



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 41/PUU-XXII/2024

Concerning

Minimum Age Requirements
for Regional Head Candidates

Petitioner	: Astro Alfa Liecharlie
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 Regulations 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	: Article 7 paragraph (2) letter e of Law 10/2016 against Article 8 paragraph (3) of the 1945 Constitution
Verdict	: On Preliminary Injunction: To dismiss the petition of preliminary injunction of the Petitioner On the Merits: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Tuesday, 20 August 2024
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who wishes to nominate himself as a candidate for deputy governor in the 2024 regional head elections. The Petitioner believes that the implementation of the *a quo* norm will harm the Petitioner's constitutional rights, because pursuant to the General Election Commission Regulation Number 2 of 2024 concerning the Stages and Schedule for the 2024 Elections of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor (PKPU 2/2024), the Petitioner, who was born on 4 August 1995, at the time of registration of the candidate pair on 27 August 2024, he is only 29 years and 23 days old and therefore he could not be nominated as a candidate for deputy governor in 2024.

Regarding the Court's authority, because the Petitioner petitions for a judicial review, *in casu* Article 7 paragraph (2) letter e of Law 10/2016 against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

The Petitioner's legal standing as an individual Indonesian citizen is proven by the Petitioner's Resident Identity Card. The Petitioner describes that he wishes to nominate himself as a candidate for deputy governor in the 2024 regional elections. In describing his constitutional loss, the Petitioner is able to describe alleged constitutional loss specifically and actually or at least potentially, such loss is caused by the enactment of the norm for which the petition is submitted, namely that the Petitioner is prevented from nominating himself as a

candidate for deputy governor due to the age restriction in the norm of Article 7 paragraph (2) letter e of Law 10/2016, since the Petitioner is only 29 years old and 23 day when the registration opens on 27 August 2024. This is because the minimum age requirement to become a candidate for deputy governor is 30 years as regulated in Article 7 paragraph (2) letter e of Law 10/2016. Therefore, it is evident that there is a causal relationship (*causal verband*) between the Petitioner's alleged constitutional loss and the enactment of the norms being petitioned for review. If the *a quo* norm is declared conditionally unconstitutional, namely a minimum age of 21 years, the said constitutional loss will not occur. Therefore, regardless of whether the said conditional unconstitutionality is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Regarding the petition for preliminary injunction, the Petitioner petitions for the Court to decide on the *a quo* case before 27 August 2024. The argument for such a preliminary injunction is because the timeline (stages) of the implementation of the 2024 Regional Elections as stated in the General Election Commission Regulation Number 2 of 2024 concerning the Stages and Schedule for the 2024 Elections of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor (PKPU 2/2024) regulates that the registration of the regional head candidate pairs is carried out from 27 August to 29 August 2024. Regarding the petition, because the norm of Article 7 paragraph (2) letter e of Law 10/2016 being petitioned for review is clear, the Court considers that it is not necessary to hold a trial to present the parties as stated in Article 54 of the Constitutional Court Law, the absence of trial is not due to considerations regarding the stages of the implementation of the regional head elections. Therefore, the *a quo* petition for preliminary injunction of Petitioner must be declared legally unjustifiable.

Because the norm whose constitutionality is being reviewed in the *a quo* case is intertwined with the Constitutional Court Decision Number 70/PUU-XXII/2024, the Court will first cite the legal considerations of the Constitutional Court Decision Number 70/PUU-XXII/2024 as follows:

Whereas upon careful reading of the minimum age requirements, especially those that differentiate the minimum age requirements for the candidates for governors and deputy governors [minimum 30 (thirty) years of age]; and the candidates for regents and deputy regents, as well as candidates for mayors and vice mayors [minimum 25 (twenty-five) years of age], the said minimum age requirements for the candidates have been regulated in four laws and one government regulation in lieu of law, as follows:

1. Article 13 paragraph (1) letter e of Law Number 22 of 2014 concerning the Elections of Governors, Regents, and Mayors (Law 22/2014) states:
 - (1) Citizens of the Republic of Indonesia who may be appointed as candidates for governors, candidates for regents and candidates for mayors are those who fulfil the following requirements:
 - e. must be a minimum of 30 (thirty) years of age for the candidates for governors and 25 (twenty-five) years of age for the candidates for regents and the candidates for mayors;
2. Article 7 letter e of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Elections of Governors, Regents, and Mayors (Government Regulation in Lieu of Law 1/2014) states:

Indonesian citizens who may be nominated as the Candidates for Governor, Candidates for Regent, and Candidates for Mayor are those who fulfil the following requirements:

 - e. must be a minimum of 30 (thirty) years of age for the Candidates for Governors and 25 (twenty-five) years of age for the Candidates for Regents and the Candidates for Mayors;
3. Article 7 letter e of Law Number 1 of 2015 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Elections of Governors, Regents, and Mayors into Law (Law 1/2015) states:

Indonesian citizens who may be nominated as the Candidates for Governor, Candidates for Regent, and Candidates for Mayor are those who fulfil the following requirements:

- e. must be a minimum of 30 (thirty) years of age for the Candidates for Governors and 25 (twenty-five) years of age for the Candidates for Regents and the Candidates for Mayors;
4. Article 7 letter e of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Elections of Governors, Regents, and Mayors into Law (Law 8/2015) states:

Indonesian citizens who may be nominated as the Candidates for Governors and Deputy Governors, Candidates for Regents and Deputy Regents, and Candidates for Mayors and Deputy Mayors are those who fulfil the following requirements:

- e. Must be a minimum of 30 (thirty) years of age for the Candidates for Governors and Deputy Governors and 25 (twenty-five) years of age for Candidates for Regents and Deputy Regents and Candidates for Mayors and Deputy Mayors;
5. Article 7 paragraph (2) letter e of Law 10/2016 states:
 - (2) the Candidates for Governor and Deputy Governors, the Candidates for Regents and Deputy Regents, as well as the Candidates for Mayors and Deputy Mayors as referred to in paragraph (1) must fulfil the following requirements:
 - e. must be a minimum of 30 (thirty) years of age for the Candidates for Governors and Deputy Governors and 25 (twenty-five) years of age for Candidates for Regents and Deputy Regents and Candidates for Mayors and Deputy Mayors

Pursuant to the provisions of a number of laws and regulations as mentioned above, there has never been any amendment in the minimum age requirements to become the candidates for governors and deputy governors [i.e. a minimum of 30 (thirty) years of age]; and the candidates for regents and deputy regents, as well as candidates for mayors and deputy mayors [i.e. a minimum of 25 (twenty-five) years of age]. In addition, all norms that require a minimum age limit as regulated in the four laws and the government regulation in lieu of law have never explicitly or clearly stated/regulated the phrase "calculated at the time the candidate pair is determined" in determining the calculation point for the said minimum age requirements.

Whereas in addition to the above historical approach, in the context of systematic approach, the minimum age requirements to be nominated as candidates for governors and deputy governors, and regents and deputy regents, as well as mayors and deputy mayors are always contained in the chapter that regulates the "candidate requirements". In this case, Law 22/2014 regulates the matter in Chapter IV "Election Participants and Candidate Requirements; Government Regulation in Lieu of Law 1/2014 regulates the matter in Chapter III "Candidate Requirements"; Law 1/2015 regulates the matter in Chapter III "Candidate Requirements"; Law 8/2015 regulates the matter in Chapter III "Candidate Requirements"; and Law 10/2016 regulates the matter in Chapter III "Candidate Requirements". Upon reading of the systematics of the 4 (four) laws and the government regulation in lieu of law, the minimum age requirements are always regulated or contained in the group of chapters that regulate matters regarding the candidate requirements, and not in any other chapters.

It is insufficient for this systematic approach to simply contain the matter in the systematic structure of statutory provisions, but it should also be read and understood in the context of the stages of regional head elections. In this case, the norm of Article 5 paragraph (3) of Law 8/2015 determines that the stages of holding the regional head and deputy regional head elections shall include:

- a. the announcement of registration of the candidate pairs for governors and deputy governors, the candidate pairs for regents and deputy regents, and the candidate pairs

for mayors and deputy mayors;

- b. the registration of the candidate pairs for governors and deputy governors, the candidate pairs for regents and deputy regents, and the candidate pairs for mayors and deputy mayors;
- c. research into the fulfilment of requirements for the candidates for governors and deputy governors, the candidates for regents and deputy regents, and the candidates for mayors and deputy mayors;
- d. the determination of the candidate pairs for governors and deputy governors, the candidate pairs for regents and deputy regents, and the candidate pairs for mayors and deputy mayors;
- e. the campaign implementation;
- f. the holding of voting;
- g. the vote counting and the recapitulation of vote counting results;
- h. the determination of the elected candidates;
- i. the resolution of any violations and any disputes regarding the election results; and
- j. the proposal for ratification of the appointment of the elected candidates.

Pursuant to the above description, there is a sequence of series or stages of activities that are linked to each other, namely the registration stage, research into the fulfilment of requirements of the candidates, and the determination of candidates for the regional heads and deputy regional heads. Because they are linked to each other, all requirements must be fulfilled before determining the candidates. This means that, within the limits of reasonable reasoning, the research into the fulfilment of these requirements must be carried out prior to entering the stage of determination of the candidate pairs. In this case, all requirements as stipulated in Article 7 of Law 10/2016 must be fulfilled before the organizer, *in casu* the General Election Commission, determines the candidates for the regional heads and deputy regional heads. This also means, the following stages, such as the voting; the vote counting and the recapitulation of the vote counting results; and the determination of the elected candidates are not the stages that may be used as the points or limits to assess and determine the fulfilment of requirements as candidates for regional heads and deputy regional heads.

Whereas in practice so far, at least since the election of regional heads and deputy regional heads has been carried out directly by the people, the point or limit to determine the fulfilment of the requirements has been carried out in a series of stages as stated above. This means that the point for the said determination of the fulfilment of the requirements is carried out at the stage of determining the candidate pairs for regional heads and deputy regional heads. The empirical facts prove that the determination of the fulfilment of requirements is calculated/determined at this stage may be examined from the series of stages carried out by the organizers of the regional head elections so far. In this case, for example, since the regional head and deputy regional head elections were held simultaneously starting from 2015, 2017, 2018, and 2020, the point or limit for determining the fulfilment of candidate requirements has always been set at the stage of determining the candidate pairs for regional head and deputy regional head.

Whereas in addition to the three approaches above, the Court needs to compare (comparative approach) the point or limit for determining the fulfilment of the requirements of the candidates for regional heads and deputy regional heads and the point or limit for determining the fulfilment of the requirements of the candidates for legislative members and the presidential and vice presidential candidates. In this case, the determination of the fulfilment of the requirements as a candidate in the election for House of Representatives/Regional Legislative Council members is carried out at the stage of determining the general election candidates. For example, the determination of candidates for members of the House of Representatives, the Regional Representatives Council, and

the Regional Legislative Council is expressed at the time of determination of the list of permanent candidates. Likewise, in the presidential and vice-presidential elections, the fulfilment of requirements is determined at the time a person is appointed as a candidate. This means that all requirements that must be fulfilled at the nomination stage must be completed when a person is appointed as a candidate, and it must be completed before the next election stage is held.

Whereas textually, the norm of Article 7 paragraph (2) letter e of Law 10/2016 is correct in not explicitly including the phrase "calculated at the time the candidate pair is determined". However, all regulations related to the implementation of general elections, both the election of candidates for the members of the House of Representatives/Regional Representatives Council/Regional Legislative Council and the presidential and vice-presidential election do not include the said phrase. Even though it is not explicitly stated, historically, systematically, current practice, and in comparison with other elections, the determination of the minimum age limit to become a regional head and deputy regional head is always calculated at the time the candidate is determined. Such a calculation point or determination point has become some sort of a postulate in the implementation of elections so that no exceptions may be made in the regional head and deputy regional head elections. This means that if the regional head and deputy regional head elections are excluded, namely the determination point for the minimum age requirements for regional head and deputy regional head candidates is justified to be set at any other the stage after the determination of the candidates, it would mean the Court justifies an anomaly in the general election law. In the context of harmonization and synchronization of general election law, the opportunity or possibility of anomalies in the regional head elections must be prevented because there are no longer any differences in the election regime, namely no difference between the regional government regime and the general election regime.

Whereas the regulations regarding the minimum age requirements for regional head candidates have not been amended since the enactment of Law 22/2014 to Law 10/2016, namely a minimum of 30 (thirty) years of age for the candidates for governors and deputy governors and 25 (twenty-five) years of age for the candidates for regents and deputy regents as well as the candidates for mayors and deputy mayors. Regarding the said age requirements, provided that there are no provisions regulating age restrictions in the 1945 Constitution of the Republic of Indonesia, this means that the constitution or legal basis to determine the age requirements is within the authority of the legislators. In other words, the minimum age requirements are considered to be a part of the legal policy of the legislator. Therefore, the minimum age requirements for any government positions, including any positions occupied with general elections, may be determined differently from one another.

Whereas as has been described in the systematic approach above, the minimum age requirements for regional head and deputy regional head candidates are regulated in the chapter regarding "Candidate Requirements". In this regard, Law Number 12 of 2011 concerning the Formation of Legislation (Law 12/2011) explains that the body of the legislation contains all the material or content of the legislation formulated into an article or several articles. The grouping of the material is formulated comprehensively in accordance with the similarities of the material. If there is any material that is required but cannot be grouped within the scope of existing regulations, this material is included in the chapter "Miscellaneous". The grouping of the material contained in the legislation can be arranged systematically in books, chapters, sections, and paragraphs. The grouping of content material in books, chapters, sections, and paragraphs is done on the basis of similarity of material [*vide* Attachment II of Law 12/2011 numbers 61-63]. Due to the grouping of the material, it is inappropriate or irrelevant to put an assessment of the fulfilment of minimum age requirements, for example at the "voting" stage, "determination of elected candidates" or at the "inauguration" stage.

Pursuant to the Elucidation of Appendix II of Law 12/2011, the chapter concerning "Candidate Requirements" contains the same material, namely regarding the requirements that must be fulfilled if a person wishes to nominate himself/herself or be nominated as a regional head candidate and deputy regional head candidate. After the research is conducted, these minimum requirements must be fulfilled when a person is determined as a candidate. Not only the minimum age, but all the requirements in Article 7 paragraph (2) of Law 10/2016 must be fulfilled at the nomination stage. In this case, as applicable to the *a quo* petition, the provisions of Article 7 paragraph (2) letter e of Law 10/2016 concerning the minimum age requirements for regional head candidates must be fulfilled if a person registers to nominate himself/herself or is nominated as a regional head candidate and deputy regional head candidate. In fact, Article 42 paragraph (3) of Law 10/2016 explicitly stipulates that the candidates for governors and deputy governors; the candidates for regents and deputy regents, as well as the candidates for mayors and deputy mayors must fulfill the requirements as referred to in Article 7 of Law 10/2016." The construction of the said norm clearly mandates that the requirements as referred to in Article 7 of Law 10/2016, including in this case the minimum age requirements, to be fulfilled by the regional head candidates and the deputy regional head candidates when registering as candidates. Then, after conducting research into whether the requirements are fulfilled, the election organizer determines the candidates.

Whereas as the organizer, the General Election Commission determines the minimum age requirements for regional head candidates and deputy regional head candidates in accordance with the minimum age requirements as regulated by the law. In this regard, it is important for the Court to emphasize that the nomination shall be the calculation point or limit for determining the fulfilment of the minimum age requirements, which culminates in the determination of candidates for regional head and deputy regional head. In this regard, in the position as the organizer, if the General Election Commission requires technical regulations to organize the material in the norms of Article 7 paragraph (2) letter e of Law 10/2016, the said technical regulations are made in accordance with the material in the *a quo* norms. In addition, in accordance with the principle of *erga omnes*, the legal consideration and interpretation of the Court regarding the norm of Article 7 paragraph (2) letter e of Law 10/2016 are binding on all organizers, election contestants and all citizens. Therefore, if the organizer does not adhere to the consideration contained in the *a quo* decision of the Court, as the holder of judicial power authorized to resolve any election result disputes, any regional head and deputy regional head candidates who do not fulfil the requirements and conditions are potentially declared invalid by the Court.

Whereas upon complete and comprehensive consideration of the Court in accordance with the historical approach, systematic approach, current practice and in comparison with other elections, Article 7 paragraph (2) letter e of Law 10/2016 is a norm that is clear and obvious, *bak basuluh matohari* (already clear, undisputable), *cetho welo-welo* (already very clear), that any other interpretation cannot or does not need to be given or added other than the one considered in the *a quo* decision, namely the said requirements must be fulfilled in the nomination process which culminates in the determination of the candidates. Within the limits of reasonable reasoning, adding a new interpretation to Article 7 paragraph (2) letter e of Law 10/2016, including as petitioned by the Petitioner, will actually make the *a quo* norm to be different (an anomaly) among all other norms within the scope of requirements for regional head candidates and deputy regional head candidates. If the interpretation as requested by the Petitioner is added to the norm of Article 7 paragraph (2) letter e of Law 10/2016, other norms that are included in the group of candidate requirements are interpreted as not having to be fulfilled during the stages of registration, research and determination as the regional head candidates and the deputy regional head candidates. In such circumstances, the new interpretation potentially gives rise to legal uncertainty in relation to other requirements regulated in Article 7 paragraph (2) of Law 10/2016. This means that this interpretation is not in line with the guarantee of legal certainty as regulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Whereas because the constitutionality issue of the norm of Article 7 paragraph (2) letter e of Law 10/2016 has been considered in the Constitutional Court Decision Number 70/PUU-XXII/2024, including the consideration which states that the determination of the minimum age requirements for the regional head candidates is under the authority of the legislator, therefore the *a quo* legal consideration *mutatis mutandis* also applies as a legal consideration in examining the constitutionality of the norm of Article 7 paragraph (2) letter e of Law 10/2016 being submitted for review by the Petitioner in the *a quo* Case. Accordingly, the Petitioner's argument regarding the conditional unconstitutionality of Article 7 paragraph (2) letter e of Law 10/2016 against Article 8 paragraph (3) of the 1945 Constitution is entirely legally unjustifiable.

Accordingly, the Court subsequently passes down a decision which verdicts are as follows:

On Preliminary Injunction:

To dismiss the petition of preliminary injunction of the Petitioner.

On the Merits

To dismiss the Petitioner's petition in its entirety.