



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 129/PUU-XXII/2024**

Concerning

**Starting Point of Calculation
of Term of Office of Substitute Regional Heads**

- Petitioners** : **Helmi Hasan, 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 Determination of Government Regulations 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** : According to the Petitioners, Article 162 paragraph (1) and paragraph (2) of Law 10/2016 are contrary to the 1945 Constitution of the Republic of Indonesia because they do not regulate the calculation of the term of office of acting (temporary) governors, regents and mayors
- 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** :

The Petitioners are individual Indonesian citizens where Petitioner I and Petitioner II are a candidate pair for Governor and Deputy Governor of Bengkulu in the 2024 Bengkulu Governor and Deputy Governor Election, while Petitioner III and Petitioner IV are a candidate pair for Regent and Deputy Regent of Bengkulu Selatan in the 2024 Bengkulu Regent and Deputy Regent Election. In principle, the Petitioners are questioning the constitutionality of the norm of Article 162 paragraph (1) and paragraph (2) of Law 10/2016 on the grounds that the norm is detrimental to the Petitioners because it does not regulate the calculation of the term of office of temporary regional heads, specifically the starting point of calculation of the term of office of temporary/substitute regional heads. According to the Petitioners, Article 162 paragraph (1) is related to the calculation of the Governor's term of office, while Article 162

paragraph (2) is related to the calculation of the Regent/Mayor's term of office.

Regarding the authority of the Court, since the Petitioners petition for a review of the constitutionality of statutory norms, *in casu* Article 162 paragraph (1) and paragraph (2) 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 the Election of Governors, Regents and Mayors into Law (Law 10/2016), against Article 1 paragraph (2) and paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Petitioners experience losses due to the absence of such regulations because there are candidate pairs participating in the regional head elections who should be declared as not fulfilling the requirements because they have actually served as regional heads for two terms, either as acting or definitive regional heads. The said candidate pairs are able to still take part in the regional head elections because a part of their terms of office as acting regional heads are not counted, so they are considered not to have served for two terms. Therefore, if the Court grants the petition for material review submitted by Petitioner I to Petitioner IV, the said constitutional loss will certainly no longer occur. Thus, regardless of whether or not the arguments of Petitioner I to Petitioner IV regarding the unconstitutionality of the norms of the articles being petitioned for review are proven, the Court is of the opinion that Petitioner I to Petitioner IV (hereinafter referred to as the Petitioners) have the legal standing to act as Petitioners in the *a quo* petition.

Whereas the Petitioners in their petition submitted a preliminary injunction which in principle requested the Court to prioritize the examination of the *a quo* petition on the grounds that the 2024 simultaneous regional head elections are already underway, in accordance with the schedule the stage of determination of the governors, regents, and mayors will be carried out on 22 September 2024. Therefore, it is requested that the Court order the General Election Commission to implement the Court's Decision by revoking the determination of the candidate pairs for governor, regent, and mayor that are not in accordance with the intent of the Constitutional Court Decision Number 22/PUU-VII/2009, Number 67/PUU-XVIII/2020, and Number 2/PUU-XXI/2023.

Regarding the Petitioners' petition for priority examination, the Court will issue a decision on the *a quo* petition without holding a plenary session with an evidentiary agenda as stipulated in Article 54 of the Constitutional Court Law. Therefore, the *a quo* petition will immediately obtain legal certainty so that there is no relevance in considering the petition for preliminary injunction submitted by the Petitioners in relation to the validity of the norm for which the review is being petitioned. Therefore, the Petitioners' petition for preliminary injunction is legally unjustifiable.

Regarding the Petitioners' petition, the Court considers that Article 162 paragraph (1) and paragraph (2) of Law 10/2016 do not regulate the calculation of the term of office of substitute regional head, *in casu* whether the term of office of a substitute regional head - definitive or temporary - is calculated from the time the relevant person is inaugurated or from the time the relevant person carries out his/her duties. The Court is of the opinion that the provisions of Article 162 of Law 10/2016, which consists of three paragraphs, regulate the period or the term of office and the authority of the newly appointed regional head (in his/her capacity as the winner of the regional election), and do not regulate the term of office in the context of the requirements for the prospective regional head candidates/candidate pairs.

The substance of the norm of Article 162 paragraph (1) and paragraph (2) of Law 10/2016 contains the phrase "shall hold the office for 5 (five) years", it shows that the provision of a 5 (five) year term of office refers to the term of office that is the right of the regional head who wins the regional head election. Likewise, the next phrase of the article, namely "shall hold the office for 5 (five) years **'effective from the date of inauguration'**" is a guideline/method for calculating the 5 (five) year term of office, and is not a guideline/method for calculating the term of office for the temporary officials or acting officials who take on the office as the substitutes for the regional heads elected from the elections.

The requirements regarding the term of office of incumbent regional head candidates/candidate pairs who wish to re-participate in the regional head election or the requirements for nominating themselves as participants in the regional head election, are actually contained in Article 7 paragraph (2) of Law 10/2016, which is a part of the regulation of "nomination requirements" [*vide* Chapter III of Law 10/2016], in principle it stipulates that a person must "never having served as a Governor, Deputy Governor, Regent, Deputy Regent, Mayor, and Deputy Mayor for 2 (two) terms of office in the same position for the Governor Candidate, Deputy Governor Candidate, Regent Candidate, Deputy Regent Candidate, Mayor Candidate, and Deputy Mayor Candidate" [*vide* Article 7 paragraph (2) letter n of Law 10/2016].

Regarding the substance of the Petitioners' petition in relation to the starting point for calculating the term of office of a regional head in the context of the relevant person re-participate in the regional head election, without the Court intending to assess the concrete case questioned by the Petitioners, the Court declares that the term of office referred to in Article 7 paragraph (2) letter n of Law 10/2016 refers to **the definite term of office that has been served (real or factual)** and not the term of office which is calculated based on the inauguration time.

Pursuant to the said legal considerations, the Court considers that the Petitioners' arguments regarding the conditional unconstitutionality of the norms of Article 162 paragraph (1) and paragraph (2) of Law 10/2016, it has been proven that the said norms provide the recognition, guarantees, protection, and fair legal certainty and equal treatment before the law so that they are not contrary to Article 1 paragraph (2) and paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

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

To dismiss the Petitioners' petition in its entirety.