



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 76/PUU-XXI/2023**

Concerning

**Constitutionality of Prohibition on Village Officials
to Serve as Administrators of Political Parties**

Petitioner	: Mahmudi
Type of Case	: Judicial Review of Law Number 6 of 2014 concerning Villages (Law 6/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Type of Case	: Article 51 letter g of Law 6/2014 against Article 28 and Article 28C paragraph (2) of 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Wednesday, 30 August 2023
Overview of Decision	:

Whereas the Petitioner is an individual Indonesian citizen as proven by a Resident Identity Card (*Kartu Tanda Penduduk* or KTP), who is currently working as a Village Official with the position of Village Secretary.

Regarding the Court's Authority, because the Petitioner petitions for a review of the constitutionality of norms of law, *in casu* Article 51 letter g of Law 6/2014 against the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the Court has the authority to hear the *a quo* petition.

Whereas in relation to the Petitioner's legal standing, the Court is of the opinion that the Petitioner has been able to describe the presumed loss of constitutional rights, specifically that his constitutional rights have been harmed by the enactment of the norms of Article 51 letter g of Law 6/2014. The Petitioner has also been able to describe the presumed loss of constitutional rights which has a causal relationship (*causal verband*) with the enactment of the norms being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed constitutional loss as described will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner 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.

Whereas regarding the subject matter of the Petitioner's petition concerning the constitutionality of the norms of Article 51 letter g of Law 6/2014 which according to the Petitioner is contrary to Article 28 and Article 28C paragraph (2) of the 1945 Constitution because it does not provide freedom of association and assembly through participation in political party organizations and does not provide the right to advance oneself as a political party administrator to realize the goals of a political party as intended in the Political Party Law, the Court needs to first state the following matters:

- Freedom of association and assembly is a basic right in a legal and democratic state which has the sovereignty of the people and is guaranteed in the constitution which constitutes the elaboration of the values of *Pancasila* (Five Principles of Indonesia). Constitutionally, the right to freedom of association and assembly is guaranteed in Article 28 of the 1945 Constitution and Article 28E paragraph (3) of the 1945 Constitution. Therefore, the 1945 Constitution has expressly guaranteed the freedom of association, freedom of assembly, and freedom of expression for everyone. Internationally too, Article 20 of the Universal Declaration of

Human Rights and Article 21 of Covenant on Civil and Political Rights have provided guarantees for everyone to have the right to be free and independent in association and assembly;

- The elaboration of the constitutional mandate regarding the right of association and assembly is then realized, among others, in the formation of political parties which are part of the democratic pillar in the Indonesian political system [*vide* General Elucidation of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Law 2/2011)]. Through political parties, the people are able realize their right to express opinions regarding the direction of national and state life;
- Whereas constitutionally the implementation of human rights may be limited, but this limitation may only be done for certain reasons and when it fulfils certain rules. The provisions of Article 28J of the 1945 Constitution have given legitimacy to the state through the legislators to place restrictions on the exercise of everyone's rights and freedoms in the law. These restrictions are intended solely to guarantee and respect the rights and freedoms of other people, and for the sake of fair demands based on moral considerations, religious values, security and public order in a democratic society;
- Doctrinally, there are two rationalities for why restrictions are needed on the implementation of human rights (*Hak Asasi Manusia* or HAM), *First*, the restriction of human rights is based on the recognition that most human rights are not absolute, instead it is a balance between individual interests and the public interest. *Second*, to resolve conflicts between rights, for example the right of expression must be limited due to respect for a person's right to privacy, so that one right may be limited to provide space for the implementation of other rights. Several rights have been internationally agreed to be rights that must not be reduced under any circumstances, even in a state of war emergency. These rights are known as non derogable rights as stated in Article 4 paragraph (2) of the Covenant on Civil and Political Rights. In relation to non derogable rights, they have been regulated in Article 28I paragraph (1) of the 1945 Constitution. However, the norm of Article 28I paragraph (1) of the 1945 Constitution must be read together with Article 28J paragraph (2) of the 1945 Constitution [*vide* Constitutional Court Decisions, among others, Number 065/PUU-II/2004, Number 2-3/PUU- V/2007];
- Whereas with regard to the prohibition on village heads, village officials and members of village consultative bodies holding concurrent positions as administrators of political parties as regulated in Law 6/2014, this provision is a specific provision attached as protection to the main provisions in Law 6/2014 (*lex specialis*). Meanwhile, the regulations regarding freedom of association and assembly in Law 2/2011 which provide opportunities for every citizen to actively participate in realizing the ideals of the Indonesian nation through political parties are general regulations (*lex generalis*) because it applies to everyone provided that they fulfil certain requirements and without discrimination on the grounds of title and social position. In accordance with the principles in the law that states *lex specialis derogate legi generalis*, namely that specific provisions override general provisions, therefore the restrictions/prohibitions on village heads, village officials and members of village consultative bodies holding the positions of administrators of political parties do not constitute discriminatory and arbitrary treatment to these positions.
- Whereas after confirming the above matters, the Court subsequently considers the issue of the constitutionality of the norms of Article 51 letter g of Law 6/2014 as argued by the Petitioner, namely whether the provisions of the *a quo* norms violate the freedom of association and assembly to express verbal and written thoughts for village officials and therefore it must be declared contrary to Article 28 and Article 28C paragraph (2) of the 1945 Constitution, the Court is of the opinion as follows:
- The existence of village officials who are also entrusted with administrative duties including holding important positions as the lowest level of government apparatus. The village officials are part of the village government organs, apart from the village head, whose positions are pursuant to Article 1 number 3 of Law 6/2014 to assist the village head in carrying out village government functions. Even though the village officials are assistant to the village head in carrying out his/her duties and authority, Law 6/2014 has placed the village officials in very important positions in the village government because in addition to bearing the attributes and symbols given by the state, the village officials also carry out state duties. Even though the appointment of village officials is very dependent on the village head as a direct interested party, the authority attached to such positions is regulated in such a way that the personnels selected as village officials must truly be capable of carrying out their duties. In addition, both the appointment and dismissal of village

officials must be consulted by the village head to the sub-district head on behalf of the Regent/Mayor to obtain recommendations [*vide* Article 49 paragraph (2) and Article 53 paragraph (3) of Law 6/2014];

- As assistant to the village head, the village officials will be directly involved in carrying out the duties and authority of the village head as regulated in Article 26 of Law 6/2014, for example, administering the Village Government, holding the authority to manage village finances and assets, determining the village income and expenditure budget and also determining village regulations. As part of the government institution in the district that has direct contact with the community, both the village head and village officials will have a closer relationship with the community. Accordingly, in fact the position of village officials is very strategic, therefore it is hoped that it can be filled by people who are not only professional and have integrity in carrying out their duties and functions, but also individuals who are able to be accepted, trusted and respected as village administrators, and are able to gain legitimacy from the village community in carrying out village government to bring village communities towards realizing prosperity, order and village progress. Therefore, in assisting the village head carry out these duties and authority, independence, professionalism and impartiality (neutrality) are needed from the village officials, especially in providing public services;
- Whereas neutrality is a very important principle in carrying out public service duties, government duties, and development duties carried out by any government employees, and government officials or state officials so that they are able to carry out their duties professionally. Neutrality, according to the *Kamus Besar Bahasa Indonesia* (Big Indonesian Language Dictionary), is defined as a neutral state and attitude, in the sense of being impartial or free, meaning that in carrying out one's duties and authority, one must be free from interests, intervention, free from influence, fair, objective and impartial. Political neutrality means not being involved and not taking sides in the interests of certain political parties. In an effort to maintain the neutrality of their positions, both the village head and the village officials must be free from the influence of political parties in order to guarantee unity and integrity and ensure the continuity of public services that are carried out well by concentrating all attention, thoughts and energy on the duties assigned to them;
- In connection with the above, as a consequence of the authority attached to the position of village officials as assistant to the village head, there should be regulations regarding political neutrality, namely in the form of prohibition on being administrators of political parties as stated in Article 51 letter g of Law 6/2014. The involvement of village officials in the management of political parties will cause various problems to arise in carrying out village governance. It is very possible for village officials to be partial towards the political parties they support, such gestures are then manifested in the formation of policies and use of the village budget. This has the potential to lead to jealousy which causes divisions between village officials so that in the end it will have an impact on ignoring the interests of the welfare of the village community itself;
- Whereas in carrying out village government, stakeholders who are neutral and free from the influence of certain political interests are needed, therefore there must be separate regulations to regulate the prohibitions on the village heads and village officials being administrators of political parties so that in carrying out their duties and authority, they will remain focus on public service and the interests and welfare of the village communities. This prohibition may not be interpreted as a form of eliminating the freedom of association and assembly in a political party for village head, village officials or members of village consultative bodies, instead this is implemented for the greater public interest. However, this restriction is not absolute, because the village head, village officials and members of village consultative bodies are able to exercise their political rights to vote in the elections. In addition, normatively in accordance with the legal principles, Law 6/2014 is *lex specialis*, meanwhile the Political Party Law is *lex generalis*. Therefore, specific provisions override general provisions (*lex specialis derogate legi generalis*), accordingly the existence of restrictions/prohibitions on village head, village officials and members of village consultative bodies from becoming administrators of political parties do not constitute discriminatory treatment of these positions;

Whereas pursuant to all the legal considerations above, the Court is of the opinion that Article 51 letter g of Law 6/2014 has been proven to provide freedom of association and assembly, expressing thoughts verbally and in writing and giving the right to advance oneself in fighting for rights collectively to build society, nation and country as guaranteed by Article 28 and Article 28C paragraph (2) of the 1945 Constitution. Therefore, the Petitioner's argument entirely legally unjustifiable.

The Court subsequently handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.