



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 123/PUU-XXII/2024**

Concerning

**Factual Verification Period for Individual Candidate Pairs
in Regional Head Elections
[Article 48 paragraph (4) of Law 10/2016]**

- Petitioner** : **Deddi Fasmadhy Satiadharmanto**
- 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 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** : Article 48 paragraph (4) and Elucidation of Article 48 paragraph (4) of Law 10/2016 are contrary to Article 28C paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2) and Article 31 paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss Petitioner's petition in its entirety
- Date of Decision** : Thursday, 14 November 2024
- Overview of Decision** :

The petitioner is an individual Indonesian citizen who has a background as a taxpayer. In addition, the petitioner is also a voter who will exercise his right to vote in the 2024 Simultaneous Regional Head Elections, namely in the Election of Governor and Deputy Governor of the Special Region of Jakarta Province in November 2024, as evidenced by the petitioner's registration in the Permanent Voters List. The petitioner feels disadvantaged by the enactment of Article 48 paragraph (4) and the Elucidation of Article 48 paragraph (4) of Law 10/2016, because the provisions of Article 48 paragraph (4) of the *a quo* Law and its Elucidation violate the petitioner's constitutional rights to elect a candidate pair, both the candidate pair from the political party and the individual candidate pair, as a collective effort to build democracy, society, nation and state, it has also cause the loss of constitutional rights to recognition, guarantees, protection and fair legal certainty and the loss of constitutional rights to be free from discriminatory treatment. Whereas the provisions of Article 48 paragraph (4) of Law 10/2016, namely regarding the factual verification of the required documents for supporting individual candidate pair which must be submitted no later than 28 (twenty-eight days) before the candidate pair registration period, it must be in line with the formation of the organizing committee (Voting Organizing Group, Sub-District Election Committee and Voting Committee), so as not to cause

constitutional losses for the petitioner. Regarding the arguments of his petition, according to the petitioner, the provisions of Article 48 paragraph (4) of the *a quo* Law are contrary to Article 28C paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2) and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the constitutionality of statutory norms, *in casu* Law 10/2016 against the 1945 Constitution, which is one of the Court's authorities, then pursuant to 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 Power Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, regardless of whether or not the petitioner's arguments in relation to the unconstitutionality of the norm of Article 48 paragraph (4) and the Elucidation of Article 48 paragraph (4) of Law 10/2016 being petitioned for review are proven, in his qualifications as an individual Indonesian citizen who is also a taxpayer and as a voter who will exercise his right to vote in the 2024 Regional Head Elections, the petitioner has described that there is an alleged constitutional loss, namely regarding the existence of legal uncertainty due to the enactment of the norm of Article 48 paragraph (4) and the Elucidation of Article 48 paragraph (4) of Law 10/2016. The alleged constitutional loss is specific and potential and has a causal relationship (*causal verband*) with the enactment of the norms of Article 48 paragraph (4) and the Elucidation of Article 48 paragraph (4) of the *a quo* Law, as evidenced by a photocopy of the Residence Identity Card and Permanent Voters List in the name of the petitioner [*vide* Evidence P-1 and Evidence P-7]. Therefore, if the petition is granted, such loss will no longer occur. Therefore, the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition;

Regarding the constitutionality review of Article 48 paragraph (4) and the Elucidation of Article 48 paragraph (4) of Law 10/2016 as argued by the Petitioner, the Court is of the opinion that the Petitioner's petition is clear and there is no need or urgency to hear the statements from the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas pursuant to Article 60 of the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021), regarding whether the *a quo* norm may be resubmitted for a review, the Court has read and compared between the petition material of the Petitioner and that of the Case Number 61/PUU-XXII/2024 which also petitions for a constitutionality review of Article

48 paragraph (4) of Law 10/2016, it is evident that the legal basis for review and the legal matter in the previous case is different from the legal basis for review and the legal matter in the *a quo* case, therefore the Court is of the opinion that the *a quo* petition not hindered by the provisions as contained in Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021, so that the provisions of the *a quo* norm may be re-submitted for review.

Whereas since the petitioner's petition may be resubmitted, the Court will then assess the constitutionality issue of the norm of Article 48 paragraph (4) of Law 10/2016 for which a judicial review is petitioned. Meanwhile, regarding the Elucidation of Article 48 paragraph (4) of Law 10/2016, since the petitioner does not describe it further in his *Posita*, the Court does not further consider the constitutionality of the Elucidation of the *a quo* Article.

Whereas before the Court considers the constitutionality issue of the *a quo* case, the Court first considers the provisions of Article 48 paragraph (4) which according to the petitioner has legal problems because it does not reflect the principles of the formation of regulations, namely the suitability of the material content [*vide* Article 5 of Law 12/2011] and it does not reflect the principles of the material content of regulations, namely nationality, kinship, justice and equality before the law [*vide* Article 6 of Law 12/2011].

Regarding the *a quo* argument, pursuant to Article 5 and Article 6 of Law 12 of 2011 concerning the Formation of Legislation as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation (hereinafter referred to as Law 12/2011), Article 1 numbers 3 and 4, and Article 9 of Law 12/2011 as last amended by Law 13/2022, the amendments to the material content or norms in a law or government regulation in lieu of law may be made as a follow-up to the Constitutional Court Decision and made by the legislator to fulfil the needs of the community.

Whereas the Law concerning the Election of Governors, Regents and Mayors to Become Law has also undergone several amendments in order to improve the implementation of the elections of governor and deputy governor, regent and deputy regent, and mayor and deputy mayor, as stated in letters a and b of the considerations of Law 10/2016. Likewise, the provisions of Article 48 paragraph (4) have also been amended due to the amendment to the Law on the Election of Governors, Regents and Mayors. However, substantially, the process of submitting the required document for supporting the individual candidate pair and the process of implementing factual verification are still carried out before candidate registration begins as stated in Law 10/2016 concerning nomination requirements for individual candidate pair who wish to run as regional head candidate. This is as stated in the considerations of Sub-paragraph [3.15.2] of the Constitutional Court Decision Number 61/PUU-XXII/2024 which was pronounced in a plenary session open to the public on 20 August 2024, page 66-

67. Therefore, the petitioner's argument regarding the content of Article 48 paragraph (4) of Law 10/2016 which states that it does not reflect the principles of the formation of regulatory content material as contained in Articles 5 and Article 6 of Law 12/2011, such argument is legally unjustifiable.

Whereas the Petitioner further questions the submission of the required documents for supporting the individual candidate pair or the authorized team to the Voting Committee in order to carry out factual verification with a maximum period of 28 days before the candidate pair registration period begins, this is not in line with the formation of the organizing committee (Voting Organizing Group, Sub-District Election Committee and Voting Committee) which was formed in November 2024, so that the submission of the required documents for supporting the individual candidate pair for verification is not possible because the organizing committee (Voting Organizing Group, Sub-District Election Committee and Voting Committee) has not been formed. Regarding the matter, the Court will consider the following:

1. Whereas regarding the stages of the implementation of the Regional Head Elections which are currently underway and approaching the implementation date, namely 27 November 2024, the provisions of laws and regulations regarding the implementation of the Regional Head Elections, including the provisions regarding the process of submitting the required documents for supporting the individual candidate pair and the process of implementing factual verification have been carried out, including anything in relation to the technical guidelines.
2. Whereas the General Election Commission, as the election organizing institution as referred to in the law governing election organizers who are given duties and authority in organizing elections pursuant to the provisions stipulated in the Regional Election Law, has issued Decree of the General Election Commission Number 532 of 2024 concerning Technical Guidelines for Fulfilling the Requirements for Supporting Individual Candidate Pairs in the 2024 Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor. The *a quo* Decree of the General Election Commission Number 532 of 2024 also regulates factual verification which is a stage to prove the truth of the identity of supporters and the truth of

providing support for individual candidate pair.

3. Whereas the factual verification stages are divided into two, the first factual verification stage is carried out on 3 - 16 June 2024 and the second is carried out on 24 July - 2 August 2024. From the side of the organizer of the Regional Head Elections, the factual verification is implemented by the Voting Committee.
4. Whereas the *a quo* Decree of the General Election Commission Number 532 of 2024, is effective from the stipulation date, namely 7 May 2024. Thus, based on the sequence and according to reasonable reasoning, the Voting Committee as the party responsible to implement factual verification must first be formed, subsequently the factual verification of documents required for supporting individual candidate pair is implemented. Furthermore, although the Decree of the General Election Commission Number 532 of 2024 has been revoked by the Decree of the General Election Commission Number 1002 of 2024, the validity of which begins on the stipulation date, namely 23 July 2024, the process of fulfilling the requirements for supporting individual candidate pair that has been implemented pursuant to the Decree of the General Election Commission Number 532 of 2024 and other implementing regulations remain valid, because the said regulations regulate a series of continuous events. So that the validity of the Decree of the General Election Commission Number 532 of 2024 which was later revoked by the Decree of the General Election Commission Number 1002 of 2024 as Technical Guidelines for Fulfilling the Requirements for Supporting Individual Candidate Pairs in the Election of Governor and Deputy Governor, Regent and Deputy Regent, and Mayor and Deputy Mayor in 2024 is in accordance and does not conflict with the schedule for the implementation of the first and second factual verification as previously mentioned above.

Whereas pursuant to all the considerations above, the Court is of the opinion that it has been proven that the provisions of the norms contained in Article 48 paragraph (4) of Law 10/2016 are not contrary to the guarantee of legal certainty as guaranteed in Article 28C paragraph (1), Article 28D paragraph (1), Article 28H paragraph (2) and Article 31 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, instead of as argued by the Petitioner. Therefore, the Petitioner's argument, which states that the norm of Article 48 paragraph (4) of Law 10/2016 is unconstitutional, is legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.