



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 46/PUU-XXII/2024**

Concerning

**Term of Office of Regional Heads
in Relation to Simultaneous Regional Head Elections**

- Petitioners** : **Sahbirin Noor, 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 Determination of Government in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (as Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 201 paragraph (7) of Law 10/2016 which has been interpreted by the Court through Constitutional Court Decision Number 27/PUU-XXII/2024 is contrary to the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**
To dismiss the petition of Petitioner I for preliminary injunction
On the Merits:
: 1. To declare that the petition of Petitioner II to Petitioner V is inadmissible
2. To dismiss the petition of Petitioner I in its entirety
- Date of Decision** : Tuesday, 30 July 2024
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who have the constitutional rights to obtain fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Petitioner I is the Governor of Kalimantan Selatan who suffers a constitutional loss due to the enactment of Article 201 paragraph (7) of Law 10/2016 which has been interpreted by the Court through Constitutional Court Decision Number 27/PUU-XXII/2024 because the *a quo* Article has caused him to be unable to hold his office for 5 (five) full years. Petitioner II is the Advisor to the Majelis Irsyadul Fata Foundation, which is the recipient of the grant assistance program, one of Petitioner I's programs in 2024, and he believes that he will be at a disadvantage because the next Governor of Kalimantan Selatan may not necessarily have the same assistance program. Meanwhile, Petitioner III is a student of the Faculty of Medicine of Universitas Lambung Mangkurat who receives benefits from a scholarship program from the Kalimantan Selatan Province grant fund and he believes that he will be

at a disadvantage because the next Governor of Kalimantan Selatan may not necessarily have the same assistance program. Petitioner IV is the Chancellor of Universitas Lambung Mangkurat which has a collaboration with the Kalimantan Selatan Provincial Government in this case in the form of scholarship grants for students, he believes that the article being petitioned for reviewed puts him at a disadvantage because if Petitioner I does not hold his office for 5 (five) full years, Petitioner IV, both individually and as an educational institution, will certainly suffers a loss in relation to the scholarship grants. Meanwhile, Petitioner V is the Chairperson of the Ikatan Pesantren Indonesia (Indonesian Islamic Boarding School Association) DPW (Regional Leadership Council) of Kalimantan Selatan 2019-2024, who believes that he is disadvantaged by the enactment of the article being petitioned for review because if the term of office of Petitioner I is not for 5 (five) full years, Petitioner V will lose the guarantee and certainty of the implementation of the Islamic boarding school program.

Regarding the authority of the Court, the Petitioners petition for judicial review of Article 201 paragraph (7) of Law 10/2016 which has been interpreted by the Court through Constitutional Court Decision Number 27/PUU-XXII/2024 against the 1945 Constitution, so that the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court considers that even though the Petitioners have fulfilled the qualifications as individual Indonesian citizens who have constitutional rights as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, however, the Court is of the opinion that the description of the alleged constitutional loss of Petitioners II to Petitioner V is a mere assumption which, within the limits of reasonable reasoning, cannot be ascertained to occur. Therefore, the description of the alleged constitutional loss of Petitioners II to Petitioner V, according to the Court, does not have a causal relationship (*causal verband*) with the enactment of the norm of Article 201 paragraph (7) of Law 10/2016 which has been interpreted by the Court through Constitutional Court Decision Number 27/PUU-XXII/2024 being petitioned for review, there is no doubt for the Court to declare or assess that Petitioner I has the legal standing to act as the Petitioner in the *a quo* petition. Meanwhile, the Court is of the opinion that Petitioner II to Petitioner V do not have the legal standing to act as Petitioners in the *a quo* Petition.

Meanwhile, regarding the petition for preliminary injunction submitted by Petitioner I which in principle petitions for the Court to declare that the *a quo* petition is an examination priority so that the Court may provide protection for the constitutional rights of and minimize the constitutional losses of Petitioner I. Regarding the petition for preliminary injunction, other than Petitioner I does not further explain the reasons for his petition for preliminary injunction, the subject matter of the *a quo* case is decided without holding a hearing with the agenda of hearing the statements from the parties as referred to in the provisions of Article 54 of the Constitutional Court Law, therefore there is no relevance in considering the preliminary injunction of Petitioner I. Therefore, the Court is of the opinion that, the petition for preliminary injunction submitted by Petitioner I must be declared legally unjustifiable.

Furthermore, regarding the subject matter of the Petitioners' petition, since the subject matter or the substance of the Petitioners' petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Subsequently, the Court considers that since a new meaning pursuant to the *a quo* Constitutional Court Decision Number 27/PUU-XXII/2024 is available and the constitutionality of the said new meaning has never been reviewed before, there is no relevance or reason to

consider the applicability of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021).

In considering the subject matter of Petitioner I's petition, the Court is of the opinion that the constitutionality issue argued by Petitioner I actually has the same nature and objective as the petition in Case Number 67/PUU-XIX/2021 which substantially questions the reduction of the term of office of the regional heads and deputy regional heads from 5 (five) years as stipulated in Article 162 of Law 10/2016 to less than 5 (five) years due to the simultaneous national election of regional heads and deputy regional heads, which will be held in November 2024. In relation to the constitutionality issue, the Court considers, among other things, that if the Court grants the petition and determines that any regional heads elected in 2020, whether they are inaugurated in 2020 or the subsequent years, to serve until 2025 or later, this will actually reduce the term of office of any governors and deputy governors, regents and deputy regents, and mayors and deputy mayors elected in the 2024 national simultaneous regional head elections. In contrast to the previous decisions, in Case Number 27/PUU-XXII/2024, the Petitioners substantially petition for the Court to maximize the term of office of regional heads elected in 2020 until the inauguration of the governors and deputy governors, regents and deputy regents, and mayors and deputy mayors elected from the 2024 simultaneous national regional head elections. In this regard, the Court changes its previous position by pronouncing that the norm of Article 201 paragraph (7) of Law 10/2016 is contrary to the 1945 Constitution to the extent that it is not interpreted as "The Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors elected in 2020 shall serve until the inauguration of the Governors and Deputy Governors, Regents and Deputy Regents, and Mayors and Deputy Mayors elected in the 2024 simultaneous national elections provided that each of their term of office does not exceed 5 (five) years." This means that, in order to protect the constitutional rights of the Petitioners in Case Number 27/PUU-XXII/2024, the Court has "maximized" the term of office of any regional heads elected in 2020, for those inaugurated in 2020 and the subsequent years, namely they will serve until the inauguration of the regional heads and deputy regional heads elected simultaneously in 2024 provided that each of their term of office does not exceed 5 (five) years.

Therefore, in the context of the *a quo* petition, the Court does not find a strong basis for argument nor an urgency for the Court to change its position regarding the norm of Article 201 paragraph (7) of Law 10/2016 as interpreted by the Constitutional Court Decision Number 27/PUU-XXII/2024. If the term of office of the regional head and deputy regional head is amended in accordance with the one in the petition of Petitioner I, this amendment will be contrary to the Court's previous positions. Moreover, the Court is of the opinion that some of the intentions and objectives conveyed by Petitioner I in relation to his term of office as the Governor of Kalimantan Selatan have been accommodated in the Constitutional Court Decision Number 27/PUU-XXII/2024, although it indeed does not provide a maximum term of office as desired by Petitioner I.

Furthermore, the Court is of the opinion that the Constitutional Court Decision Number 27/PUU-XXII/2024 has emphasized the exceptions to simultaneous inaugurations, that the said inaugurations can only be made for regions that are holding re-elections, or re-voting, or re-counting due to a Constitutional Court decision in a case of a dispute over the results of the regional head elections. In addition, there is the possibility that inaugurations may not be held simultaneously due to force majeure in accordance with the provisions of the laws and regulations. This means that since the inauguration of the regional heads and deputy regional

heads elected from the simultaneous elections must be carried out simultaneously, that would include any election results that are in dispute at the Constitutional Court and any petitions that are dismissed or inadmissible. Therefore, the inauguration must be postponed pending the completion of the dispute resolution process regarding the results of the regional head and deputy regional head elections at the Constitutional Court. The exceptions are only applicable for any regions that are holding re-elections, or re-voting, or re-counting of votes due to a Constitutional Court decision and any force majeure as described above.

Pursuant to all the above legal considerations, it is evident that the provisions of Article 201 paragraph (7) of Law 10/2016 which have been interpreted by the Court through the Constitutional Court Decision Number 27/PUU-XXII/2024 have provided legal certainty and are not contrary to Article 18 paragraph (4) and paragraph (5), Article 27, and Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by Petitioner I. Therefore, the arguments of the Petitioner I are entirely legally unjustifiable.

On Preliminary Injunction:

To dismiss the petition of Petitioner I for preliminary injunction.

On the Merits:

1. To declare that the petition of Petitioner II to Petitioner V is inadmissible.
2. To dismiss the petition of Petitioner I in its entirety.

Dissenting Opinion

Regarding the *a quo* decision of the Court, there is a dissenting opinion from 1 (one) of the Constitutional Justices, namely Constitutional Justice Daniel Yusmic P. Foekh who states the following:

Whereas the petition submitted by Petitioner I as the Governor of Kalimantan Selatan has apparently not involved the Deputy Governor of Kalimantan Selatan. Upon closer look, the Decree of the President of the Republic of Indonesia Number 105/P of 2021 concerning the Dismissal of the Acting Governor of Kalimantan Selatan and the Ratification of the Appointment of the Governor and Deputy Governor of Kalimantan Selatan, dated 24 August 2021, in principle contains the legal action of honorably dismissing the Acting Governor of Kalimantan Selatan and ratifying the appointment of H. Sahbirin Noor, S.Sos., M.H., and H. Muhidin as the Governor and Deputy Governor of Kalimantan Selatan for the 2021-2024 term (*vide* evidence P-8). Therefore, any interpretation to the term of office as contained in the *a quo petitem* of the petition will surely have a direct impact on the Governor and Deputy Governor of Kalimantan petition simultaneously. Therefore, the submission of the *a quo* petition without the inclusion of the deputy regional head *in casu* The Deputy Governor of Kalimantan Selatan is inappropriate according to reasonable reasoning. Moreover, the requirements for formally submitting a petition for a dispute over the results of regional head elections must be submitted by the candidate pair for governor and deputy governor, the candidate pair for regent and deputy regent, and the candidate pair for mayor and deputy mayor as regulated in Article 4 paragraph (1) letters a, b, and c of Constitutional Court Regulation Number 6 of 2020 concerning Procedures in Cases of Disputes over the Results of the Election of Governors, Regents and Mayor;

Meanwhile, regarding the legal standing of Petitioners II to Petitioner V, I agree with the legal considerations of the majority of constitutional justices that Petitioner II, Petitioner III, Petitioner IV, and Petitioner V do not have the legal standing. The alleged constitutional loss of Petitioner II, Petitioner III, Petitioner IV, and Petitioner V and the enactment of Article 201 paragraph (7) of the Regional Election Law as interpreted in the Constitutional Court Decision Number 27/PUU-XXII/2024 which regulates the terms of office of regional heads and deputy regional heads elected in 2020 is unjustifiable and has insufficient relevance with grants program and any other programs described in the *a quo* petition because those are

government programs and they must be implemented in accordance with the laws and regulations;

Whereas pursuant to the arguments presented above, in my opinion, the Court's decision should have stated that the Petitioners' petition is inadmissible (*niet onvatkelijke verklaard*).