



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 12/PUU-XXII/2024**

Concerning

Resignation of Legislative Candidates in Regional Head Elections

- Petitioners** : **Ahmad Al Farizy and Nur Fauzi Ramadhan**
- 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 (Regional Head Elections Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution).
- Subject Matter** : Judicial Review of Article 7 paragraph (2) letter s against the 1945 Constitution
- Verdict** : **On the Preliminary Injunction:**
To dismiss the petition for Preliminary Injunction
On the Merits:
To dismiss the Petitioners' petition entirely
- Date of Decision** : Thursday, February 29, 2024
- Overview of Decision** :

The Petitioners are individual Indonesian citizens as Students at the Faculty of Law, the University of Indonesia with a study concentration in Constitutional Law and have the right to vote in the 2024 Simultaneous general election (Pemilu) and regional head election (Pilkada) pursuant to the website cekdptonline.kpu.go.id; The Petitioners feel prejudiced by the existence of Article 7 paragraph (2) letter s of the Regional Head Elections Law as one of the foundations for implementing the 2024 Simultaneous Regional Head Election. The Petitioners see the potential intersection of schedule between the 2024 Simultaneous General Election and the 2024 Simultaneous Regional Head Election. In the Petitioners' opinion, Article 7 paragraph (2) letter s of the Regional Head Elections Law may result in the 2024 Simultaneous Regional Head Election not being held fairly and thus is contrary to the principles of Regional Head Elections as guaranteed in Article 22E paragraph (1) of the 1945 Constitution.

Regarding the Court's authority, because the Petitioners' petition is a review of the constitutionality of law, *in casu* Article 7 paragraph (2) letter s of the Regional Head Elections Law against the 1945 Constitution, the Court has the authority to hear the *a quo* Petitioners' petition.

Regarding the Petitioners' legal standing, the Petitioners are able to describe the causal relationship (*causal verband*) between the assumptions regarding the injury of constitutional rights that are actual or at least potential and the enactment of the norms being petitioned for judicial review. Therefore, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition;

The Petitioners submitted a petition for preliminary injunction which basically petitions to prioritize the examination of the *a quo* case and to decide before the beginning of the hearings on disputes regarding the results of general elections (PHPU) by the Constitutional Court or before the beginning of the registration stage for the participants in the 2024 Regional Head Election.

Regarding the argument of the Petitioners' petition for preliminary injunction, because the *a quo* Petitioners' petition is decided without going through a Plenary Session in a Trial Examination whose agenda includes, among other things, hearing statements from the Legislators, namely the DPR (House of Representatives) and the President, as referred to in Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no relevance to further consider the *a quo* Petitioners' petition for preliminary injunction. Therefore, the Petitioners' petition for preliminary injunction is legally unjustifiable.

Whereas regarding the constitutionality issue regarding the obligation to resign for the DPR members, the DPD (Regional Representatives Council) members, and the DPRD (Regional Legislative Council) members who want to run for regional heads has actually been resolved. Moreover, in relation to this matter, the Court has reaffirmed in Constitutional Court Decision Number 45/PUU-XV/2017, which was pronounced in a plenary session open to the public on 28 November 2017, where the obligation to resign for the DPR members, the DPD members and the DPRD members remains in effect if they want to run for regional heads.

Pursuant to the legal considerations mentioned above, the Court will then consider the Petitioners' argument regarding Article 7 paragraph (2) letter s of the Regional Head Elections Law which is considered to be conditionally contrary to the 1945 Constitution as intended by the Petitioners in the *petitum* of their petition. In principle, the Petitioners petition the Court that the provisions of Article 7 paragraph (2) letter s of the Regional Head Elections Law be declared constitutional if they include the resignation of candidates for the DPR members, the DPD members, and the DPRD members who have been elected pursuant to vote recapitulation of the General Election Commission if they run for regional heads since being determined as participants in Election. Regarding the issue petitioned by the Petitioners, the Court considered further, as follows:

Whereas on the status of elected candidates for the DPR members, the DPD members, and the DPRD members, constitutional rights and obligations that may potentially be misused by the candidates for the DPR members, the DPD members, and the DPRD members concerned are not yet attached. Therefore, if this is connected to the Petitioners' concerns as voters who have the potential to not obtain guarantees of regional head elections pursuant to implementation that provides a sense of justice for voters, then such concerns are excessive. Because, if the existing sequence of time is carefully considered, there is still a time difference between the inauguration of elected candidates for the DPR members, the DPD members, and the DPRD members and the regional head election which is currently planned to be held on 27 November 2024 [*vide* Attachment to General Election Commission Regulation Number 2 of 2024 concerning Stages and Schedule for the 2024 Election for Governors and Deputy Governors, Regents and

Deputy Regents, and Mayors and Deputy Mayors], while the inauguration of the DPR and the DPD members will be carried out on 1 October 2024 [*vide* Attachment to General Election Commission Regulation Number 3 of 2022 concerning Stages and Schedule for Holding of the 2024 General Election]. Meanwhile, the inauguration of the DPRD members will be adjusted to the end of the term of office of each DPRD member, both the provincial DPRD members and the district/municipal DPRD members [*vide* Attachment to General Election Commission Regulation Number 3 of 2022 concerning Stages and Schedule for Holding of the 2024 General Election]. Therefore, given that candidates for the DPR members, the DPD members, and the DPRD members are not yet attached with constitutional rights which have the potential for abuse of authority and interference with the performance of their positions as argued by the Petitioners as a condition for resignation for candidates for the DPR members, the DPD members, and the DPRD members who are running for regional heads, such thing is not yet relevant to apply.

However, through the *a quo* case decision, the Court needs to emphasize that the General Election Commission should require elected candidates for the DPR members, the DPD members, and the DPRD members who are running for regional heads to make statement letters regarding their willingness to resign if they have been officially inaugurated as the DPR members, the DPD members, and the DPRD members and still continue to run for regional heads.

Whereas further regarding the Petitioners' argument that the provisions regarding resignation for candidates for the DPR members, the DPD members, and the DPRD members who will become candidates for regional heads have not been accommodated as argued by the Petitioners, this is not the cause of the candidates for the DPR members, the DPD members, or the DPRD members, and candidates for regional heads denying the mandate given by their voters or constituents, including, in this case, become "the second option" in choosing positions for the candidates concerned. However, positions under the category of "elected official" are actually chosen by the discretion or freedom of voters. Because voters may know and feel better in assessing the capability and integrity of the candidates concerned, and voters are essentially the "users" of candidates for the DPR members, the DPD members, or the DPRD members as well as candidates for regional heads in question. Therefore, in the Court's opinion, the fact that the above issue has not been accommodated does not necessarily expand the meaning of the provisions of the norms of Article 7 paragraph (2) letter s of the Regional Head Elections Law, but as has been considered above, this matter can be sufficiently accommodated with the addition of requirement as confirmed in Sub-paragraph **[3.13.1]** above. Moreover, the resignation of candidates of the DPR members, the DPD members, or the DPRD members before being determined as members, has the potential to ignore the principle of equality before the law and in government as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution, not necessarily violating the rights of citizens, including the Petitioners' rights to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law as stipulated in Article 28D paragraph (1) and Article 22E paragraph (1) of the 1945 Constitution as argued by the Petitioners.

Whereas considering the importance of the holding stages of the Regional Head Election that have been determined which apparently have implications for the meaning of the simultaneity of Regional Head Election nationally, the Court needs to emphasize the schedule set out in Article 201 paragraph (8) of the Regional Head Elections Law which states, "National simultaneous voting in the Election for Governors and Deputy Governors, Regents and Deputy Regents, as well as Mayors and Deputy Mayors in all regions of the Unitary State of the Republic of Indonesia will be held in November 2024." Therefore, the Regional Head Election must be held according to the schedule consistently to avoid overlapping between the crucial stages of the 2024 simultaneous Regional Head Election and the stages of the 2024 General Election which have not yet been completed. This means that changing the schedule in question may disrupt

and threaten the constitutionality of the holding of simultaneous Regional Head Election. Therefore, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court passed down a decision in which the verdict was as follows:

On the Preliminary Injunction:

To dismiss the petition for Preliminary Injunction

On the Merits:

To dismiss the Petitioners' petition entirely

Dissenting Opinion

Against the *a quo* Decision, there is a dissenting opinion of one Constitutional Justice, namely Constitutional Justice M. Guntur Hamzah who states as follows:

Whereas I am of the opinion that the substance of the Petitioners' petition should be granted, so **the provisions of the norms** of Article 7 paragraph (2) letter s 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 regarding the phrase "*to declare in writing the resignation as the House of Representatives members, the Regional Representatives Council members, and the Regional Legislative Council members since being determined as pairs of candidates participants in Election*" are conditionally unconstitutional to the extent that they are not interpreted **including as candidates for the DPR, the DPD, and the DPRD members who have been elected pursuant to vote recapitulation determined by the General Election Commission**. Thus, in my opinion, the Petitioners' petition should be granted (*gegrond wordt verklaard*).