



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 122/PUU-XXII/2024**

Concerning

**Provisions on Leave of Absence Without Government Remuneration
for Incumbents Running in the Same Region**

- Petitioners** : Harseto Setyadi Rajah, 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, as lastly amended by Law Number 6 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third 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 70 paragraph (3) of Law 10/2016 against Article 1 paragraph (2), Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To reject the Petitioners' petition entirely.
- Date of Decision** : Thursday, 14 November 2024
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who hold voting rights in general elections and regional head elections. Petitioner I is a member of the community who resides in Kendal Regency, Central Java Province (vide evidence P-3), Petitioner II is a member of the community who resides in Cilegon City, Banten Province (vide evidence P-5), and Petitioner III is a member of the community who resides in Palu City, Central Sulawesi Province (vide evidence P-7). These three regencies/cities will hold regional head elections in 2024. The Petitioners are not candidates for regional heads who have a direct interest in the provisions of the *a quo* norms but feel prejudiced by the enactment of the norms of Article 70 paragraph (3) of Law 10/2016 because, according to the Petitioners, regional heads who have responsibilities and political

commitment with the community that has exercised their political rights through regional head elections cannot fully perform these responsibilities and therefore causes constitutional loss as incumbents running for re-election are required to take a full leave of absence for 60 days to participate in election campaigns, during which they are replaced by Acting Regents who inevitably have different visions, missions, and authority compared to the incumbents.

Regarding the Court's authority, the Petitioners' petition is a constitutional review of the norms of law, *in casu* Article 70 paragraph (3) of Law 10/2016 against the 1945 Constitution. Therefore, the Court has the authority to hear the *a quo* petition.

Whereas because the Court has the authority to hear the *a quo* petition and the Petitioners have legal standing to act as Petitioners in the *a quo* petition, the Court will proceed to consider the subject matter of the petition.

Whereas since the Petitioners' petition is evident, according to the Court, there is no urgency or relevance in hearing statements from other parties as referred to in Article 54 of the Constitutional Court Law.

Whereas before further examining the Petitioners' petition, the Court first considers the issue of whether the judicial review of the norms of Article 70 paragraph (3) of Law 10/2016 can be submitted again, given that the constitutionality of the *a quo* norms has previously been reviewed in Case Number 55/PUU-XIV/2016, Case Number 60/PUU-XIV/2016, and Case Number 68/PUU-XIV/2016. Since it has been proven that the basis for review in the *a quo* petition differs from the previous cases, there is no doubt that the Petitioners may submit the *a quo* petition again. Thus, regardless of whether the substance of the *a quo* petition is justified or not, the *a quo* petition can be formally submitted again pursuant to Article 60 of the Constitutional Court Law and Article 78 of CCR 2/2021. Accordingly, the Court will proceed to consider the subject matter of the petition further.

Whereas before further considering the norms being petitioned for review by the Petitioners, the Court will first examine the provision requiring a leave of absence without government remuneration for incumbents running as regional heads as stipulated in Article 70 paragraph (3) letter a of Law 10/2016. This provision has previously been decided upon in Constitutional Court Decision Number 60/PUU-XIV/2016, pronounced in a plenary session open to the public on 19 July 2017, and included in the legal considerations Paragraph [3.15]. Regarding these legal considerations, the requirement for "leave during the campaign period" serves as a legislative measure to anticipate and prevent incumbents from abusing their positions and the privileges attached to those positions for election purposes. This stance can be seen as an effort to realize honest and fair regional head elections. In this context, the Court's stance prioritizes ensuring honest and fair regional head elections over maintaining the full term of office of the regional heads. Hence, the requirement of leave "during the campaign period" better guarantees honest and fair elections compared to "leave during the campaign". Regarding this, the legal considerations in Constitutional Court Decision Number 60/PUU-XIV/2016 further clarify that the regional government's operation will not stop or be disrupted during the incumbent's leave for the campaign period. In this regard, the government administration continues under the Acting Officer [vide Constitutional Court Decision Number 60/PUU-XIV/2016, pp. 101-102].

Whereas regarding the Petitioners' argument, which essentially petitions the reinstatement of the phrase "regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties" as stipulated in the norms of Article 70 paragraph (3) letter c of Law 8/2015, which was removed by Article 70 paragraph (3) of Law 10/2016, the Court considers as follows. A careful reading of the regulation concerning "campaign leave" shows that the substance of the prohibition has been regulated since the enactment of Law

32/2004. Specifically, the phrase “regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties” was once included in the norms of Article 79 paragraph (3) letter c of Law 32/2004. However, that regulation was not formulated specifically because the norms of Article 79 paragraph (3) letter c of Law 32/2004 were more directed at state officials running as candidates for regional heads and deputy regional heads in carrying out campaigns.

After the issue of regional head elections was regulated separately in 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 1/2015), the campaign leave for incumbent regional heads was regulated in a “simple” manner. In this regard, Article 70 paragraph (2) of Law 1/2015 states, “Governors, Regents, Mayors, and other state officials may participate in campaigns by submitting a campaign leave in accordance with statutory regulations”. Regarding the phrase petitioned for review by the Petitioners, namely “regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties”, it was reintroduced in Article 70 paragraph (3) letter c of Law 8/2015. However, in the subsequent amendment, specifically in Law 10/2016, the *a quo* norms were no longer regulated. According to the Court, the absence of the phrase “regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties” cannot be separated from the intention of Article 70 paragraph (3) letter a of Law 10/2016, which emphasizes 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. Regarding this, if the Petitioners’ petition to reinstate the phrase “regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties” were granted, it would conflict with Article 70 paragraph (3) letter a of Law 10/2016, which regulates a leave of absence without government remuneration for a clearly defined period, namely during the campaign period. In this regard, the Court needs to emphasize that a leave of absence without government remuneration is intended as a leave for a specific purpose. Putting into the context of regional head election campaigns, such leave is meant for the campaign period for incumbents (governors and deputy governors, regents and deputy regents, mayors, and deputy mayors) running for reelection in the same region. Thus, in the context of the principles of honest and fair elections as stipulated in Article 22E paragraph (1) of the 1945 Constitution, such regulation fulfills the principle of legal certainty.

Meanwhile, regarding the Petitioners’ argument to reinstate the phrase “regulation on the duration and schedule of leave taking into account the continuity of regional government administration duties” on the basis of ensuring the continuity of regional government administration duties, the Court refers to the legal considerations of Constitutional Court Decision Number 60/PUU-XIV/2016. Under these legal considerations, the Court leaves to legislators, the regulation of matters related to campaign leave for incumbents, including ensuring continuity of duties during their leave of absence without government remuneration in the case of running for reelection in the same region as candidates for governors and deputy governors, regents and deputy regents, mayors, and deputy mayors. In this context, the Court finds no compelling reason to deviate from its legal considerations in *a quo* Constitutional Court Decision Number 60/PUU-XIV/2016. Should adjustments or harmonization of campaign regulations be necessary due to the elimination of differences between the general election regime and the regional government regime (the regional head election regime under Article 18 paragraph (4) of the 1945 Constitution) to fulfill the principle of popular sovereignty in Article 1 paragraph (2) of the 1945 Constitution, the Court leaves this matter to legislators. In this regard, because there are no longer differences between the general election regime and the regional government regime (the regional head

election regime under Article 18 paragraph (4) of the 1945 Constitution), legislators need to harmonize all regulations related to regional head elections. Consequently, legislators need to harmonize regulations related to legislative election campaigns and presidential/vice-presidential election campaigns according to their respective characteristics.

Whereas according to the legal considerations outlined above, the norms of Article 70 paragraph (3) of Law 10/2016, without the addition of the phrase “regulation on the duration and schedule of leave taking into account the continuity of regional government administration tasks” do not violate the principles of popular sovereignty, democratic elections, honest and fair elections, and the legal certainty guaranteed in Article 1 paragraph (2), Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, not as argued by the Petitioners. Thus, the Petitioners’ petition argument is legally unjustifiable entirely.

Subsequently, the Court passed down a decision in which the verdict was to reject the Petitioners’ petition entirely.