



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 137/PUU-XXII/2024**

Concerning

**Changing Voting Location in Regional Head Elections
and Utilization of Electronic Equipment in Elections**

- Petitioners** : **Satrio Anggito Abimanyu, et al.**
- Type of Case** : Judicial Review 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 (Law 1/2015) as last amended by Law Number 6 of 2020 concerning the Determination of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third 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 against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of the phrase “*at another location*” in Article 62 paragraph (1) of Law 1/2015 and the phrase “*at another polling station*” in Article 95 paragraph (2) of Law Number 8 of 2015 concerning Amendments 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 (Law 8/2015) against Article 1 paragraph (2) and paragraph (3), Article 18 paragraph (4), Article 22E paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (5) of the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**
To dismiss the petition for preliminary injunction of the Petitioners
On the Merits
To dismiss the Petitioners’ petition in its entirety
- Date of Decision** : Thursday, 14 November 2024
- Overview of Decision** :

Whereas the Petitioners are Indonesian citizens, students at Universitas Islam Indonesia Yogyakarta who have the right to vote and are registered on the Permanent Voter List for the 2024 Governor, Regent and Mayor Elections.

Whereas regarding the Court's authority, because the *a quo* petition is a review of the constitutionality of the statutory norms, *in casu* material review of the phrase "*at another location*" in Article 62 paragraph (1) of Law 1/2015 and the phrase "*at another polling station*" in Article 95 paragraph (2) of Law 8/2015 against the of 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Petitioners have been able to specifically describe the potential constitutional loss and the enactment of the norm for which a judicial review is petitioned. In addition, the Petitioners have also been able to describe the alleged constitutional loss which has a causal relationship (*causal verband*) with the enactment of the statutory norms that are being reviewed, namely regarding the unclear phrase "at another location" in Article 62 paragraph (1) of Law 1/2015 and the phrase "at another polling station" in Article 95 paragraph (2) of Law 8/2015, along with their Elucidations respectively, which cause the Petitioners to potentially be unable to exercise their right to vote in the 2024 Election for Governors, Regents and Mayors because it is possible that the Petitioners are not in their area of origin where the Petitioners are registered on the Permanent Voter List. Therefore, if the *a quo* petition is granted, the alleged constitutional loss as described will not occur. Therefore, regardless of whether or not the unconstitutionality of the norms being petitioned for review is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas regarding the petition for preliminary injunction, upon careful examination by the Court, 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 Petitioners must be declared legally unjustifiable.

Whereas regarding the issue of changing the voting location, the Court has previously decided on the issue of changing the voting location in relation to the General Election of President and Vice President, Members of the House of Representatives, Regional Representatives Council, and Regional Legislative Council (Legislative Election and Presidential Election) as regulated in Article 348 paragraph (4) of Law Number 7 of 2017 concerning General Elections (General Election Law), namely in the Constitutional Court Decision Number 19/PUU-XVII/2019 which was pronounced in a plenary session open to the public on 28 March 2019. There are restrictions on the right to vote, *in casu*, changing the voting location, it is related to "Voters under certain conditions" and electoral districts which not only determine the electoral boundaries for election participants, but also the electoral boundaries for voters. This means that the electoral district is the boundary for the use of voting rights, both the right to vote and the right to be elected. Such considerations should also apply to the voters who "change their voting location" in the election of governors, regents and mayors, pursuant to the Constitutional Court Decision Number 85/PUU-XX/2022 which was pronounced in a plenary session open to the public on 29 September 2022, which is a part of the general election as referred to in Article 22E of the 1945 Constitution of the Republic of Indonesia.

Whereas the sentence "using his/her voting rights at another location" as regulated in the provisions of Article 62 paragraph (1) of Law 1/2015 must be interpreted within the framework of "under certain circumstances" as referred to in Article 50 paragraph (3) of General Election Commission Regulation 7/2024 and there is an attached obligation to report such circumstances

to the Voting Committee. Thus, the phrase “at another location” in the *a quo* Article, should also be interpreted as being in the same electoral district where the voters are registered in the Permanent Voter List. This is because the implementation of the election of governors, regents and mayors is also based on electoral districts (both the provinces for the election of governors and deputy governors and the regencies/municipalities for the election of regents and deputy regents and mayors and deputy mayors), likewise the election of members of the House of Representatives, Regional Representatives Council and Regional Legislative Council. In this case, if the voter who applies for a change of voting location is still within the same electoral district (the same province for the election of governor and deputy governor and the same regency/municipality for the election of regent and deputy regent and mayor and deputy mayor), the said voter still has the right to vote for the regional head. Meanwhile, for any voter who does not reside/have a domicile as evidenced by a Residence Identity Card in the relevant electoral district, this means that there is no right to vote for the regional head. This means that when a voter has left his/her electoral district, his/her right to vote is no longer valid. Such regulation of restrictions on the right to vote is a very logical and not excessive legal policy to maintain the purity of the electoral system based on electoral districts (both the province for the election of governors and deputy governors and regencies/municipalities for the election of regents and deputy regents and mayors and deputy mayors) and at the same time to maintain the clarity of the accountability system from the elected regional heads to the voters who indeed reside in the relevant region. The Court’s considerations also simultaneously answer the alternative method of election proposed by the Petitioners, namely granting the voting rights by changing electoral districts. Such an alternative, if conducted without changing the voters’ domicile, would certainly damage the purity of the electoral system based on electoral districts (both the province for the election of governors and deputy governors and regencies/municipalities for the election of regents and deputy regents and mayors and deputy mayors) and at the same time it would create an unclear accountability system from the elected regional heads to the voters who indeed reside in the relevant region.

Whereas the use of electronic election equipment is basically the adoption of digital technology in elections which has the benefit of realizing the effectiveness and efficiency of the legitimate political contestation process. In practice, there are several methods using the electronic voting equipment, including: electronic voting (e-voting) which has been practiced in the election of Village Head in Jembrana, Bali in 2009 and in the election of Village Head in Babakan Wetan Village, Bogor in 2017. In a broader context, the use of e-voting has also been used in several countries with varying degrees of success. The Court in the Constitutional Court Decision Number 147/PUU-VII/2009, which was pronounced in a plenary session open to the public on 30 March 2010, stated that the use of e-voting is constitutional under the cumulative conditions, namely, (i) it does not violate the principles of direct, general, free, confidential, honest and fair; and (ii) the region that applies the e-voting method fulfils the readiness in terms of technology, financing, human resources and software, fulfils the readiness of the community in the relevant region, and other necessary requirements. In addition to e-voting, there is also another method known as internet voting (i-voting) which utilizes the internet technology, the voting process can be done anywhere without having to gather voters in one place. Furthermore, in addition to the use of electronic election equipment, there is also a method of election/voting known as proxy voting which is included in the special voting arrangements (SVA) because the voter authorizes someone else to cast his/her vote. This method is often used to help the voters with special needs (disabilities) who require the assistance of others to be able to exercise their right to vote. Apart from these three methods, there are also early voting (where voters can cast their ballots before the scheduled election day), postal voting [in which the ballot papers are distributed to voters (and usually returned) by post], and mobile ballot box (mobile polling station). The use of electronic election equipment and the use of election/voting methods within reasonable limits are open to implementation provided that they do not violate the principles of direct, general, free, confidential, honest and fair election, and

fulfil the readiness in terms of technology, financing, human resources, and software, fulfil the readiness of the community in the relevant region, and other necessary requirements, and are regulated in the laws and regulations. As for which election/voting method that may be used, this matter is not within the authority of the Court to determine, but rather it is within the authority of the legislators to determine and regulate while still paying attention to the principles of elections and the readiness of all related aspects. In this regard, in order to protect the voters' right to vote, which is a constitutional right of citizens, the issues raised by the Petitioners must receive the attention of the legislators to be regulated in the future amendments to the general election law, *in casu* simultaneous regional elections in 2029 and beyond. Pursuant to the above considerations, the Petitioners' argument which states that the phrase "at another location" in Article 62 paragraph (1) of Law 1/2015 is conditionally contrary to the 1945 Constitution of the Republic of Indonesia is legally unjustifiable.

Whereas regarding the review of the norm of Article 95 paragraph (2) of Law 8/2015, the Court is of the opinion that the essence of the norm regulated in Article 95 paragraph (2) of Law 8/2015 is basically the same as the norm regulated in Article 62 paragraph (1) of Law 1/2015, namely regarding the implementation of voting rights outside the electoral district where the voter is registered on the Permanent Voter List, *in casu* outside the voter's polling station. Any voter who applies for a change of voting location within the same electoral district (the same province for the election of governor and deputy governor and the same regency/municipality for the election of regent and deputy regent and mayor and deputy mayor) will still have the right to vote for the relevant regional head. Meanwhile, for any voter who does not reside/have a domicile as evidenced by a Residence Identity Card in the relevant electoral district, this means that there is no right to vote for the regional head. This means that when a voter has left his/her electoral district, his/her right to vote is no longer valid. Therefore, the phrase "at another polling station" in Article 95 paragraph (2) of the *a quo* Law 8/2015 must be interpreted as any polling station which is still within the same electoral district (the same province for the election of governor and deputy governor and the same regency/municipality for the election of regent and deputy regent and mayor and deputy mayor) where the voter is registered in the Permanent Voter List.

Whereas because the Petitioners' argument regarding the phrase "at another location" in Article 62 paragraph (1) of Law 1/2015 and the phrase "at another polling station" in Article 95 paragraph (2) of Law 8/2015 have been declared legally unjustifiable by the Court, the Petitioners' argument regarding the Elucidation of these articles respectively is irrelevant for further consideration, therefore they must be declared legally unjustifiable.

Pursuant to the entire description of the legal considerations above, the Court is of the opinion that it has been proven that the norm of the phrase "at another location" in Article 62 paragraph (1) of Law 1/2015 and the phrase "at another polling station" in Article 95 paragraph (2) of Law 8/2015, along with their Elucidations respectively, are not contrary to the principles of a democratic state of law and fair legal certainty as regulated in Article 1 paragraph (2) and paragraph (3) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, instead of as argued by the Petitioners. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Subsequently, the Court passes down a decision which verdicts are:

On Preliminary Injunction:

To dismiss the petition for preliminary injunction of the Petitioners

On the Merits

To dismiss the Petitioners' petition in its entirety.