



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 91/PUU-XXII/2024**

Concerning

**Resignation Requirement for Members
of House of Representatives, Regional Representatives Council, and Regional
Legislative Council When Running for Regional Heads**

- Petitioner** : **Terence Cameron, 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 into Law (Law 10/2016) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 7 paragraph (2) letter s of Law 10/2016 against the 1945 Constitution
- Verdict** : **On the Preliminary Injunction:**
To dismiss the Petitioners' Preliminary Injunction
On the Merits:
To dismiss the Petitioners' petition entirely
- Date of Decision** : Tuesday, 20 August 2024
- Overview of Decision** :

The Petitioners are individual Indonesian citizens registered on the Permanent Voter List for the 2024 Regional Head Election.

Regarding the Court's authority, because the Petitioners' petition is a judicial review of Article 7 paragraph (2) letter s 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 legal standing, the Petitioners essentially argue that the norms of Article 7 paragraph (2) letter s of Law 10/2016 have the potential to discourage many of the best candidates for regional heads from registering as candidates in the 2024 Simultaneous Regional

Head Elections, as they are either sitting legislative members or elected legislative candidates who are unwilling to resign out of concern for disappointing their voters and supporters if they must resign as legislative candidates and then lose in the Regional Head Elections. This situation could also lead to a lack of alternative qualified candidates, including in the Petitioners' regions, potentially causing political parties to support only 1 (one) regional head candidate in a given region, resulting in a single-candidate phenomenon. This, in turn, would deprive voters, including the Petitioners, of the opportunity to have alternative choices for candidates for regional heads. According to the Court, the Petitioners, as individual Indonesian citizens who have voting rights in the 2024 Regional Head Elections, have sufficiently explained the constitutional rights guaranteed by the 1945 Constitution that they perceive to be violated by the enforcement of the norms being petitioned for review. The Petitioners have also demonstrated a causal relationship (*causal verband*) between the potential constitutional loss and the enforcement of the norms being petitioned for review, as the Petitioners believe that the norms being petitioned for review indirectly undermine the Petitioners' constitutional rights to competent regional heads and fair, honest, and democratic Regional Head Elections. Therefore, if the petition is granted, the potential loss experienced by the Petitioners will not occur. Thus, regardless of whether or not the alleged unconstitutionality of the norms is proven, the Court considers that the Petitioners have legal standing to act as Petitioners in the *a quo* petition.

Whereas regarding the Petitioners' preliminary injunction, which essentially asks the Court to prioritize the examination of the Petitioners' petition and decide on it before the start of the registration period for candidates for Governors and Deputy Governors, Regents and Deputy Regents, Mayors and Deputy Mayors for the 2024 Simultaneous Regional Head Elections on 27 August 2024, the Court is of the opinion that, since the *a quo* petition is adjudicated without an examination with evidentiary agenda, including hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law, there is no relevance to consider the Petitioners' preliminary injunction. Accordingly, the Court is of the opinion that the Petitioners' preliminary injunction is legally unjustifiable.

Whereas regarding the subject matter of the petition, the Petitioners essentially argue that the Petitioners' petition is not *ne bis in idem* with previous petitions and that the provision of Article 7 paragraph (2) letter s of Law Number 10 of 2016 potentially results in limited qualified candidates for regional heads in the 2024 Simultaneous Regional Head Elections, including in the Petitioners' regions. This situation may also lead political parties to nominate candidates for regional heads who lack competence and sufficient political experience. This condition further results in unfairness for voters, including the Petitioners, as they are compelled to choose inexperienced candidates for regional heads, depriving voters of the opportunity to have alternative choices. Regarding the Petitioners' argument, the Court considers the following:

- a. Whereas in general, the executive and legislative powers have different roles and functions, although they complement each other. The executive power is responsible for implementing policies and daily administration, while the legislative power is responsible for making laws and overseeing their implementation by the executive (checks and balances). Furthermore, in terms of responsibility to their constituents (the voters), the Court is of the opinion that elected legislative members at the national level (House of Representatives), regional level (Regional Legislative Council), and regional representation (Regional Representatives Council) have different responsibilities compared to regional heads. Legislative members are responsible to their constituents within their electoral districts concerning legislative functions, oversight, and budgeting. They also address constituents' needs across various sectors, such as education, health, infrastructure, and social welfare. Meanwhile, regional heads (governors, regents, mayors) are directly responsible for the administration in their respective regions, focusing more on policy implementation, public services, regional resource

management, regional development management, societal welfare improvement, and regional stability. Additionally, the accountability of legislative members tends to be collective as they often work as part of a faction or commission in parliament and are politically responsible to the political parties that nominated them. In contrast, regional heads have direct and personal accountability to their voters. The performance of regional heads is evaluated based on specific results in their regions, such as local economic growth, infrastructure development, healthcare, services, and education, and they must transparently communicate their policies and actions to the public through annual reports, public dialogues, or other forums.

- b. Whereas in the context of the constitutional review of the norms of Article 7 paragraph (2) letter s of Law 10/2016 as petitioned by the *a quo* Petitioners, the Petitioners argue that requiring legislative members to resign if they run in regional head elections potentially prejudices the people in the electoral districts of those members because, if those legislative members lose the Regional Head Election, the people would lose a qualified leader who could advocate for their welfare either as a legislative member or as a regional head. According to the Court, this argument is unsubstantiated and even excessive because, apart from the fact that legislative members and regional heads have distinct responsibilities to their constituents, it is not necessarily true that legislative members running as candidates for regional heads will be replaced by legislative candidates who are not credible or competent and fail to fulfill their responsibilities to the public in the regions. Such matters depend on the integrity of the representatives (each individual). Moreover, the legislative candidates who would replace those legislative members who resign are typically selected and vetted by their party leadership, ensuring their qualification to replace the resigning members running as candidates for regional heads. Furthermore, the performance of the legislative members cannot be assessed until they have carried out their duties.
- c. Whereas concerning voters' choices in electing either legislative or regional head candidates, these choices fundamentally involve granting a mandate or trust to ensure the chosen legislative or regional head candidates do not betray that mandate or trust. Regarding this *a quo* matter, the Court is of the opinion that voters' choices are influenced by factors such as capability, integrity, and acceptability, which differ between legislative and regional head candidates. In other words, a legislative candidate may not necessarily possess the same capability or competency as a candidate for regional head. In this context, voters elect legislative candidates based on their assessment that the candidates' capability/competence and track record are suitable and fit for legislative roles, which may not be appropriate for regional head positions, and vice versa. Therefore, if newly elected or incumbent legislative members are not required to resign when running for regional head positions in their electoral districts, it would equate to betraying the mandate or trust given by the voters. This is because granting a mandate or trust to legislative or regional head candidates is not merely a formality for channeling aspirations but a substantial matter to ensure those aspirations are realized through the newly elected or incumbent legislative members with an appropriate track record and competence so that voters elect legislative candidates to serve as legislative members, not as regional heads.
- d. Whereas according to the above legal considerations, the Court is of the opinion that the Petitioners' argument is legally unjustifiable.

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

On the Preliminary Injunction:

To dismiss the Petitioners' Preliminary Injunction.

On the Merits:

To dismiss the Petitioners' petition entirely.