regulate the requirements to be fulfilled by the appointed Acting Regional Heads in fulfilling their roles, duties and authorities;
- f. The terms of office of the incumbent regional heads and/or the term of office of regional heads that expire in 2022 and 2023 may be extended; and
- g. Independent and do not represent any certain political interests of the President or the Central Government.

Whereas the Court is of the opinion that within the limits of reasonable reasoning, the construction of the formulation of such *petitum* can be concluded as a conflicting petition. Because, on the one hand, the Petitioners petitioned for the Court to declare that the Article 201 paragraph

(9) Law 10/2016 and its Elucidation is in contrary to the 1945 Constitution, while on the other hand the Petitioners petitioned for the Article 201 paragraph (9) of Law 10/2016 and its Elucidation to be declared as conditionally constitutional. Therefore, the Court is of the opinion that such *Petitum* can only be justified if it is made or formulated as an alternative. Not only regarding Article 201 paragraph (9) of Law 10/2016 and its Elucidation, but the conflicting petition also occur in the petition for Article 201 paragraph (10) and Article 201 paragraph (11) of Law 10/2016. The preparation of such *petitum* has caused the petition to not fulfil the requirements of a formal petition.

Based on the above considerations, the petition of the Petitioners does not fulfil the formal requirements so that the *a quo* petition must be declared as vague. Even if the petition is not considered as vague, *quod non*, based on the above considerations, it is evident that the norm of Article 201 paragraph (9) and its Elucidation, Article 201 paragraph (10) and Article 201 paragraph (11) of Law 10/2016 does not contain the constitutionality issue of norms as argued by the Petitioners, therefore the Petitioners' petition is legally unjustifiable.

Therefore, the Court issued a decision which verdict states that the Petitioners' petition is inadmissible.