



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 143/PUU-XXI/2023**

Concerning

**Constitutionality of the Term of Office for Regional Heads/Deputy Regional Heads
Who Were the Results of the 2018 Election and Inaugurated in 2019**

- Petitioners** : **Murad Ismail, et al.**
- Type of Case** : Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors to Become a Law (Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Article 201 paragraph (5) of Law 10/2016 is contrary to Article 1 paragraph (2) and paragraph (3), Article 18 paragraph (4), Article 27 paragraph (1), and Article 28D paragraph(1) of the 1945 Constitution.
- Verdict** : **On the Preliminary Injunction:**
To declare that the Petitioners' petition for preliminary injunction is inadmissible.
- On the Merits:**
1. To grant the Petitioners' petition in part.
 2. To declare that Article 201 paragraph (5) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) which originally reads, "The Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election shall hold office until 2023", is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force to the extent that it is not interpreted as, "the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election and inauguration shall hold office for 5 (five)

years and the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 Election and inaugurated in 2019 shall hold office for 5 (five) years starting from the date of inauguration to the extent that it does not exceed 1 (one) month before the holding of the 2024 national simultaneous voting." Thus, the norms of Article 201 paragraph (5) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors in full read, "The Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election and inauguration shall hold office until 2023 and the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 Election and inaugurated in 2019 shall hold office for 5 (five) years starting from the date of inauguration to the extent that it does not exceed 1 (one) month before the holding of the 2024 national simultaneous voting."

3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Date of Decision : Thursday, December 21, 2023

Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens who serve as the Governors, the Deputy Governors, the Mayors, and the Deputy Mayors in their respective regions and were directly elected by the public during the simultaneous voting on 17 June 2018 and then inaugurated in 2019. The Petitioners state that they have constitutional rights as guaranteed in Article 1 paragraph (2) and paragraph (3), Article 18 paragraph (4), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution.

Whereas regarding the Court's authority, because the Petitioners' petition is a review of the constitutionality of norms of law, *in casu* Article 201 paragraph (5) of Law 10/2006 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding legal standing, according to the Court, the Petitioners are indeed regional heads/deputy regional heads in their respective regions who were appointed and inaugurated at the same time as their pairs or deputy regional heads as stated in one decision letter. However, regarding the constitutional issue in the petition, as individual citizens who have suffered constitutional injury, the Petitioners only need to be represented by one of the pairs of regional heads. The Petitioners have described the injury of constitutional rights they have suffered as regional heads/deputy regional heads who have directly experienced or at least will potentially experience a reduction in their terms of office as regional heads/deputy regional heads due to the enactment of the *a quo* norms. Thus, the Petitioners have been able to specifically describe that there is a causal relationship (*causal verband*) between the Petitioner's assumptions regarding the injury of constitutional rights and the enactment of Article 201 paragraph (5) of Law 10/2016. The assumption regarding the injury of constitutional rights is specific in that if the petition is granted by the Court then the assumption regarding the injury of constitutional rights in question will not occur. Therefore, regardless of whether the unconstitutionality issues of the norms as argued by the Petitioners are proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the Petitioners submitted a petition for Preliminary Injunction which basically asks the Court to prioritize the examination of the *a quo* Petition, provide a decision to postpone the dismissal of the Petitioners at the end of 2023, and postpone the nomination, discussion, and inauguration of Acting heads in the regions led by the Petitioners until the Court passes down a Decision on the *a quo* Petition. Regarding the reason for the Petitioners' petition for preliminary injunction, because the subject matter of the *a quo* case is decided without proceeding to the next trial with an agenda of proof to hear statements from the parties as referred to in the provisions of Article 54 of the Constitutional Court Law, in the Court's opinion, it is not relevant to consider the Petitioners' petition for preliminary injunction. Thus, the Petitioners' petition for preliminary injunction is inadmissible.

Whereas in the Court's opinion, the constitutionality issue that must be considered is whether the norms of Article 201 paragraph (5) of Law 10/2016 are contrary to Article 1 paragraph (2) and paragraph (3), Article 18 paragraph (4), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution because it does not regulate and consider the term of office for regional heads/deputy regional heads who were elected during the 2018 simultaneous election but were only appointed and started their term of office in 2019 because they were waiting for the completion of the term of office for the previous regional heads/deputy regional heads. Given the norms of Article 201 paragraph (5) of Law 10/2016, the regional heads/deputy regional heads who were inaugurated in 2019 will end their term of office in 2023. Thus, the Petitioners will lose their constitutional right to serve as regional heads for 5 (five) years as regulated in Article 162 paragraph (1) and paragraph (2) of Law 10/2016. Regarding the Petitioners' arguments, the Court in principle considers as follows:

1. Whereas the norms of Article 201 paragraph (5) of Law 10/2016 cannot be separated from the norms of Article 201 paragraph (4) of Law 10/2016 which is also a transitional provision. Under the provisions of Article 201 paragraph (4) of Law 10/2016, there are legal facts that there were regional heads/deputy regional heads whose terms of office ended in 2018 and there are also facts that there were regional heads/deputy regional heads whose terms of office ended in 2019. Furthermore, by carefully reading Article 201 paragraph (5) of Law 10/2016 which states, "The Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election shall hold office until 2023", within the limits of reasonable reasoning, the regional heads/deputy regional heads elected as the results of the 2018 simultaneous voting will serve for 5 (five) years until 2023.
2. Whereas the norms of Article 201 paragraph (5) of Law 10/2016 cannot be separated from the provisions regulating the term of office for regional heads/deputy regional heads as provided in Article 162 paragraph (1) and paragraph (2) of Law 10/2016. Under the norms of Article 162 paragraph (1) and paragraph (2) of Law 10/2016, a regional head/deputy regional head has a term of office for 5 (five) years, starting from the inauguration of the regional head/deputy regional head. This means that, in general, the term of office for a regional head/deputy regional head starts from the time of inauguration, not based on the time of the holding of election or voting unless it is expressly regulated in specific norms that the term of office is not even 5 (five) years [*vide* Article 201 paragraph (7) of Law 10/2016] which has been known to the regional head/deputy regional head before running in the regional head election.
3. Whereas given the regulations in the norms of Article 201 paragraph (4), Article 201 paragraph (5), and Article 162 paragraph (1) and paragraph (2) of Law 10/2016, as well as the legal facts as described above, in the Court's opinion, the norms of Article 201 paragraph (5) of Law 10/2016, is clearly in accordance with the provisions of Article 162 paragraph (1) and paragraph (2) of Law 10/2016 regarding the term of office for regional heads/deputy regional heads, namely serving for 5 (five) years from the inauguration *in casu* to the extent that they in 2018. In this regard, in the Court's opinion, the legislators have set the stages or times for the inauguration of the regional heads/deputy regional heads elected in the 2018 election, to be held in 2018, so that the 5 (five) years term of office for the regional heads/deputy regional heads started from 2018 to 2023 which is 5 (five) years as provided in the norms of Article 162 paragraph (1) and paragraph (2) of Law 10/2016.

However, the norms of Article 201 paragraph (5) of Law 10/2016 in particular and the transitional norms in the provisions of Article 201 of Law 10/2016 as a whole still leave problems regarding

the regional heads/deputy regional heads who were elected in the 2018 election but were only appointed in 2019 because the term of office for the previous regional heads/deputy regional heads only ended in 2019. In fact, Article 201 paragraph (4) of Law 10/2016 implicitly states the existence of regional heads/deputy regional heads whose term of office ended in 2019, but it turns out that this is not further provided separately in relation to Article 162 paragraph (1) and paragraph (2) of Law 10 /2016. As a result, the regional heads/deputy regional heads who were only appointed in 2019 are "forced" to follow the term of office for the regional heads/deputy regional heads who were appointed in 2018. Moreover, they were only appointed in 2019 not because of experiencing concrete events that caused them to be inaugurated late, but because the term of office for the previous regional heads/deputy regional heads only ended in 2019.

Whereas in Case Number 62/PUU-XXI/2023, the Court based its legal considerations on the concrete case experienced by the Petitioner. Moreover, in the *petitum* petitioned by the Petitioner in Case Number 62/PUU-XXI/2023, the Petitioner petitioned to remove the phrase "the 2018 election results". In fact, the regional heads and the deputy regional heads who were inaugurated in 2018 based their inauguration on the results of the 2018 election. If the Court agreed to remove the phrase "the 2018 election results", this would create legal uncertainty regarding the regional heads/deputy regional heads inaugurated in 2018 based on the 2018 election results. Different from the petition for Case Number 62/PUU-XXI/2023, in the *a quo* petition, the Court can see that the constitutional injury experienced by the Petitioners in the form of a reduction in their terms of office is not due to the implementation of the norms of Article 201 paragraph (5) of Law 10/2016 but rather is the result of a vacuum in the norms providing Article 201 paragraph (5) of Law 10/2016 and Article 162 paragraph (1) and paragraph (2) of Law 10/2016 for the regional heads/deputy regional heads who were elected in 2018 and only inaugurated in 2019 due to waiting for the end of the terms of office for the previous regional heads/deputy regional heads.

Whereas two factual conditions have caused differences between the 171 regional heads and deputy regional heads elected in 2018. *First*, the regional heads/deputy regional heads who were elected and inaugurated in 2018. *Second*, the regional heads/deputy regional heads who were elected in 2018 but were only inaugurated in 2019. In the Court's opinion, these factual conditions have led to different treatment in terms of inauguration which in turn has led to differences in the length of term of office that will be obtained by each regional head or deputy regional head. In fact, the 171 regional heads or deputy regional heads were elected in the same election, namely in 2018. In this regard, in the Court's opinion, the transitional provisions regarding a simultaneous voting cannot ignore the provisions regarding the inauguration of regional heads and their deputies. Thus, the provisions regarding a simultaneous voting must be followed by the norms providing a simultaneous inauguration, as has been considered by the Court in Sub-Paragraph **[3.10.2]** of Constitutional Court Decision Number 18/PUU-XXI/2023 which was pronounced in the Plenary Session open to the public on 14 April 2023.

Whereas in the Court's opinion, the Petitioners' argument which states that the provisions of Article 201 paragraph (5) of Law 10/2016 are contrary to the 1945 Constitution and having no binding legal force is justified. However, regarding the term of office of 5 (five) years starting from the date of inauguration to the extent that not exceeding the day of the 2024 national simultaneous voting as petitioned by the Petitioners in their *Petitum*, in the Court's opinion, this cannot be granted given that sufficient time is needed to appoint acting regional heads so that there is no vacancy in the position of regional heads/deputy regional heads that is based on reasonable reasoning and deemed sufficient, namely 1 (one) month before the D-Day of the national simultaneous voting which applies to regional heads/deputy regional heads whose term of office has passed the 2024 simultaneous voting. Meanwhile, in terms of regional heads/deputy regional heads whose term of office ends 1 (one) month before the 2024 simultaneous voting, their term of office ends 5 (five) years from the inauguration.

Whereas pursuant to the entire description of the legal considerations above, it is evident that the provisions of the norms of Article 201 paragraph (5) of Law 10/2016 have created legal uncertainty, and injustice, and provided different treatment before the law as argued by the Petitioners. However, because the verdict decided by the Court is different from the *Petitum* petitioned by the Petitioners, the Petitioners' arguments are legally justifiable in part.

Subsequently, the Court's Verdict stated:

On the Preliminary Injunction:

To declare that the Petitioners' petition for preliminary injunction is inadmissible.

On the Merits:

1. To grant the Petitioners' petition in part.
2. To declare that Article 201 paragraph (5) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) which originally reads, "The Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election shall hold office until 2023", is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force to the extent that it is not interpreted as, "the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election and inauguration shall hold office for 5 (five) years and the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 Election and inaugurated in 2019 shall hold office for 5 (five) years starting from the date of inauguration to the extent that it does not exceed 1 (one) month before the holding of the 2024 national simultaneous voting." Thus, the norms of Article 201 paragraph (5) of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors in full read, "The Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 election and inauguration shall hold office until 2023 and the Governor and the Deputy Governor, the Regent and the Deputy Regent, as well as the Mayor and the Deputy Mayor who were the results of the 2018 Election and inaugurated in 2019 shall hold office for 5 (five) years starting from the date of inauguration to the extent that it does not exceed 1 (one) month before the holding of the 2024 national simultaneous voting."
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Dissenting Opinion

Regarding the Court's Decision, there is a dissenting opinion of Constitutional Justice Daniel Yusmic P. Foekh regarding legal standing, which basically states that Petitioner I, Petitioner II, Petitioner V, and Petitioner VII have no legal standing, and the Court's verdict should declare that the petition of Petitioner I, Petitioner II, Petitioner V, and Petitioner VII is inadmissible (*niet ontvankelijke verklaard*). Meanwhile, Petitioner III, Petitioner IV, and Petitioner VI have the legal standing, and therefore in answering the merits of the petition, as stated in the *a quo* legal considerations and verdict, Constitutional Justice Daniel Yusmic P. Foekh agrees with the majority of constitutional justices.