



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 125/PUU-XXII/2024**

Concerning

**Constitutionality of Blank Vote in Regional Head Elections
That Have More Than One Candidate Pair**

- Petitioners** : **Heriyanto, 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 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 and Law Number 2 of 2024 concerning Special Region of Jakarta Province (Law 2/2024) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : There is no regulation regarding blank vote in the provisions of Article 79 paragraph (1) and Article 85 paragraph (1) of Law 1/2015, Article 94 of Law 8/2015, Article 107 paragraph (1) and Article 109 paragraph (1) of Law 10/2016 and Article 10 paragraph (2) and paragraph (3) of Law 2/2024 violate the principle of popular sovereignty, the principle of a state based on the rule of law, the principle of democratic regional head elections, the principle of direct, general, free, confidential, honest and fair elections, have created legal uncertainty and violate the right to express opinions, the right to freedom of thought, and are discriminatory, as regulated in Article 1 paragraph (2) and paragraph (3), Article 18 paragraph (4), Article 28D paragraph (1) and paragraph (3), Article 22E paragraph (1) and paragraph (3), Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia;

Verdict : On Preliminary Injunction:

To dismiss the petition for preliminary injunction of the Petitioners

On the Merits:

1. To declare that the petition of the Petitioners regarding judicial review of Article 107 paragraph (1) and Article 109 paragraph (1) 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 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) and Article 10 paragraph (2) of Law Number 2 of 2024 concerning the Special Region of Jakarta Province (State Gazette of the Republic of Indonesia Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 6913 of 2024) is inadmissible
2. To dismiss the remainder of the Petitioners' petition

Date of Decision : Thursday, 14 November 2024

Overview of Decision :

The Petitioners are individual Indonesian citizens who have the right to be elected and to vote in the 2024 National Simultaneous Regional Elections;

Regarding the Court's authority, since the petition is submitted to review the constitutionality of statutory norms, *in casu* Law 1/2015, Law 8/2015, Law 10/2016, and Law 2/2024 against the of 1945 Constitution, the Court has the authority to hear the *a quo* petition of the Petitioners;

Regarding the legal standing of the Petitioners, the Court is of the opinion that the Petitioners have been able to specifically describe their constitutional rights which in their opinion are actually or at least potentially injured by the enactment of the norms being petitioned for review, namely the right to vote on the regional head in a democratic election. Therefore, it is evident that there is a logical connection and causal relationship between the alleged constitutional loss of the Petitioners and the enactment of the norms of the articles being petitioned for review. Therefore, if the petition of the Petitioners is granted, the alleged constitutional loss as described will not or at least will no longer 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.

Regarding the Petitioners' petition for preliminary injunction, the Court considers that since the *a quo* petition will be decided without first holding a Plenary Session with the agenda of hearing the statements from the House of Representatives and the President and other parties deemed necessary, the *a quo* petition will immediately obtain legal certainty. Therefore, there is no reason for the Court to further consider the Petitioners' petition for preliminary injunction. Therefore, the Petitioners' petition for preliminary injunction is legally unjustifiable.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency or needs in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law;

In the main point of the petition, the Court emphasizes that the right to vote and be elected are rights guaranteed by the constitution so that any restriction, deviation, elimination and abolition of the said rights constitute a violation of the fundamental human rights of the citizens. As rights that may not be violated, the Court in its previous decisions has revoked or given new interpretations to statutory norms that have been proven/have the potential to limit, deviate from, eliminate or remove the right to vote and be elected *in casu* in the regional head election process. The Court has also restored the right to vote and be elected several times in its decisions regarding disputes over regional head election results that were proven to have violated the right to vote.

Whereas the Court then answers the main point of the Petitioners' petition, namely whether the absence of regulations regarding the "blank vote" in the regional head election whose participants are more than one candidate pair (not a single candidate pair) violates the right to vote because the Petitioners are unable to vote according to their conscience, namely they do not have a choice to disagree with all the candidate pairs participating in the election listed on the ballot paper.

Whereas the Court explains that the diverse political, social and cultural conditions of society in each place means that not every country implements the "blank vote" system in its election. Because "blank vote" is not a reference to determine whether an election is democratic or not. Although the implementation of "blank vote" may reduce the number of abstain voters and therefore the level of public participation would be higher, however the "blank vote" is not necessarily suitable to be implemented in every country.

In Indonesia, a system similar to "blank vote" is implemented in any regional head election which only has a single candidate pair, pursuant to the Constitutional Court Decision Number 100/PUU-XIII/2015. However, in the consideration of the *a quo* decision, the Court affirms that the "blank vote"/blank box in any election which only has a single candidate pair is not an ideal choice because it eliminates the meaning of competition and contestation in the true sense, but it must still exist as a final effort to fulfil the constitutional rights of citizens, and because for any election with only a single candidate pair there is no other contestant, the manifestation of the contestation is carried out by asking the people (voters) to determine their choice whether they "agree" or "disagree" (plebiscite model) to the single candidate pair.

The Court is of the opinion that the absence of "blank vote" in regional head elections with more than one candidate pair does not reduce the Petitioners' right to vote. The Petitioners as voters registered in the Permanent Voters List have the right to vote which cannot be denied. No right to vote is lost or impaired by the absence of "blank vote" in regional head elections with more than one candidate pair. But it would be different if there is no option to cast "blank vote" in a regional head election with only a single candidate pair. Without "blank vote", the said election will be postponed until the next election, so that there would be no contestation as is desired in an election system.

Then the Court emphasizes that voting in general elections, including regional head elections, is a human right, not a citizen's obligation. In this case, although the 1945 Constitution of the Republic of Indonesia does not require citizens to vote in general elections, as good citizens, their participations in elections are important. This is different from several other countries which require their citizens to vote in general elections. Because voting and being elected is not an obligation, the voters who believe that there is no candidate pair that suits their wishes cannot be forced to vote, let alone be sanctioned if they do not vote. To fulfil the right to vote, the community must participate and use their right to vote. In this case, of course, the Court has no intention of encouraging the public not to vote or to give up their rights in the regional head elections, especially on the grounds that there is no desired candidate and there is no option to cast "blank vote", because by voting, the community is actively participating in the political process which is a shared responsibility.

The Court is of the opinion that the root of the Petitioners' problem is disappointment because the candidates the Petitioners had hoped for did not become election participants due to political cartel practices. The Court is of the opinion that such problems lie at the initial stages of the election, namely in the candidate selection process, which should be resolved by improving the nomination process. Because the nomination process should not only about political parties having strategies and manoeuvres to achieve their goals, but it is also related to the figures/persons to be nominated in the contest who should prepare themselves thoroughly. The supporters of the figures/persons must also provide concrete support from the start, so that the figures/persons are able to carefully plan their candidacy, create strategies, missions, and programs that are attractive in the eyes of the voters, and thus they would have "selling points" in the regional head elections. This is done to find a political party that can be a political vehicle for them to nominate themselves. Even if he is not from a political party, then the said persons may nominate themselves by taking the individual candidates route.

Regarding the issue of support from a large coalition of political parties which may reduce the opportunities for other people to become election candidates, the Court emphasizes that the Court has relaxed the requirements for political parties to nominate their candidates in the regional head elections as decided in the Constitutional Court Decision Number 60/PUU-XXII/2024 which lowers the threshold for political parties based on the results of valid votes in the relevant province/regency/municipality election, the amount of which is as interpreted by the Court. Therefore, ideally there would be more political parties or coalitions of political parties that are able to nominate regional head candidates, and this would open up opportunities for someone who wishes to run as a candidate, and also for the community to have many choices of candidates. However, even with such arrangements, it turns out that there are still many regions which only have a single candidate pair because political parties still choose to form coalitions. Therefore, the Court is of the opinion that in the future, political parties and figures/persons running as candidates should work together well before the start of the nomination process. Therefore, the Court is of the opinion that there is no reduction in voting rights that violates the principle of popular sovereignty as argued by the Petitioners. Thus, the Petitioners' argument regarding the absence of "blank vote" violates the Petitioners' right to vote is legally unjustifiable.

Regarding the constitutionality issue of the norms of Article 107 paragraph (1), Article 109 paragraph (1) of Law 10/2016 and Article 10 paragraph (2) of Law 2/2024 being petitioned in *petitum* number 5, number 6 and number 7, the Court do not find a clear and adequate description of the legal arguments in the *posita* section regarding the reasons why Article 107 paragraph (1) and Article 109 paragraph (1) of Law 10/2016 and Article 10 paragraph (2) of Law 2/2024 must be interpreted as petitioned by the Petitioners. In this regard, there is no description of the contradiction between the said norms and the articles in the 1945 Constitution which are used as the legal basis for review. Therefore such *petitum* does not have any legal basis for argument in the *posita*, thus the *posita* and *petitum* of the Petitioners' petition regarding Article 107 paragraph (1), Article 109 paragraph (1) of Law 10/2016 and Article 10 paragraph

(2) of Law 2/2024 becomes unclear or obscure (*obscuur*) and such ambiguity resulted in the Petitioners' petition for the three *a quo* norms does not meet the formal requirements for petition as regulated in Article 10 paragraph (2) letter b number 3 of the Constitutional Court Regulation 2/2021.

Therefore, pursuant to the above considerations, the Court is of the opinion that the provisions of Article 79 paragraph (1) and Article 85 paragraph (1) of Law 1/2015, Article 94 of Law 8/2015 and Article 10 paragraph (3) of Law 2/2024 have been proven not to violate the principle of popular sovereignty, the principle of the rule of law, the principle of democratic regional head elections, the principle of direct, general, free, confidential, honest and fair elections, nor do they give rise to legal uncertainty and do not violate the right to express opinions, do not violate the right to freedom of thought and are not discriminatory, instead of as argued by the Petitioners. Therefore, they are not contrary to Article 1 paragraph (2) and

paragraph (3), Article 18 paragraph (4), Article 28D paragraph (1)

and paragraph (3), Article 22E paragraph (1) and paragraph (3), Article 28I paragraph (1) and paragraph (2) of the 1945 Constitution. Thus, the Petitioners' petition regarding Article 79 paragraph (1) and Article 85 paragraph (1) of Law 1/2015, Article 94 of Law 8/2015 and Article 10 paragraph (3) of Law 2/2024 is legally unjustifiable. Meanwhile, the petition to review the norms of Article 107 paragraph

(1) and Article 109 paragraph (1) of Law 10/2016 and Article 10 paragraph (2) of Law 2/2024 is unclear or obscure (*obscuur*).

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

On Preliminary Injunction:

To dismiss the petition for preliminary injunction of the Petitioners.

On the Merits:

1. To declare that the petition of the Petitioners regarding judicial review of Article 107 paragraph (1) and Article 109 paragraph (1) 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 (State Gazette of the Republic of Indonesia of 2016 Number 130, Supplement to the State Gazette of the Republic of Indonesia Number 5898) and Article 10 paragraph (2) of Law Number 2 of 2024 concerning the Special Region of Jakarta Province (State Gazette of the Republic of Indonesia Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 6913 of 2024) is inadmissible;
2. To dismiss the remainder of the Petitioners' petition.