



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 54/PUU-XXII/2024**

Concerning

Waiting Period Requirement for Former Convicts

- Petitioner** : **Aditya Anugrah Moha**
- 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 7 paragraph (2) letter g of Law 10/2016 as interpreted by Constitutional Court Decision Number 56/PUU-XVII/2019, dated 11 December 2019, against Article 28C paragraph (2), Article 28D paragraph (2), and Article 28I paragraph (4) of the 1945 Constitution.
- Verdict** : **On the Preliminary Injunction:**
To dismiss the Petitioner's preliminary injunction entirely.
- On the Merits:**
To dismiss the Petitioner's petition entirely.
- Date of Decision** : Thursday, 20 August 2024
- Overview of Decision** :

Whereas the Petitioner is an individual Indonesian citizen and a former convict seeking to participate in the 2024 Regional Head and Deputy Regional Head Election. According to the Petitioner, Article 7 paragraph (2) letter g of Law 10/2016, as interpreted by Constitutional Court Decision Number 56/PUU-XVII/2019, dated 11 December 2019, prejudices the Petitioner by obstructing his constitutional rights as guaranteed under Article 28C paragraph (2), Article 28D paragraph (2), and Article 28I paragraph (4) of the 1945 Constitution.

Regarding the Court's authority, because the Petitioner's petition is a judicial review of the constitutionality of a legal norm, *in casu* Article 7 paragraph (2) letter g of Law 10/2016 against the 1945 Constitution, which falls within the authority of the Court, under Article 24C paragraph

(1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petition.

Regarding legal standing, the Petitioner is an individual Indonesian citizen who is a former convict, whose political rights were never revoked, and who completed his sentence on 7 October 2021 under Central Jakarta District Court Decision No. 11/Pid.Sus-TPK/2018/PN.JKT.PST, dated 6 June 2018. The Petitioner claims to have been prejudiced by the enactment of the *a quo* norm, arguing that Article 7 paragraph (2) letter g of Law 10/2016, as interpreted by Constitutional Court Decision Number 56/PUU-XVII/2019, causes potential constitutional loss by preventing the Petitioner from running as a candidate for regional head/deputy regional head in the 2024 Regional Head Election. This is due to the requirement for a waiting period of 5 (five) years after completing a prison sentence under a court decision with permanent legal force. Regarding this argument, the Court is of the opinion that the alleged constitutional loss described is specific and actual. The Petitioner has also explained a causal relationship (*causal verband*) between the alleged constitutional loss and the enactment of the norm under review. Therefore, if the *a quo* petition is granted, the alleged constitutional loss as described will not occur or will cease to occur. Accordingly, regardless of whether the alleged unconstitutionality of the norm under review is proven, in the Court's opinion, the Petitioner has legal standing to act as a Petitioner in the *a quo* petition.

Regarding the provisional petition submitted by the Petitioner, the Court is of the opinion that, since the Petitioner's *a quo* petition is adjudicated by the Court without a plenary session with the agenda to hear the parties as stipulated in Article 54 of the Constitutional Court Law, the *a quo* petition will promptly be adjudicated. Therefore, the Petitioner's petition for a provisional decision is irrelevant to consider further and must be declared legally unjustifiable.

Regarding the subject matter of the Petitioner's petition, the Court provides the following considerations:

- 1) Whereas regarding the Petitioner's petition for the Court to reinterpret the "five-year waiting period for former convicts" in Article 7 paragraph (2) letter g of Law 10/2016, as interpreted in Constitutional Court Decision Number 56/PUU-XVII/2019 concerning the constitutional issues related to the provisions of norms of Article 7 paragraph (2) letter g of Law 10/2016, the Court has addressed this matter multiple times in its decisions, further reaffirmed through Constitutional Court Decision Number 56/PUU-XVII/2019. In that decision, the Court establishes that the five-year waiting period concerning criminal offenses punishable by five years or more and former convicts who must truthfully and transparently declare themselves as former convicts, applies cumulatively. This means that individuals proven guilty of offenses punishable by imprisonment of 5 (five) years or more must honestly and openly disclose their status as former convicts, clearly stating the type and penalty of the proven offense. Consequently, the five-year waiting period applies to individuals sentenced to 5 (five) years or more, irrespective of whether the individual was the principal offender or an accomplice, contrary to the Petitioner's argument. Because the basis for the five-year waiting period lies not in the type of offense or the qualification of the act but in the proven penalty of five years or more. The Court's reiteration of this position is essential to bring leaders who are clean, honest, and possess integrity. Therefore, all these conditions must be fulfilled cumulatively as part of the requirements to become a regional head.
- 2) The Court does not disregard the political rights of Indonesian citizens to be elected and to vote, which are rights guaranteed by the 1945 Constitution. However, these rights cannot be separated from the restrictions stipulated in Article 28J paragraph (2) of the 1945 Constitution. Constitutionally, political rights are not rights that cannot be restricted (non-

derogable rights). In this case, the restriction in the form of imposing a waiting period for those previously convicted, as considered above, does not contradict the constitution, *in casu* the 1945 Constitution. Restrictions on fundamental rights, as referred to in Article 28J paragraph (2) of the 1945 Constitution, represent an actualization of values upheld in a democratic society, which include propriety, piousness, fairness, reasonableness, and justice. Thus, the five-year waiting period fundamentally provides an opportunity for such individuals to adapt to society and engage in self-reflection to avoid repeating criminal acts. This restriction is not intended to further punish individuals convicted of crimes punishable by five years or more. Rather, the five-year period is deemed sufficient for offenders to improve themselves and reintegrate into society. Moreover, it provides society or voters with the opportunity to evaluate whether the former convict in question is deemed fit to be elected as a public official, *in casu* a regional head. In addition to adaptation reasons, the five-year period aligns with Indonesia's five-year electoral cycle, covering legislative elections, presidential and vice-presidential elections, and regional head and deputy regional head elections.

- 3) Regarding the five-year waiting period requirement for individuals convicted of crimes punishable by five years or more, the Court has referred to this requirement to reinforce its position regarding the qualifications for candidates for the House of Representatives (DPR), Regional Representatives Council (DPD), and Regional Legislative Council (DPRD), as stated in Constitutional Court Decision Number 87/PUU-XX/2022, pronounced in a plenary session open to the public on 30 November 2022, and Constitutional Court Decision Number 12/PUU-XXI/2023, pronounced in a plenary session open to the public on 28 February 2023. Therefore, the cumulative requirements outlined in the verdict of Constitutional Court Decision Number 56/PUU-XVII/2019, pronounced in a plenary session open to the public on 11 December 2019, and subsequent decisions, already constitute an interpretation consistent with the 1945 Constitution of the Republic of Indonesia. This is critical because the waiting period serves as an adaptation process for former convicts to demonstrate that they have genuinely reformed their attitudes and behavior after completing their sentence. It aims to establish public confidence that the individual will not repeat their past offenses or engage in other actions that could undermine the quality of a leader who is clean, honest, and possesses integrity. This serves as an indicator to ensure democratic regional head elections, facilitating the election of representatives who are qualified, possess moral integrity, and prioritize the public interest. The waiting period also provides the public with sufficient time to evaluate whether the former convict has convincingly upheld constitutional democratic values. Accordingly, the Constitutional Court's decision regarding the five-year waiting period for former convicts proven guilty of offenses punishable by five years or more as a requirement for candidacy in regional head elections aims to ensure consistency in the behavior of potential leaders, *in casu* regional heads, thereby reflecting legal certainty within the framework of electoral regulation.
- 4) The Court is of the opinion that the Petitioner's petition to exempt the five-year waiting period for convicts whose political rights were not revoked by court decisions, even if the crimes they were proven to have committed are punishable by five years or more, is unjustifiable. According to the Court, the issue does not lie in substituting the five-year waiting period with the absence of political rights revocation on the grounds that the penalty imposed by the court might be categorized as a less severe offense, making the five-year waiting period irrelevant. Instead, the fundamental rationale for applying the five-year waiting period to convicts proven guilty of offenses punishable by five years or more lies merely in the assessment that these individuals committed offenses classified as severe and therefore the waiting period is deemed sufficient to allow them to adapt and demonstrate to the public, particularly potential voters, that they have recognized and regretted their wrongdoing and can be reintegrated

into their social environment, in this context, can be accepted again by potential voters. Furthermore, regarding the *a quo* revocation of political rights, the Court has encouraged the judiciary not to impose additional penalties in the form of political rights revocation for individuals sentenced for crimes punishable by five years or more, given this would amount to imposing 2 (two) "additional" penalties on convicts when they intend to exercise their political rights after serving their sentence. Because convicts would not only need to endure the period of political rights revocation but also fulfill the five-year waiting period as mandated by Constitutional Court Decision Number 56/PUU-XVII/2019, which in essence has effectively absorbed the political rights revocation period.

Whereas according to all the legal considerations above, the Court is of the opinion that the Petitioner's arguments petitioning the Court to reassess Constitutional Court Decision Number 56/PUU-XVII/2019, dated 11 December 2019, by eliminating the requirement of a "five-year waiting period for convicts whose political rights were not revoked by the court, even if they were proven to have committed crimes that are punishable by five years or more" is legally unjustifiable. Accordingly, the Petitioner's arguments are entirely legally unjustifiable, and other matters and the remaining aspects are not further considered as they are deemed irrelevant.

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

On the Preliminary Injunction:

To dismiss the Petitioner's preliminary injunction entirely.

On the Merits:

To dismiss the Petitioner's petition entirely.