



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 88/PUU-XXI/2023**

**Concerning**

**Constitutionality of Dismissal of Regency/Municipal Regional Legislative Council Members  
Due to Transferring of Political Party Membership**

- Petitioners** : **Sefriths Eduard Dener Nau, et al.**
- Type of Case** : Judicial Review of Law 23 of 2014 concerning Regional Government (Law 23/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Type of Case** : Review of the Constitutionality of Article 193 paragraph (2) letter i of Law 23/2014 against the 1945 Constitution
- Verdict** : 1. To dismiss the Petitioner's petition in its entirety.  
2. To declare Article 193 paragraph (2) letter i of 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, provided that it is not interpreted as "except for members of the Regency/Municipal Regional Legislative Council if:  
a. the political party that nominated the member is no longer a participant in the election or the management of the political party no longer exists,  
b. the member of the Regency/Municipal Regional Legislative Council shall not be dismissed or withdrawn by the political party that nominated them,  
c. there are no replacement candidates registered in the Permanent Candidate List of the party that nominated the member."  
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.  
4. To dismiss the remainder of the Petitioners' petition.
- Date of Decision** : Tuesday, 31 October 2023
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who currently serve as members of the regency/municipal DPRD (Regional Legislative Council) who have suffered losses due to the enactment of the *a quo* article norms namely Article 193 paragraph (2) letter i of Law 23/2014.

Regarding the authority of the Court, since the Petitioners petition for a review of Law 23/2014 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 Indonesian citizens who currently serve as members of the regency/ municipal DPRD who believe that their constitutional rights have been harmed due to the enactment of Law 23/2014, specifically in relation to Article 193 paragraph (2) letter i concerning members of the regency/ municipal DPRD who resign from time to time because they become members of other political parties.

According to the Petitioners, in the case experienced by the Petitioners, the temporary dismissals because the Petitioners moved to other political parties are very detrimental to the Petitioners' constitutional rights because those have created a lack of legal certainty as members of the DPRD. In fact, according to the Petitioners, there has been Constitutional Court Decision Number 39/PUU-XI/2013 concerning the interpretation of Article 16 paragraph (3) of Law 2/2011 and such decision states that Article 16 paragraph (3) of Law 2/2011 conditionally does not have binding legal force provided that it is not interpreted as "shall be excluded for members of the DPR (House of Representatives) or DPRD (Regional Legislative Council), if:

- a. the political party that nominated the member no longer exists or is no longer a participant in the election or the management of the political party no longer exists;
- b. DPR or DPRD members are not dismissed or withdrawn by the political party that nominated them;
- c. there are no replacement candidates registered in the Permanent Candidate List of the party that nominated the member.

Therefore, according to the Petitioners, Article 193 paragraph (2) letter i is actually contrary to the Constitutional Court's decision.

Next, the Court considers the legal standing of the Petitioners. The Court is of the opinion that the Petitioners has fulfil the Requirements of the legal standing to act as Petitioners in the *a quo* Petition.

Meanwhile, regarding the subject matter of the petition, the Court in its legal consideration states the following:

- Whereas the Court is of the opinion that the facts related to the constitutional issue of the dismissal of members of the DPRD and the transfer of political party membership carried out by the members of political parties who currently holding the position of legislative members have been considered and stated in the decision of the Constitutional Court Number 39/PUU-XI/2013 as has been considered by the Court in Paragraph **[3.12]** above. Pursuant to this decision, since the substance of the norm of Article 193 paragraph (2) letter i of Law 23/2014 is related to the temporary dismissal of regency/ municipal DPRD members who are dismissed because they transfer their memberships to other political parties, specifically the political parties that nominate them in the previous election do not qualify as participants in the next election, the Court declares the norm of *a quo* Article is conditionally unconstitutional in accordance with the substance and decision of the Constitutional Court Decision Number 39/PUU-XI/2013, provided that it concerns the membership of the regency/ municipal DPRD. Meanwhile, since the decision of the Constitutional Court Number 39/PUU-XI/2013 is related to the membership status of the DPR and Provincial DPRD, the Court considers this matter to be irrelevant for consideration. Therefore, the norm of Article 193 paragraph (2) letter i of Law 23/2014 must also be interpreted conditionally constitutional, the same as the interpretation in the Constitutional Court Decision Number 39/PUU-XI/2013 only to the extent that it concerns the membership status of the regency/ municipal DPRD. Therefore, the norm of Article 193 paragraph (2) letter i of Law 23/2014 is unconstitutional provided that it is not interpreted entirely the same as stated in the *a quo* decision;
- Whereas in relation to the Petitioners' argument which questions the Constitutional Court's decision, it should be *erga omnes*, therefore the *a quo* petition should follow the verdict in the Constitutional Court Decision Number 39/PUU-XI/2013. Regarding this matter, in order to strengthen the principle of legal certainty, based on the *erga omnes* doctrine, to the extent that it is related to the membership status of the regency/ municipal DPRD, the Court shall remain complying with the verdict in the Constitutional Court Decision Number 39/PUU-XI/2013 because the substance or material regulated in the norms of Article 193 paragraph (2) letter i of Law 23/2014 which are being petitioned for review by the Petitioners are substantially the same as the norms of Article 16 paragraph (3) of Law 2/2008.
- Whereas pursuant to all the considerations above, the Petitioners' argument which states that Article 193 paragraph (2) letter i of Law 23/2014 has created legal uncertainty and injustice and has resulted in the violation of the right to equal opportunities in the government, thereby is contrary to Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution to the extent that it concerns the membership status of the district/ municipal DPRD is partially legally unjustifiable.

Accordingly, the Court subsequently handed down a decision whose verdict states, as follows:

1. To dismiss the Petitioner's petition in its entirety.
2. To declare that Article 193 paragraph (2) letter i of 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 contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, provided that it is not interpreted as "shall be excluded for members of the Regency/Municipal Regional Legislative Council if:
  - a. the political party that nominated the member is no longer a participant in the election or the management of the political party no longer exists,
  - b. the member of the Regency/Municipal Regional Legislative Council shall not be dismissed or withdrawn by the political party that nominated them,
  - c. there are no replacement candidates registered in the Permanent Candidate List of the party that nominated the member."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioners' petition.