



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION  
FOR CASE NUMBER 2/PUU-XXI/2023

Concerning

Periodization of Term of Office of Regional Heads

<b>Petitioner</b>	: <b>Edi Damansyah</b>
<b>Type of Case</b>	: Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors to become Law (Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
<b>Subject Matter</b>	: Judicial Review of Article 7 paragraph (2) letter n of Law 10/2016 against the 1945 Constitution.
<b>Verdict</b>	: To dismiss the Petitioner's Petition entirely.
<b>Date of Decision</b>	: Tuesday, 28 February 2023.
<b>Overview of Decision</b>	:

The Petitioner argues that as a Candidate for Regent of Kutai Kartanegara for the upcoming 2024-2029 period, he has the potential to lose his rights to "guarantee of legal certainty" and "equal opportunity in the government", because the word "served" in Article 7 paragraph (2) letter n of Law 10/2016 does not fulfil the protection of the Petitioner's right to legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution, because it is unclear to which officer the periodization limitation of the term of office of regent is intended, whether it is only intended for any regents who serve definitively or simultaneously with those who have served as temporary officials;

Regarding the authority of the Court, because the Petitioner petitions for a review of the Law, *in casu* Law 10/2016 against the 1945 Constitution, the Court has the authority to hear and decide on the *a quo* petition.

In relation to the legal standing of the Petitioner, because the Petitioner has been able to explain the relations between the presumed loss of the Petitioner's constitutional rights as guaranteed in the 1945 Constitution and the enactment of the norms of Article 7 Paragraph (2) letter n of Law 10/2016 as submitted in the *a quo* petition for review, therefore, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

The Petitioner argues that as a Candidate for Regent of Kutai Kartanegara for the upcoming 2024-2029 period, he has the potential to lose his rights. The rights as referred to are the rights to "guarantee of legal certainty" and "equal opportunity in the government", because Article 7 paragraph (2) letter n of Law 10/2016, the phrase "served" can be interpreted as the Petitioner having served the term of regent for two consecutive terms from 2016–2021 and 2021–2026. Such interpretation calculates that one period has been counted in the first stage (2016-2021) because he has served for more than 2 ½ years as Acting Regent and definitively as Regent (both are counted as 2 years, 10 months, 12 days). Then,

on the second stage of the term of office of Regent (2021-2024/2026), it is also counted as one period, because he has gone through a term of office of 3 or 5 years. According to the Petitioner, the word “served” in Article 7 paragraph (2) letter n of Law 10/2016 has not fulfilled the protection of the Petitioner's right to legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution, because it is unclear to which officer the periodization limitation of the term of office of regent is intended, whether it is only intended for any regents who serve definitively or simultaneously with those who have served as temporary officials.

Whereas because of the *a quo* petition is clear, the Court is of the opinion that there is no urgency or need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas there are differences in the basis and reasons for reviewing the constitutionality used in the *a quo* Petition, it is sufficient for the Court to provide an assessment regarding the fulfilment of the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021 in the submission of the *a quo* Petition. Therefore, regardless of whether the Petitioners' petition is legally justifiable or not, pursuant to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, the *a quo* petition may be re-submitted.

In accordance with the considerations of the decisions of the Court, in particular the legal considerations and the verdict of the Decision of the Constitutional Court Number 22/PUU-VII/2009 which states that “the term of office which shall be counted as one period is any **term of office served** for half or more than half of the term of office” which was reaffirmed in the legal considerations of the Decision of the Constitutional Court Number 67/PUU-XVIII/2020 which states, “...a half term of office or more than half shall be counted as one term of office. That means, if a person has served as a Regional Head or as an Acting Regional Head for half or more than half of the term of office, then such person is counted as having served one term of office”, so that the Petitioner's Petition which requires that the word “served” in the phrase “has never **served** as Governor, Deputy Governor, Regent, Deputy Regent, Mayor and Deputy Mayor for 2 (two) terms of office in the same position for Candidates for Governor, Candidates for Deputy Governor, Candidates for Regent, Candidates for Deputy Regent, Candidates for Mayor and Candidates for Deputy Mayor”, in Article 7 paragraph (2) letter n of Law 10/2016 is declared contrary to the 1945 Constitution and does not have binding legal force to the extent that it is not interpreted as “served definitively”, automatically has been answered by the legal considerations of the decisions. Therefore, based on the legal considerations and the verdict of the Decision of the Constitutional Court Number 22/PUU-VII/2009 which was later affirmed in the legal considerations of the Decision of the Constitutional Court Number 67/PUU-XVIII/2020, the meaning of the word “served” is clear and it does not need to be interpreted other than the meaning as referred to in the decisions. Thus, the word “served” is a term of office that is counted as one period, i.e. **term of office served** for half or more than half of the term of office of regional head. Therefore, through the *a quo* verdict, the Court needs to emphasize that what is meant by **term of office served** for half or more than half is the same as and is not different from the “term of office served”, whether for anyone that has served definitively or served temporarily, as argued by the Petitioners.

Whereas in accordance with all the aforementioned legal considerations, the word “served” in the phrase “has never **served** as Governor, Deputy Governor, Regent, Deputy Regent, Mayor and Deputy Mayor for 2 (two) terms of office in the same position for Candidates for Governor, Candidates for Deputy Governor, Candidates for Regent, Candidates for Deputy Regent, Candidates for Mayor and Candidates for Deputy Mayor”, in Article 7 paragraph (2) letter n of Law 10/2016, is not contrary to the recognition, guarantee, protection and fair legal certainty and equal treatment before the law as set forth in Article 28D paragraph (1) of the 1945 Constitution; it is not contrary to the principle that every citizen has the right to equal opportunities in government as also stated in Article 28D paragraph (3) of the 1945 Constitution; and it is not contrary to the rights and freedom of anyone to fulfil just

demands in accordance with considerations of morality, religious values, security, and public order in a democratic society as set forth in Article 28J paragraph (2) of the 1945 Constitution. Therefore, the Petitioner's petition is legally unjustifiable entirely.

Regarding the *a quo* petition, the Court passes down a decision in which the verdict states to dismiss the Petitioner's petition entirely.