CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 62/PUU-XXI/2023

Concerning

Constitutionality of Regulations of Terms of Office of Regional Heads in Transitional Period to Simultaneous Regional Elections

Petitioners	:	**Elly Engelbert Lasut and Moktar Arunde Parapaga**
Type of Case	:	Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law (Regional Election Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	:	According to the Petitioner, Article 201 paragraph (5) of the Regional Election Law is contrary to 1945 Constitution because it reduced the Petitioner's term of office to less than five years
Verdict	:	To dismiss the Petitioner's petition in its entirety
Date of Decision	:	Monday, 31 July 2023
Overview of Decision	:	

The Petitioners are individual Indonesian citizens who are the Regent and Deputy Regent of the Talaud Islands Regency. The Petitioners petition for a review of the constitutionality of Article 201 paragraph (5) of the Regional Election Law. According to the Petitioners, Article 201 paragraph (5) of the Regional Election Law which determines the term of office of regional heads elected in the 2018 election shall start in 2018 and end in 2023, such determination has harmed the Petitioners constitutional rights. This is because the Petitioners, who were elected as regional head/deputy regional head in the 2018 election, has just been appointed in 2020, so they are unable to serve for five years.

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of statutory norms, *in casu* Article 201 paragraph (5) of the Regional Election Law against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Petitioners are indeed the Regent and Deputy Regent of the Talaud Islands Regency elected in the 2018 election (*vide* evidence P-3, evidence P-4, evidence P-5, and evidence P-6). The Court is of the opinion that the Petitioners have been able to describe the presumed loss of constitutional rights specifically due to the enactment of the norms of Article 201 paragraph (5) of the Regional Election Law. In addition, The Petitioners have also been able to describe the presumed loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms of the law being petitioned for review. Accordingly, if the *a quo* petition is granted, the constitutional loss or at least the potential loss of constitutional rights as described will no longer occurs and will not occur. Therefore, regardless of whether the unconstitutionality of the Elucidation being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Regarding the Petitioner's argument which stated that Article 201 paragraph (5) of the Regional Election Law is contrary to the 1945 Constitution and does not have binding legal force provided that it is not interpreted as "the Governor and Deputy Governor, Regent and Deputy Regent, and the Mayor and Deputy Mayor shall hold a term of office for 5 (five) years or hold the maximum possible term of office until the 2024 Simultaneous Regional Election period is held, starting from the date of

inauguration."

Regarding this petition, the Court is of the opinion that the norms of Article 201 paragraph (5) of the Regional Election Law are part of 4 (four) stages of holding regional head and deputy regional head elections in the transitional period towards holding simultaneous regional head and deputy regional head elections nationally in 2024.

As a transitional norm, if Article 201 paragraph (5) of the Regional Election Law is given an additional new meaning to "hold a term of office for 5 (five) years or hold the maximum possible term of office until the 2024 Simultaneous Regional Election period is held, starting from the date of inauguration", the Court is of the opinion that this has the potential to have complicated implications for the elections of regional heads and other deputy regional heads held in 2018. Among other things, it creates legal uncertainty for the 170 (one hundred and seventy) regional heads and deputy regional heads elected in 2018.

In addition to eliminating the meaning of Article 201 paragraph (5) of the Regional Election Law as a transitional norm, the new meaning as petitioned by the Petitioner will also eliminate the existence of Article 201 paragraph (5) of the Regional Election Law as a connecting norm for holding simultaneous regional head and deputy regional head elections nationally in 2024.

The Court is aware that the inauguration event is the starting point for calculating the terms of office of regional heads and deputy regional heads, however, if the phrase "elected in the 2018 election will serve until 2023" in the norms of Article 201 paragraph (5) of the Regional Election Law is interpreted as "holding a term of office for 5 (five) years or holding the maximum possible term of office until the 2024 Simultaneous Regional Election period is held, starting from the date of inauguration", this could not only damage the construction of transitional norms in Article 201 paragraph (5), but could also damage the construction of transitional norms in Article 201 of the Regional Election Law in its entirety.

Pursuant to these legal considerations, the Court is of the opinion that the Petitioner's petition is legally unjustifiable. Accordingly, the Court subsequently handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.

Concurring Opinion

Regarding the *a quo* decision of the Constitutional Court, we Constitutional Justices Suhartoyo and M. Guntur Hamzah have a concurring opinion as follows:

Whereas in connection with the petition for review of Article 201 paragraph (5) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors Into Law (hereinafter referred to as Law 10/2016), We Constitutional Justices Suhartoyo and M. Guntur Hamzah, has concurring opinions, with several reasons/arguments as follows:

Whereas the Constitutional Court Regulation (*Peraturan Mahkamah Konstitusi* or PMK) Number 2 of 2021 concerning Procedures in Judicial Review Cases (hereinafter referred to as PMK 2/2021) has provided confirmation regarding the unclear or obscure nature of the Petitioner's petition in judicial review. In Article 74 of PMK 2/2021, it is stated that the Court may declare a Petition as unclear or obscure, among other things because:

a. there is a discrepancy between the arguments of the Petition in the *posita* and the *petitum*;
b. the argument is not contained in the *posita*, instead it is stated in the *petitum* or vice versa;
c. the petition of the Petitioner in the *petitum* contradict each other and do not provide alternative options.

Whereas by referring to the criteria of obscure petition in point 6 letter a above, and by carefully examining the parts that give rise to the *a quo* petition being considered as inconsistent and cause this petition to be obscure (*obscuur*), therefore, the Constitutional Court as a constitutional judiciary should wisely give the Petitioners the opportunity to resubmit the petition by declaring the *a quo* petition as obscure and declaring that the Petitioners' petition is inadmissible, without declaring that the Petitioners' petition is dismissed, which is the same as the Constitutional Court confirming that the norm of Article 201 paragraph (5) of Law 10/2016 is constitutional. Therefore, this conclusion closes the issue of the constitutionality of the *a quo* norm and it would be difficult to resubmit a petition to question the issue of constitutionality of this law.

Whereas if the *a quo* petition of the Petitioner is not obscure, therefore by continuing the examination of the Petitioner's petition to the plenary hearing stage, the Court is able to explore the

constitutionality issue questioned by the Petitioners. Therefore, regarding the substance of the issue of constitutionality of the norms of Article 201 paragraph (5) of Law 10/2016, it can be known whether the problems faced by the Petitioners are really caused due to the constitutionality issue of these norms;

Whereas in accordance with these reasons/arguments, the *a quo* petition of the Petitioners, we shall affirm that we have a concurring opinion, the Constitutional Court should not have reached the conclusion of dismissing the *a quo* petition of the Petitioners and declared that the provisions of Article 201 paragraph (5) of Law 10/2016 are constitutional, instead it should have declared that the *a quo* petition of the Petitioners is inadmissible.