



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 139/PUU-XXII/2024**

Concerning

Regional Head Elections Pursuant to Permanent Voter List

Petitioner	: M. Taufik Hidayat and Doni Istyanto Hari Mahdi
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	: Article 54D paragraph (1) and paragraph (2) of Law 10/2016 in relation to blank box are contrary to Article 1 paragraph (2), Article 18 paragraph (4), and Article 28D paragraph (1) of the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition in its entirety
Date of Decision	: Thursday, 14 November 2024
Overview of Decision	:

The Petitioners are individual Indonesian citizens who feel disadvantaged by the enactment of Article 54D paragraph (1) and paragraph (2) of Law 10/2016 because the article is intended to facilitate the implementation of regional election which only has one candidate pair. With the implementation of the said article, a candidate pair who run against an "blank box" can easily win the regional election, because they only need to obtain "more than 50% (fifty percent) of valid votes". Therefore, the candidate pair does not need to bother seeking votes from all voters registered in the Permanent Voter List, because if many voters are not present at the Polling Station, it will be easier for the candidate pair to win the regional election.

Regarding the Court's Authority, because the Petitioners petition for a review of the constitutionality of statutory norms, *in casu*, Article 54D paragraph (1) and paragraph (2) of Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing of the Petitioners, upon careful examination by the Court on the Petitioners' description in describing their legal standings and the evidence submitted, in relation to the review of Article 54D paragraph (1) and paragraph (2) of Law 10/2016, the Court is of the opinion that the Petitioners has been able to prove the existence of a causal relationship (*causal verband*) between their alleged constitutional loss, whether actual or potential, and the enactment of the norm for which the review is being petitioned. This is because as individual Indonesian citizens [*vide* Evidence P-2], the Petitioners have the right to vote on the regional heads in the regional elections where they are registered on the Permanent Voter List [*vide* Evidence P-2.2 and Evidence P-3.2]. In addition to the right to

vote, the Petitioners also have the right to be elected, both of which are constitutional rights of citizens as a part of the right to equal standing before the law and in the government as guaranteed in the 1945 Constitution of the Republic of Indonesia. In this case, the Petitioners have sufficiently described that their constitutional right to vote and be elected is being harmed by the enactment of the norms of the *a quo* Article, and if the Petitioners' petition is granted, then the alleged constitutional losses experienced by the Petitioners, whether actual or at least potential, will no longer occur or will not occur. Therefore, regardless of whether or not the arguments of the Petitioners in relation to the unconstitutionality of the norms of Article 54D paragraph (1) and paragraph (2) of Law 10/2016 are proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas, before further considering the petition of the Petitioners, because the Court is of the opinion that the constitutionality issue disputed by the Petitioners is clear, there is no urgency and relevance to request the statements from the parties as intended in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, the Petitioners argue that in principle the norms of Article 54D paragraph (1) and paragraph (2) of Law 10/2016 are deliberately made so that the regional election may be held with only one candidate pair, thus giving rise to manipulation of party support without any witnesses from the opponent, namely a blank box. For this reason, according to the Petitioners, the regional election candidate pair supported by a political party or a coalition of political parties should obtain more than 50% (fifty percent) of the votes registered in the Permanent Voter List. Furthermore, if the candidate pair loses against a blank box, then the relevant candidate pair will not be allowed to re-participate in the next regional election.

Regarding the Petitioners' argument above, the Court is of the opinion that the right to vote and be elected in the regional head elections is a constitutional right of citizens which is recognized as part of the right to equal standing before the law and in the government as guaranteed in Article 27 paragraph (1), and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. In the context of regional head elections, the guarantee of citizens' constitutional rights to vote and be elected is further regulated in laws related to the regional elections. In Law 10/2016, the direct regional elections are a manifestation of the principle of people's sovereignty as referred to in Article 1 paragraph (2) of the 1945 Constitution by giving the right to the citizens who meet the requirements to elect regional heads. The right to elect and be elected is also emphasized in Article 43 paragraph (1) of Law Number 39 of 1999 concerning Human Rights and Article 25 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by Indonesia with the issuance of Law Number 12 of 2005 concerning Ratification of International Covenant on Civil and Political Rights. Therefore, the rights of citizens to vote and be elected, including to vote and be elected as regional heads, are constitutional rights and fundamental human rights of citizens and thus they should not be complicated or hindered by any administrative provisions and procedures that regulate the implementation of elections, election results and the right to be re-elected due to any failure or defeat in the previous election.

The Permanent Voter List (*Daftar Pemilih Tetap* or DPT), Additional Permanent Voter List (*Daftar Pemilih Tetap Tambahan* or DPTb), and Special Voter List (*Daftar Pemilih Khusus* or DPK) are also voter lists used in the regional elections. Therefore, the voters who are entitled to exercise their right to vote in the regional elections are not only the voters registered in DPT, but also the voters registered in other voter lists, namely DPTb and DPK. In this case, DPT is not the only voter list used to recapitulate the number of voters who exercised their right to vote and to recapitulate the valid and invalid votes, therefore DPT should not be used to determine the elected candidate pair in the regional elections. Moreover, although the voters are expected to exercise their right to vote, there are no sanctions for any voters registered on the DPT who do not exercise their right to vote. This means that in the context of the right to vote, the said right is not an obligation for the voters, therefore the argument of the Petitioners, which states that the determination of the elected candidate pair in the regional elections should be based on the DPT, is irrelevant and it has

also implicitly shifted the construction of participation in elections from a right to an obligation. In addition, even though the voters on the DPT exercise their right to vote, there is a possibility that the votes cast will be invalid because they were not made in accordance with election provisions. For this reason, when invalid votes in the DPT are still counted as the basis for calculating the votes in determining the elected candidate pair, this will result in the election result being invalid.

In addition, Article 107 paragraph (3), Article 109 paragraph (3), and Article 158 of Law 10/2016 indicate that the votes are calculated from the total number of valid votes, so that if the Court grants the Petitioners' petition which in principle petitions for the Court to interpret that the calculation of votes obtained in a regional election with only one candidate pair is based on a percentage of the DPT, then this could actually result in legal uncertainty because it creates differences in calculation standards and/or determinations for the regional elections between the *a quo* article and other articles in the same law, such thing is actually contrary to Article 28D paragraph (1) of the 1945 Constitution. Pursuant to the above legal considerations, the Petitioners' argument regarding the constitutionality issue of Article 54D paragraph (1) of Law 10/ 2016 is legally unjustifiable.

Regarding the constitutionality issue of Article 54D paragraph (2) of Law 10/2016, upon careful examination by the Court on the arguments of the Petitioners in the *a quo* petition, although in the *a quo* case the Petitioners have different reasons from the arguments of the petition in the Case Number 14/PUU-XVII/2019, the reasons for the arguments in the case essentially dispute the same norm as the previous case which questioned the participation of a losing candidate pair in the next regional head election. In this regard, the Court has no fundamental and basic legal reasons to shift from its previous position. Therefore, the legal considerations of the Constitutional Court Decision Number 14/PUU-XVII/2019 to the extent that it relates to the constitutionality of the *a quo* norm *mutatis mutandis* also applies as a legal consideration in the petition regarding the norms in Article 54D paragraph (2) of Law 10/2016. In this case, the Court maintains that a candidate pair who lost in the previous regional election cannot be prohibited from re-participating in the next regional election as long as the candidate pair fulfils the nomination requirements and re-participates in the verification process and is declared to have passed the verification for the next regional head election. Therefore, the argument of the Petitioners who petition for the norm of Article 54D paragraph (2) of Law 10/2016 to be interpreted as "if the number of votes obtained by a candidate pair is less than as referred to in paragraph (1), the candidate pair who loses in the Election is prohibited from re-participating in the next Election", is legally unjustifiable.

Accordingly, the Court subsequently passes down a decision which verdict states to dismiss the Petitioners' petition in its entirety.