



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 60/PUU-XXII/2024**

Concerning

**Requirements for Political Parties and Coalitions of Political Parties
as the Nominators of Candidate Pairs for Regional Heads**

- Petitioners** : 1. **The Labor Party**, represented by: Ir. H. Said Iqbal, M.E. and Ferri Nuzarli, S.E., S.H. (as President and Secretary General)
2. **The Gelora Party**, represented by: Muhammad Anis Matta and Mahfuz Sidik (as General Chair and Secretary General)
- Type of Case** : Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2014 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 (Law 10/2016) concerning the Election of Governors, Regents, and Mayors into Law against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial Review of Article 40 paragraph (3) of Law 10/2016 against the 1945 Constitution
- Verdict** : **On the Preliminary Injunction:**
To dismiss the Petitioners' provisional petition
- On the Merits:**
1. To grant the Petitioners' petition partially
 2. To declare that Article 40 paragraph (1) 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, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as follows:
"political parties or coalitions of political parties

participating in elections may register candidate pairs if they have fulfilled the following requirements:

For nominating candidates for governor and vice governor:

- a. in provinces with a permanent voter list of up to 2,000,000 (two million) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the province;
- b. in provinces with a permanent voter list of more than 2,000,000 (two million) people up to 6,000,000 (six million) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the province;
- c. in provinces with a permanent voter list of more than 6,000,000 (six million) people up to 12,000,000 (twelve million) people, political parties or coalitions of political parties participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the province;
- d. in provinces with a permanent voter list of more than 12,000,000 (twelve million) people, political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the province;

For nominating candidates for regent and vice regent as well as candidates for mayor and vice mayor:

- a. in regencies/municipalities with a permanent voter list of up to 250,000 (two hundred fifty thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the regency/municipality;
- b. in regencies/municipalities with a permanent voter list of more than 250,000 (two hundred fifty thousand) people up to 500,000 (five hundred thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the regency/municipality;
- c. in regencies/municipalities with a permanent voter list of more than 500,000 (five hundred thousand) people up to 1,000,000 (one million) people, political parties or coalitions of political parties participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the regency/municipality;

- d. in regencies/municipalities with a permanent voter list population of more than 1,000,000 (one million), political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the regency/municipality;"
3. To declare that Article 40 paragraph (3) 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, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
5. To dismiss the Petitioners' petition for the remainder.

Date of Decision : Tuesday, 20 August 2024

Overview of Decision :

The Petitioners identify themselves as legally recognized political party organizations (the Labor Party and the Gelora/Indonesian People's Wave Party). Although the political parties have been designated by the General Election Commission (KPU) as participants in the 2024 General Election, they do not have representatives in the House of Representatives of the Republic of Indonesia (DPR RI) and were not involved in the discussion or approval of Law 10/2016. The Petitioners claim their constitutional rights are violated by the enactment of Article 40 paragraph (3) of Law 10/2016 since the Petitioners, as officially established political parties that have been recognized by the Government, designated as participants in the 2024 General Election, and are entitled to valid votes in the 2024 General Election, are hindered from exercising their right to nominate/register candidate pairs for regional heads as stipulated in Article 40 paragraph (1) of Law 10/2016.

Regarding the Court's authority, since the *a quo* petition is a petition to review the constitutionality of legal norms, *in casu* Article 40 paragraph (3) of Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, regardless of whether or not the Petitioners' arguments concerning the unconstitutionality of Article 40 paragraph (3) of Law 10/2016, which is petitioned for review, are proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the Court finds no such urgency because the 2024 Regional Head Election stages can proceed regardless of whether the subject matter of the Petitioners' petition is granted. Furthermore, despite the provisions of Article 54 of the Constitutional Court Law (MK Law), the Court deems it unnecessary to hold a hearing to listen to the statements of parties mentioned in the *a quo* petition. Therefore, there is no relevance to considering the provisional petition submitted by the Petitioners regarding the enactment of the norms being petitioned for review. As such, the Petitioners' provisional petition is legally unjustifiable.

Whereas the Petitioners primarily petition the Court to declare that:

1. Article 40 paragraph (3) of Law 10/2016 is contrary to the 1945 Constitution and has no binding legal force;

Or

2. Article 40 paragraph (3) of Law 10/2016 is contrary to the 1945 Constitution and conditionally has no binding legal force, to the extent that it is not interpreted as "In the case of Political Parties or coalitions of Political Parties nominating candidate pairs using the provision of obtaining at least 25% (twenty-five percent) of the total valid votes as referred to in paragraph (1) if the result of dividing the total valid votes in the Regional Legislative Council election in the relevant region results in a fractional number, it shall be rounded up".

Whereas since the *a quo* petition is clear, as already considered in responding to the Petitioners' provisional petition, the Court finds no urgency or relevance in requesting statements from parties as referred to in Article 54 of the MK Law.

Whereas before further considering the arguments of the Petitioners' *a quo* petition, the Court will first examine the Petitioners' petition regarding the provisions of Article 60 of the MK Law and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (CCR 2/2021), to determine whether the *a quo* norms may be petitioned for review again. The Petitioners' *a quo* petition has a different basis for review, especially since the Court has not yet assessed the subject matter of the petition in Case Number 51/PUU-XVII/2019. Therefore, the Petitioners' *a quo* petition, regardless of whether it substantially can be proven or not, may formally be re-submitted without being hindered by the provisions of Article 60 paragraph (2) of the MK Law and Article 78 paragraph (2) of CCR 2/2021, and the Court will subsequently assess the constitutional issues concerning the norms of Article 40 paragraph (3) of Law 10/2016 as petitioned for review by the Petitioners.

Whereas the norms of Article 40 paragraph (1) of Law 10/2016 elaborate further on Article 39 letter a of Law 8/2015, stating, "Candidate pairs for Governor and Vice Governor, Candidate pairs for Regent and Vice Regent, as well as Candidate pairs for Mayor and Vice Mayor nominated by political parties or coalitions of political parties". In this context, Article 40 paragraph (1) of Law 10/2016 can be described as a regulatory design for the threshold requirement for political parties or coalitions of political parties participating in elections to nominate candidate pairs for regional heads with an alternative model. Firstly, whether they meet the requirement of obtaining at least 20% (twenty percent) of the total DPRD seats. Or, secondly, whether they meet the requirement of obtaining 25% (twenty-five percent) of the total valid votes in the DPRD election in the relevant region. Political parties or coalitions of political parties choose which threshold of nominating regional heads they can fulfill. Regarding the first alternative, the detailed requirements are set out in Article 40 paragraph (2) of Law 10/2016, which primarily provides clarity on how to calculate fractional percentages of the minimum of 20% of the total DPRD seats, requiring that fractions be rounded up for certainty in determining the total number of obtained seats.

Whereas meanwhile, the norms of Article 40 paragraph (3) of Law 10/2016 also elaborate further on the alternative threshold of obtaining 25% (twenty-five percent) of the total valid votes in the DPRD election in the relevant region. However, they do not specify whether fractional results of the valid votes should be rounded up, as regulated in *a quo* Article 40 paragraph (2). Instead, the norms of Article 40 paragraph (3) of Law 10/2016 introduce an additional requirement, namely such total valid votes "only apply to political parties that have seats in the DPRD" as questioned for its constitutionality by the Petitioners because of inconsistency with the principle of electing regional heads democratically as stipulated in Article 18 paragraph (4) of the 1945 Constitution. This means that the first and second alternatives as stipulated in Article 40

paragraph (1) and paragraph (3) of Law 10/2016, require having seats in the DPRD. This provision violates the rights of political parties officially designated as participants in the 2024 simultaneous national elections, which have obtained valid votes but do not obtain DPRD seats, as they cannot nominate candidates for regional head and vice regional head. This constitutional issue also appears in Constitutional Court Decision Number 005/PUU-III/2005, pronounced in a plenary session open to the public on 22 March 2005.

Regarding the constitutional issue of the norms of Article 40 paragraph (3) of Law 10/2016, as argued by the Petitioners, Constitutional Court Decision Number 005/PUU-III/2005 declares that the Elucidation to Article 59 paragraph (1) of Law 32/2004 is unconstitutional since limiting and negating the rights of political parties or coalitions of political parties that have valid votes in general elections as stipulated in the main body of the law by stating that "only political parties holding seats in the DPRD are entitled to nominate candidate pairs for Regional Head/Vice Regional Head". Constitutional Court Decision Number 005/PUU-III/2005 aligns with Constitutional Court Decision Number 5/PUU-V/2007, pronounced in a plenary session open to the public on 23 July 2007. Because the verdict of Constitutional Court Decision Number 5/PUU-V/2007 affirms that the norms of Article 59 paragraph (2) of Law 32/2004 shall read, "Political parties or coalitions of political parties may nominate candidate pairs if they fulfill the requirement of obtaining at least 15% (fifteen percent) of the total DPRD seats or 15% (fifteen percent) of the total valid votes in the DPRD election in the relevant region". The verdict of Constitutional Court Decision Number 5/PUU-V/2007 was later incorporated into Law 1/2015 by legislators, setting the minimum percentage thresholds as stipulated first in Article 40 paragraph (1) of Law 1/2015, then consistently applied until Law 10/2016, which states:

"Political Parties or coalitions of Political Parties may nominate candidates if they have fulfilled the requirement of obtaining at least 20% (twenty percent) of the total DPRD seats or 25% (twenty-five percent) of the total valid votes in the DPRD election in the relevant region".

The issue that further arises is, even though the Court has declared that the Elucidation to Article 59 paragraph (1) of Law 32/2004 stating "only political parties holding seats in the DPRD are entitled to nominate candidate pairs for Regional Head/Vice Regional Head" is unconstitutional due to limiting the purpose of alternative provisions in the main body of the norms of the article that primarily regulate the percentage of the total valid votes in the DPRD election in the relevant region as a requirement to nominate candidates for regional head, legislators have evidently continued to impose this limitation phrase, even since the enactment of Law 1/2015 until Law 10/2016, embedding it directly into the main body of law, *in casu* Article 40 paragraph (3) of Law 10/2016.

Whereas such regulation clearly limits the fulfillment of constitutional rights of political parties participating in elections that have obtained valid votes in general elections, even if they do not hold seats in the DPRD, thereby undermining the value of democratic regional head elections as mandated by Article 18 paragraph (4) of the 1945 Constitution. Given this, valid votes cast in the elections become meaningless as political parties are unable to channel their aspirations and advocate for their rights through the nomination of candidates for regional head. In fact, Article 18 paragraph (4) of the 1945 Constitution emphasizes democratic regional head elections, which includes providing opportunities for all political parties participating in elections with valid votes to nominate candidates for regional head. This allows the public to have a variety of candidates, minimizing the emergence of a single candidate, which, if the enactment of Article 40 paragraph (3) of Law 10/2016 is allowed to persist, the integrity of democratic processes could be threatened. Furthermore, since the enactment of Law 1/2015 until Law 10/2016, independent candidates fulfilling the requirements have been allowed to participate in regional head elections [vide Article 39 letter b of Law 10/2016]. Moreover, reintroducing the Elucidation to Article 59

paragraph (2) of Law 32/2004, which has been declared unconstitutional by the Constitutional Court, with essentially the same content as Article 40 paragraph (3) of Law 10/2016, creates legal uncertainty, contrary to the guarantee of Article 28D paragraph (1) of the 1945 Constitution. Therefore, the norms of Article 40 paragraph (3) of Law 10/2016 lack justification and relevance and must also be declared contrary to the 1945 Constitution.

Whereas given that Article 40 paragraph (3) of Law 10/2016 has been declared contrary to the 1945 Constitution and the *a quo* Article is a follow up of Article 40 paragraph (1) of Law 10/2016, the Court must also comprehensively assess the constitutionality of the *a quo* norms of Article 40 paragraph (1) of Law 10/2016 as part of the norms governing candidate nomination. This is necessary to guarantee the constitutional rights of political parties participating in elections that have obtained valid votes in general elections and to respect the people's votes cast in elections. In this context, with opportunities now open for independent candidates fulfilling certain requirements, the regulation on the threshold for valid votes obtained by political parties or coalitions of political parties to nominate candidates for regional head and vice regional head becomes unjustifiable and irrational. This is particularly evident when the threshold for political parties exceeds the requirements for independent candidates, as set out in Article 41 paragraph (1) letter a through letter d of Law 10/2016 and Article 41 paragraph (2) letter a through letter d of Law 10/2016. Therefore, the percentage requirements for political parties or coalitions of political parties to nominate candidates must align with the percentage requirements for independent candidates. Because retaining the percentages specified in Article 40 paragraph (1) of Law 10/2016 would bring an intolerable injustice against all political parties participating in elections. Thus, Article 40 paragraph (1) of Law 10/2016 must also be declared conditionally unconstitutional to the extent that it is not interpreted as "political parties or coalitions of political parties participating in elections may register candidate pairs if they have fulfilled the following requirements:

For nominating candidates for governor and vice governor:

- a. in provinces with a permanent voter list of up to 2,000,000 (two million) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the province;
- b. in provinces with a permanent voter list of more than 2,000,000 (two million) people up to 6,000,000 (six million) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the province;
- c. in provinces with a permanent voter list of more than 6,000,000 (six million) people up to 12,000,000 (twelve million) people, political parties or coalitions of political parties participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the province;
- d. in provinces with a permanent voter list of more than 12,000,000 (twelve million) people, political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the province;

For nominating candidates for regent and vice regent as well as candidates for mayor and vice mayor:

- a. in regencies/municipalities with a permanent voter list of up to 250,000 (two hundred fifty thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the regency/municipality;

- b. in regencies/municipalities with a permanent voter list of more than 250,000 (two hundred fifty thousand) people up to 500,000 (five hundred thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the regency/municipality;
- c. in regencies/municipalities with a permanent voter list of more than 500,000 (five hundred thousand) people up to 1,000,000 (one million) people, political parties or coalitions of political parties participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the regency/municipality;
- d. in regencies/municipalities with a permanent voter list population of more than 1,000,000 (one million), political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the regency/municipality;”

With the interpretation as stated above, the calculation of the requirements for nominating candidates for regional head and vice regional head through political parties or coalitions of political parties participating in elections shall only be based on the results of valid votes obtained in the relevant province/regency/municipality, with the percentages as interpreted by the Court above.

Given that, according to all the legal considerations outlined above, even though the norms of Article 40 paragraph (1) of Law 10/2016 have been declared conditionally unconstitutional as considered in Paragraph [3.13] and the norms of Article 40 paragraph (3) of Law 10/2016 has been declared unconstitutional, the Court is of the opinion that the Petitioners' petition is partially legally justifiable since these are not petitioned by the Petitioners.

Thus, the Court subsequently passed down a decision in which the verdicts were as follows:

On the Preliminary Injunction:

To dismiss the Petitioners' provisional petition.

On the Merits:

1. To grant the Petitioners' petition partially.
2. To declare that Article 40 paragraph (1) 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, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as:

“political parties or coalitions of political parties participating in elections may register candidate pairs if they have fulfilled the following requirements:

For nominating candidates for governor and vice governor:

- a. in provinces with a permanent voter list of up to 2,000,000 (two million) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the province;
- b. in provinces with a permanent voter list of more than 2,000,000 (two million) people up to 6,000,000 (six million) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the province;
- c. in provinces with a permanent voter list of more than 6,000,000 (six million) people up to 12,000,000 (twelve million) people, political parties or coalitions of political parties

participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the province;

- d. in provinces with a permanent voter list of more than 12,000,000 (twelve million) people, political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the province;

For nominating candidates for regent and vice regent as well as candidates for mayor and vice mayor:

- a. in regencies/municipalities with a permanent voter list of up to 250,000 (two hundred fifty thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 10% (ten percent) of valid votes in the regency/municipality;
 - b. in regencies/municipalities with a permanent voter list of more than 250,000 (two hundred fifty thousand) people up to 500,000 (five hundred thousand) people, political parties or coalitions of political parties participating in elections must obtain at least 8.5% (eight and a half percent) of valid votes in the regency/municipality;
 - c. in regencies/municipalities with a permanent voter list of more than 500,000 (five hundred thousand) people up to 1,000,000 (one million) people, political parties or coalitions of political parties participating in elections must obtain at least 7.5% (seven and a half percent) of valid votes in the regency/municipality;
 - d. in regencies/municipalities with a permanent voter list population of more than 1,000,000 (one million), political parties or coalitions of political parties participating in elections must obtain at least 6.5% (six and a half percent) of valid votes in the regency/municipality;"
3. To declare that Article 40 paragraph (3) 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, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
 4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
 5. To dismiss the Petitioners' petition for the remainder.

Concurring Opinion and Dissenting Opinion

Against the *a quo* decision of the Court, there is a concurring opinion from 1 (one) Constitutional Justice, namely Constitutional Justice Daniel Yusmic P. Foekh, and there is a dissenting opinion from one Constitutional Justice, namely Constitutional Justice M. Guntur Hamzah, as follows:

Whereas according to all the legal considerations above, I am of the opinion that the norms of Article 40 paragraph (3) of Law 10/2016 remain constitutional but must be conditionally applied that coalitions of political parties participating in the 2024 General Election that receive public support but fail to obtain seats in the DPRD should be allowed to nominate candidate pairs for regional heads using the parameter of a minimum of 25% of the total valid votes. Therefore, legislators should immediately amend all of the norms of Article 40 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. Thus, the norms of Article 40 paragraph (3) 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, should be declared unconstitutional for future simultaneous regional head elections.

Dissenting Opinion of Constitutional Justice M. Guntur Hamzah

In the context of comparative legal systems, the Supreme Court of the United States has introduced a doctrine known as the *Purcell Principle* in the case of *Purcell v. Gonzalez* (2006), which posits that courts cannot modify electoral regulations too close to the election date due to the risk of confusing. In this regard, the Constitutional Court should begin to apply this principle by restraining itself from modifying electoral regulations close to the nomination or election date unless there are exceptional conditions that fundamentally undermine the principle of justice. Moreover, the public and political parties have begun to find legal loopholes or *modus operandi* by filing judicial reviews of laws near the election date. By applying the principle of restraint (*purcell principle*), elections would not only deliver justice to electoral organizers and voters but also bring utility and legal certainty, aligning with the legal ideals of a constitutional democratic state. In other words, democracy and elections should not merely be seen as tools for acquiring or competing for power (struggle for power). Democracy should also serve as an instrument to achieve the common virtue within a civilized society, safeguarded by the shield of justice.

Last but not least, according to all of the arguments and legal considerations above, once again, I do not doubt dismissing the Petitioners' petition in the *a quo* petition (*wordt ongegrond verklaard*). Thank you.