



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 52/PUU-XXII/2024**

Concerning

**Campaign Permit for Members of DPR, DPD,
and DPRD in Regional Head Elections**

- Petitioners** : **Ahmad Farisi and A. Fahrur Rozi**
- 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 the Election of Governors, Regents, and Mayors into Law (Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 70 paragraph (2) of Law 10/2016 against the 1945 Constitution
- Verdict** : 1. To grant the Petitioners' petition partially
2. To declare that Article 70 paragraph (2) 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 the Election of Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2016 Number 130 and Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent that it is not interpreted as: "including fulfilling the requirements to: a. not use facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations; and b. take a leave of absence without government remuneration," so that Article 70 paragraph (2) 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 the Election of Governors, Regents, and Mayors into Law shall read in full as follows: "Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, other state officials, and regional officials may

participate in campaigns by submitting a campaign permit in accordance with statutory regulations, including fulfilling the requirements to: a. not use facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations; and b. take a leave of absence without government remuneration”

3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate
4. To dismiss the Petitioners’ petition for the remainder

Date of Decision : Tuesday, 20 August 2024

Overview of Decision :

The Petitioners are individual Indonesian citizens registered in the Permanent Voter List for the 2024 Regional Head Elections;

Regarding the Court’s authority, because the Petitioners’ petition is a review of Article 70 paragraph (2) of Law 10/2016 against Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioners’ petition;

Regarding the Petitioners’ legal standing, the Petitioners argue that the norms of Article 70 paragraph (2) of Law 10/2016 opens opportunities for abuse of power and misuse of state instruments by governors and deputy governors, regents and deputy regents, mayors and deputy mayors, and other state officials during political campaign activities, which could prevent and violate the Petitioners’ rights to fair, honest, and democratic Regional Head Elections because the *a quo* Article does not regulate limitations on the use of instruments of power, office facilities, and state apparatus by state officials when conducting campaigns in Regional Head Elections. According to the Court, the Petitioners, as individual Indonesian citizens with voting rights in the 2024 Regional Head Elections, have been able to elaborate on their constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia, which are deemed to have been violated by the enactment of the norms being petitioned for review. The Petitioners have also demonstrated a causal relationship (*causal verband*) between the alleged potential constitutional loss due to the enactment of the norms under review because the Petitioners are of the opinion that the existence of the norms of the article being petitioned for review will indirectly violate the Petitioners’ constitutional rights to honest, fair, and democratic Regional Head Elections. Therefore, regardless of whether the unconstitutionality of the norms argued by the Petitioners is proven or not, the Court is of the opinion that the Petitioners have legal standing to act as Petitioners in the *a quo* petition;

Whereas, in the subject matter of their petition, the Petitioners essentially argue that the norms of Article 70 paragraph (2) of Law 10/2016 differ from the provision in Article 281 paragraph (1) of Law Number 7 of 2017 concerning General Elections (Law 7/2017), which regulates campaign restrictions for state officials. In fact, according to the Court’s decision, Regional Head Elections are already considered part of the General Election regime, and therefore, the provisions regarding campaign restrictions for state officials in both Law 10/2016 and Law 7/2017 should be harmonized. Additionally, the existence of active regional heads and other state officials in relation to the campaign activities of candidates for regional head positions who share blood relations or are related by marriage up to the third degree, or who have spousal ties even if divorced, must be subject to stricter limitations. These limitations should include prohibiting active

regional heads and other state officials from participating in campaign activities that may involve the misuse of instruments, office facilities, and state apparatus for the purpose of familial or kinship politics. Regarding the Petitioners' argument, the Court essentially considers as follows:

- a. Whereas the phrase "participate in the campaign", as referred to by the Petitioners in the *a quo* petition, pertains to cases where governors and deputy governors, regents and deputy regents, mayors and deputy mayors, other state officials, as well as regional officials, involve in Regional Head Elections campaign, whether for themselves or others running for regional head positions (incumbents). Upon a careful examination of the Petitioners' *petitum* in the *a quo* petition, in the Court's opinion, the provision concerning the prohibition on campaigning using office facilities, except for security facilities for state officials as stipulated in statutory regulations, and the requirement of a leave of absence without government remuneration, is essentially already regulated in Article 70 paragraph (3) of Law 10/2016, which stipulates that "Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, who are running for re-election in the same region, during the campaign period must comply with the provisions: a. taking a leave of absence without government remuneration; and prohibited from using facilities related to their position." In this context, there is a distinction from the *a quo* petition because the Petitioners seek clarification that governors and deputy governors, regents and deputy regents, mayors and deputy mayors, other state officials, and regional officials campaigning in Regional Head Elections, whether to support their own re-election (incumbents) or to support others running for regional head positions, must also be subject to prohibitions. These include not using office facilities except for security facilities for state officials as stipulated in statutory regulations, taking a leave of absence without government remuneration, and being prohibited from having blood or marital ties up to the third degree or spousal relationships, even if divorced, with the candidates, as well as not having potential conflicts of interest with their duties, authority, and rights of office. According to the Petitioners, these issues arise because these matters are not explicitly regulated in Article 70 paragraph (2) of Law 10/2016, particularly concerning the phrase "participate in the campaign by submitting a campaign permit in accordance with statutory regulations".
- b. Whereas in connection with the provisions of Article 281 paragraph (1) of Law 7/2017, a strict prohibition on campaigning has been clearly regulated, essentially stating: "Election campaigns involving the President, Vice President, ministers, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors must comply with the provisions: a. not using facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations; b. taking a leave of absence without government remuneration". In fact, according to the Petitioners, in several of its decisions, the Court has declared that Regional Head Elections are part of the General Election regime, and therefore, there should not be differences regarding such prohibitions. Regarding the Petitioners' argument in the *a quo* petition, as considered above, the substance of Article 281 paragraph (1) of Law 7/2017 is also regulated in Article 70 paragraph (3) of Law 10/2016. However, such campaign prohibitions only apply to incumbents running for regional head positions in the same region, requiring them to take a leave of absence without government remuneration and prohibiting them from using facilities related to their position during the campaign period.
- c. Whereas even though the Petitioners did not argue the provision of Article 70 paragraph (3) of Law 10/2016, it is linked with the norms of Article 70 paragraph (2) of the *a quo* Law. Therefore, the Court needs to emphasize the legal considerations of Constitutional Court Decision Number 60/PUU-XIV/2016, which was pronounced in a plenary session open to the public on 19 July 2017.

- d. Whereas considering the aforementioned legal consideration, the Court is of the opinion that the campaign prohibition for governors and deputy governors, regents and deputy regents, mayors and deputy mayors, as examined in relation to the constitutional review of the provision of Article 70 paragraph (3) of Law 10/2016, has the same essence as the Petitioners' *a quo* petition if they intend to campaign again as incumbents in the same region. The issue arises when they campaign in a different region, whether for themselves or others. In this regard, Article 70 paragraph (2) of Law 10/2016 essentially stipulates that for governors and deputy governors, regents and deputy regents, mayors, and deputy mayors, as well as other state officials and regional officials, to participate in a campaign, they must first submit a campaign permit. The requirement for such a permit does not apply solely to governors and deputy governors, regents and deputy regents, mayors and deputy mayors as state officials as stated in Article 121 of Law Number 5 of 2014 concerning the State Civil Apparatus (Law 5/2014), but also extends to other state officials as determined under Law 5/2014. The provision regarding this permit, as well as the requirement for campaign leave for governors and deputy governors, regents and deputy regents, and mayors and deputy mayors, is hierarchically determined according to their respective positions [vide Article 70 paragraph (4) and paragraph (5) of Law 10/2016]. Meanwhile, for other state officials, the campaign prohibition during the holding of Regional Head Elections automatically refers to the provisions under Law 7/2017, in line with the Court's decision that equates the Regional Head Elections regime with the General Election regime, as stated in Constitutional Court Decision Number 85/PUU-XX/2022, pronounced in a plenary session open to the public on 29 September 2022. Given this, the Court has affirmed that there are no longer any differences between the election regimes. This demonstrates that the campaign prohibition for other state officials, under the principle of *erga omnes*, should automatically refer to the provisions in Law 7/2017, which apply equally to both Regional Head Elections and General Elections, in line with Constitutional Court Decision Number 85/PUU-XX/2022.
- e. Whereas furthermore, with regard to the Petitioners' arguments questioning the phrase "by submitting a campaign permit" for governors and deputy governors, regents and deputy regents, mayors and deputy mayors, other state officials, and regional officials to be able to participate in Regional Head Elections campaign, which, according to the Petitioners, has created legal uncertainty in ensuring fair, honest, and democratic elections as stipulated in Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. In this context, any state or regional official who may be included in the Regional Head Elections campaign or actively participate in the campaign, whether campaigning for themselves or others while still performing their official duties, must first be required to submit a campaign permit to avoid disrupting the execution of their official duties. Consequently, if state or regional officials participate in campaigns, they must comply with the general provisions regulating "campaign prohibitions," as also stipulated in Law 7/2017. Therefore, to ensure that the holding of Regional Head Elections proceeds in a democratic, honest, and fair manner as guaranteed under Article 18 paragraph (4), Article 22E, and Article 28D paragraph (1) of the 1945 Constitution, even if the state or regional officials obtain a permit of Regional Head Elections campaign, for them to participate in the campaign, they are still required to fulfill the provisions prohibiting the use of official facilities, except for security facilities for state officials as regulated under statutory provisions, and to take a leave of absence without government remuneration as stipulated under Article 281 paragraph (1) of Law 7/2017. Accordingly, the Petitioners' argument concerning the constitutional review of Article 70 paragraph (2) of Law 10/2016 is legally justifiable to the extent that the *a quo* provision is not interpreted as, "Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, other state officials, and regional officials may participate in campaigns by submitting a campaign permit in accordance with

statutory regulations, provided that they do not use facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations and take a leave of absence without government remuneration". Therefore, any official granted a campaign permit must automatically take a leave of absence without government remuneration.

- f. Whereas the Petitioners also challenge the provision on the prohibition of Regional Head Elections campaign as regulated in Article 70 paragraph (2) of Law 10/2016, which is associated with the issue of not "having blood or marital ties up to the third degree or spousal relationships, even if divorced, with the candidates, as well as not having potential conflicts of interest with their duties, authority, and rights of office". As previously considered, the provision of the "prohibition on campaigning" constitutes a general campaign provision applicable in the holding of general elections to ensure that elections are held in an honest and fair manner. Therefore, regarding the part regulating the "prohibition on campaigning," it has established fundamental principles that must not be violated, including, among others, questioning the state foundation of Pancasila, the 1945 Constitution of the Republic of Indonesia, endangering the integrity of the Unitary State of the Republic of Indonesia, disrupting public order, and using facilities inconsistent with the applicable regulations. Included in this is the requirement to ensure neutrality in campaign implementation by stipulating the prohibition against involving state officials and regional officials, as previously considered. The scope of state officials referred to has been defined in Article 121 of Law 5/2014. Furthermore, Article 280 paragraph (2) of Law 7/2017 also broadens the scope of prohibition towards parties involved in campaigns down to the village level. Therefore, to ensure that elections are conducted in an honest and fair manner, it is necessary to strengthen supervision by the Election Supervisory Body (Bawaslu) and its subordinates down to the Polling Station level in accordance with their duties and authorities. This means that if there is a violation of the "prohibition on campaigning" committed by anyone, Bawaslu and its subordinates, in accordance with the provisions of the general election law, must exercise their authority to follow up on the violation. Thus, it is irrelevant to limit this solely to blood or marital ties because such a limitation would narrow the scope of supervision in election administration. Consequently, the Petitioners' argument regarding the prohibition on campaigning for officials having blood or marital ties up to the third degree, or spousal relationships, even if divorced, with the candidates, as well as not having potential conflicts of interest with their duties, authority, and rights of office, is legally unjustifiable.
- g. Whereas in arguing the unconstitutionality of the norms of Article 70 paragraph (2) of Law 10/2016, the Petitioners associate it with the norms of Article 281 paragraph (1) of Law 7/2017, which, according to the Petitioners, the existence of these two campaign regulations has caused ambiguity, thereby leading to legal uncertainty because Regional Head Elections are also part of the general election regime, yet there are differences in the regulations regarding the prohibition on campaigning for state officials. Regarding the Petitioners' *a quo* argument, the Court has emphasized that there is no longer any distinction between the regime for regional head elections and the regime for general elections. Therefore, in the future, legislators need to harmonize and synchronize between the general election law and the regional head election law, followed by harmonization and synchronization down to the subordinate regulations, so that the elections can be carried out in a democratic, honest, and fair manner, as well as with legal certainty as guaranteed in Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

- h. Whereas according to the legal considerations above, it has been established that Article 70 paragraph (2) of Law 10/2016 is contrary to the principles of democratic, honest, and fair elections, as well as legal certainty, as stipulated in Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as argued by the Petitioners.

Accordingly, the Court subsequently passed down a decision in which the verdicts were:

1. To grant the Petitioners' petition partially;
2. To declare that Article 70 paragraph (2) 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 the Election of Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2016 Number 130 and Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent that it is not interpreted as: "including fulfilling the requirements to: a. not use facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations; and b. take a leave of absence without government remuneration," so that Article 70 paragraph (2) 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 the Election of Governors, Regents, and Mayors into Law shall read in full as follows: "Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors, other state officials, and regional officials may participate in campaigns by submitting a campaign permit in accordance with statutory regulations, including fulfilling the requirements to: a. not use facilities related to their position, except for security facilities for state officials as stipulated in statutory regulations; and b. take a leave of absence without government remuneration."
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the Petitioners' petition for the remainder.