



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 136/PUU-XXII/2024**

Concerning

**Criminal Sanctions for Violations of Neutrality
by Indonesian National Army/Indonesian National Police Members**

- Petitioner** : **Syukur Destieli Gulo**
- Type of Case** : Judicial Review of Law Number 1 of 2015 concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning Election of Governors, Regents and Mayors into Law (Law 1/2015) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 188 Law 1/ 2015 is contrary to Article 18 paragraph (4) and Article 22E and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : **On preliminary injunction:**
To dismiss the petition for preliminary injunction of the Petitioner.
- On the Merits:**
1. To grant the entire Petitioner's petition.
 2. To declare that the provisions of Article 188 of Law Number 1 of 2015 concerning the Determination 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 2014 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 5588) as has been amended by Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination 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 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, "Every state official, regional official, State

Civil Apparatus official, Indonesian National Army/Indonesian National Police member, and Village Head or any other equivalent position who intentionally violates the provisions as referred to in Article 71, shall be punished with imprisonment of at least 1 (one) month or a maximum of 6 (six) months and/or a fine of at least IDR 600,000.00 (six hundred thousand rupiah) or a maximum of IDR 6,000,000.00 (six million rupiah)";

3. To order this Decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

Date of Decision : Thursday, 14 November 2024

Overview of Decision :

Whereas the Petitioner as an individual Indonesian citizen has the right to vote in the 2024 Regional Elections and at the same time he has the constitutional right to obtain a guarantee of fair legal certainty for the implementation of honest, fair, free and confidential regional elections.

Regarding the Court's authority, since the Petitioner petitions for a review the constitutionality of statutory norms, *in casu* Law 1/2015 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Court considers that the Petitioner has fulfilled the qualifications as an individual Indonesian citizen who has the constitutional rights as guaranteed in Article 18 paragraph (4), Article 22E paragraph (1), Article 28D paragraph (1) of the 1945 Constitution. In addition, regarding the alleged constitutional loss of the Petitioner, the Court is of the opinion that it is specific and potential in nature because the implementation of the norm of Article 188 of Law 1/2015 causes the non-guarantee of the neutrality of the regional officials and the Indonesian National Army/Indonesian National Police members, thus potentially harming the Petitioner's constitutional rights to participate and vote in the regional head elections democratically in accordance with the principles of direct, general, free, confidential, honest and fair as well as the right to recognition, guarantee, protection and fair legal certainty as guaranteed in Article 18 paragraph (4), Article 22E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Therefore, the alleged constitutional loss as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the statutory norms for which a judicial review is being petitioned, if the petition is granted, the constitutional loss as described will no longer occur. Therefore, regardless of whether or not the unconstitutionality of the norm of Article 188 of Law 1/2015 being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Regarding the Petitioner's petition for preliminary injunction, which in principle petitions for the Court to prioritize the examination of the *a quo* petition because it is closely related to the guarantee of neutrality in the regional head/deputy regional head elections which is currently approaching the implementation of the campaign period for the 2024 simultaneous regional head elections. For the said petition for preliminary injunction, the Court considers that the *a quo* petition does not proceed with an examination hearing with the agenda of hearing the statements from the

parties as intended in the provisions of Article 54 of the Constitutional Court Law. Therefore, the *a quo* petition will be decided immediately with a final decision and the legal norms that are being reviewed will immediately receive legal certainty. Therefore, the Court is of the opinion that, the petition for preliminary injunction submitted by the Petitioner must be declared legally unjustifiable.

Whereas since the petition of Petitioner is clear as also considered in the above legal consideration regarding the petition for preliminary injunction, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Furthermore, in considering the subject matter of the Petitioner's petition, the Court is of the opinion that the constitutionality issue that must be considered by the Court is whether the absence of the phrases "regional officials" and "the Indonesian National Army/Indonesian National Police members" in Article 188 of Law 1/2015 as a secondary norm makes the norm of Article 188 of Law 1/2015 contrary to the 1945 Constitution of the Republic of Indonesia. However, before considering such constitutionality issue, the Court must first consider the basis or guidelines for the Court to assess the constitutionality of the formation and substance of the norms in the law whose constitutionality is being petitioned to the Court. In this case, the concept of state administration based on the rule of law and the guarantee of fair legal certainty as stated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia places the written legislation (laws) as one of the fundamental matters. Therefore, legal norms must be formulated clearly, consistently, harmoniously, synchronously and easily understandable and they must not open up any space for multiple interpretations in their formulations and must not cause any ambiguity in their implementations. This requirement is also a principle for making good legislation, in summary, it is the principle of consistency, coherence, harmony, synchrony, and there must be correspondence between the legal rules made and the rules that are hierarchically above them, between the rules made and other legal regulations in one hierarchy and between one legal rule and the legal rules that are hierarchically below it. This means that, *a contrario*, a norm in legislation that does not fulfil this principle is contrary to Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution.

Furthermore, in considering the subject matter of the Petitioner's petition, the Court is of the opinion that the neutrality of the state apparatus, both civil and military, in the regional elections is a fundamental principle to ensure the implementation of an honest and fair election.

By guaranteeing the neutrality of its apparatus, the state is able to maintain justice, protect the rights of the citizens to participate in a direct, general, free and confidential regional election, while at the same time guarantee an honest and fair regional election by preventing any abuse of power by the state apparatus. The neutrality of the state apparatus will improve the quality of democracy and ensure that the regional leaders elected from the regional elections are not the results of a manipulative election process due to state apparatus' partiality towards any certain candidate pair. Therefore, although Article 71 paragraph (1) of Law 1/2015, which is the primary norm, has been amended, the amendment has not been followed by an amendment or addition of the 2 (two) new legal subjects to the norm of Article 188 of Law 1/2015, which is the secondary

norm. Since Law 10/2016 does not amend the norm of Article 188 of Law 1/2015, the secondary norm regulating the criminal penalties remains valid and refers to Article 188 of Law 1/2015. When in fact, the norm of Article 71 paragraph (1) of Law 1/2015, which was amended by Law 10/2016, is not a norm that is *lex imperfecta*, but rather a norm created with legal effects or consequences. In this case, the legal effects or consequences must be included in the secondary norms that regulate criminal provisions for any violations committed against Article 71 paragraph (1) of Law 10/2016. The norm of Article 188 of Law 1/2015 in Law 10/2016 has not been amended so that the *a quo* norm is in sync with the norm of Article 71 paragraph (1) of Law 10/2016 which is used as a reference, therefore it creates a legal uncertainty and unconformity regarding the criminalization norms for the 2 (two) new legal subjects that have been added, namely the regional officials and the Indonesian National Army/Indonesian National Police members. Therefore, it is important for the Court to add the phrase "the regional official" and the phrase "the Indonesian National Army/Indonesian National Police member" in Article 188 of Law 1/2015 to comply with the principles of the rule of law and to create fair legal certainty as stipulated in Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, the norm of Article 188 of Law 1/2015, which was amended to become Law 10/2016, in full reads "Every state official, regional official, State Civil Apparatus official, Indonesian National Army/Indonesian National Police member, and Village Head or any other equivalent position who intentionally violates the provisions as referred to in Article 71, shall be punished with imprisonment of at least 1 (one) month or a maximum of 6 (six) months and/or a fine of at least IDR 600,000.00 (six hundred thousand rupiah) or a maximum of IDR 6,000,000.00 (six million rupiah)".

Pursuant to all the legal considerations above, it has been proven that the norm of Article 188 of Law 1/2015 has violated the principles of the rule of law and the guarantee of the right to fair legal certainty and thus it is contrary to the norm of Article 1 paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as argued by the Petitioner. Therefore, the Court is of the opinion that the arguments of the Petitioner are entirely legally justifiable.

Accordingly, the Court subsequently passes down a decision which verdict states, as follows:

On preliminary injunction:

To dismiss the petition of preliminary injunction of the Petitioner.

On the Merits:

1. To grant the entire Petitioner's petition.
2. To declare that the provisions of Article 188 of Law Number 1 of 2015 concerning the Determination 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 2014 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 5588) as has been amended by

Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Determination 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 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, "Every state official, regional official, State Civil Apparatus official, Indonesian National Army/Indonesian National Police member, and Village Head or any other equivalent position who intentionally violates the provisions as referred to in Article 71, shall be punished with imprisonment of at least 1 (one) month or a maximum of 6 (six) months and/or a fine of at least IDR 600,000.00 (six hundred thousand rupiah) or a maximum of IDR 6,000,000.00 (six million rupiah)".

3. To order this Decision to be published in the State Gazette of the Republic of Indonesia as appropriate.