



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 154/PUU-XXII/2024**

**Concerning**

**Leave Without Pay (for State Civil Servants)  
and Prohibition on Using Facilities Related to Their Position  
for Incumbent Regional Heads and/or Vice Regional Heads**

<b>Petitioner</b>	: <b>Edi Iswadi</b>
<b>Type of Case</b>	: Judicial Review of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Enactment 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)
<b>Subject Matter</b>	: Article 70 paragraph (3) of Law 10/ 2016 is contrary to Article 22E paragraph (1) and Article 28J paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: <b>On Preliminary Injunction:</b>

To dismiss the Petitioner's petition for preliminary injunction

**On the Merits:**

1. To dismiss the Petitioner's petition in part.
2. To declare that Article 70 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment of Law Number 1 of 2015 concerning the Enactment 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) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "leave without pay (for State Civil Servants) and are prohibited to use facilities related to their position for incumbent regional heads and/or vice regional heads, whether during the campaign period, the election silence period or on the election day."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioner's petition.

**Date of Decision** : Thursday, January 2, 2025

**Overview of Decision** :

The Petitioner is an Indonesian citizen who works as a village head in Bojongsari Village, Kebumen Regency, who has been actively serving for the period of 2019-2026 and who is also a voter in Kebumen Regency in the 2024 Regional Election.

With respect to the Court's authority, since the Petitioner petitions for a review of the constitutionality of statutory norms *in casu* Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

With respect to the legal standing of the Petitioner, the Court is of the opinion that the Petitioner has been able to describe the logical connection and causal relationship (*causal verband*) between the assumed loss of the Petitioner's constitutional rights, which is specific and actual and at least potential in nature, and the enactment of the norm of Article 70 paragraph (3) of Law 10/2016 being petitioned for review. Therefore, if the petition *a quo* is granted, the assumed loss of constitutional rights will no longer or will not occur. Therefore, regardless of whether or not the unconstitutionality of the norm of Article 70 paragraph (3) of Law 10/2016 being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

With respect to the Petitioner's petition for preliminary injunction, since the petition *a quo* 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 any other parties deemed necessary as referred to in Article 54 of the Constitutional Court Law, the petition *a quo* will promptly achieve legal certainty. Thus, there is no relevance to consider Petitioner's petition for preliminary injunction. Therefore, the Petitioner's petition for preliminary injunction is legally unjustifiable.

With respect to the subject matter, the Court considers that the constitutional issues questioned by the Petitioner, namely the addition or extension of the leave without pay (for State Civil Servants) and the prohibition on using facilities related to their positions for the incumbent regional heads and/or vice regional heads, not only during the campaign period but also for the period until the election day, this matter cannot be separated from the legal considerations of the Constitutional Court Decision Number 60/PUU-XIV/2016 and the Constitutional Court Decision Number 122/PUU-XXII/2024. Pursuant to the legal considerations in the above Decisions, regarding the leave for the incumbent regional heads and/or vice regional heads, the Court has confirmed that: (1) any facilities related to their position must be relinquished, as a consequence from their mandatory leave to uphold the state or government neutrality in the regional head election; (2) the existence of a clear legal norm that separates the regional head who is currently serving from the (incumbent) regional head who is on leave, such legal norm is intended to provide equal treatment between candidates who are incumbents and those who are not, and specifically to address any concerns over the misuse of influence and facilities by the incumbent candidates; (3) "leave during the campaign period" is a form of anticipation by the law makers so that the incumbent regional heads and/or vice regional heads do not misuse their position and any facilities attached to their position for election purposes; (4) the phrase "taking a leave during the campaign period" provides greater assurance of honest and fair regional head elections than "taking a leave when campaigning;" (5) if an incumbent candidate takes a leave during the campaign period, it does not mean the work of the regional government will stop/be disrupted because the government will be run by an acting officer.

Whereas in fact, the opportunity for the incumbent regional heads and/or vice regional heads seeking re-election in the same region to misuse their authority or official facilities is wide open and this creates the potential for the elected regional heads and/or vice regional

heads to violate the principles of fair and honest elections. Therefore, upon careful examination, the Court is of the opinion that the Petitioner's argument stating that the incumbent regional heads and/or vice regional heads must take leaves without pay (for state civil servants) and are not permitted to use any facilities related to their position, not only during the campaign period, but also during the election silence period and on the election day, is a logically sound argument. This means that the incumbent regional heads and/or vice regional heads have the potential to misuse their power related to the resources they possess and the facilities attached to their position when they take leaves without pay (for State Civil Servants) only during the campaign period.

Furthermore, although the Regional Election Law also regulates the prohibition on campaigning in Chapter XI Campaign, specifically Part Five of the Regional Election Law, the Court is of the opinion that the silence period and the election day are very crucial times and those are the points when the prospective voters determine their choice. Therefore, there is considerable potential for interference by parties seeking to undermine the integrity of fair and honest election, including, in this case, from the incumbent regional heads and/or vice regional heads having authority and facilities due to their positions who are seeking re-election in the same region. Therefore, the Court is of the opinion that in an effort to provide honest and fair elections, it is necessary to add or extend the time for taking leaves without pay and prohibit the use of facilities related to their position for the incumbent regional heads and/or vice regional heads, not only during the campaign period, but also during the election silence period and on the election day. The Court is of the opinion that this is because the regional heads and/or vice regional heads, both incumbents and non-incumbents, must have the same rights, opportunities, justice and equality in treatment during the campaign period, the election silence period, and on the election day.

Whereas in addition to the legal considerations above, the Court is of the opinion that there is no compelling reason in the administration of regional government to limit the taking of leaves without pay by State Civil Servants, or to restrict the prohibition on the use of official facilities by incumbent regional heads and/or their deputies, only to the campaign period, likewise, there is no urgency for the incumbent regional heads and/or vice regional heads to immediately resume their duties during the election silence period or on election day. In fact, as has been considered in the previous legal considerations, the election silence period and the election day are crucial times, where the prospective voters determine their choice and must not be disturbed by any parties, therefore all forms of voter influence must be strictly avoided. Moreover, even though normatively it is named an election silence period, these days are not actually "silent". In this regard, the Constitutional Court Decision Number 60/PUU-XIV/2016 has also emphasized that if the incumbent regional heads and/or vice regional heads take leaves without pay (for State Civil Servants), this does not mean the work of the regional government will stop/be disrupted because the government will be run by an Acting Officer.

Whereas in the decision *a quo*, the Court emphasized that in order to provide honest and fair regional elections, the incumbent regional heads and/or vice regional heads seeking re-election in the same region must submit to the obligation to take leaves without pay and to be prohibited from using any facilities related to their positions, not only during the campaign period, but also during the election silence period and on the election day. Therefore, the Court is of the opinion that the norm of Article 70 paragraph (3) of Law 10/2016 must be declared contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force if it is not interpreted as "leave without pay (for State Civil Servants) and are prohibited to use facilities related to their position for incumbent regional heads and/or vice regional heads, whether during the campaign period, the election silence period or on the election day," which is fully stated in the decision *a quo*.

Whereas pursuant to the above legal considerations, it has been proven that the norm of Article 70 paragraph (3) of Law 10/2016 violates the principle of elections which are honest, fair and free from intervention and does not guarantee fair restrictions as regulated in Article 22E paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, consistent with the argument of the Petitioner. However, because the interpretation provided by the Court is not the same as the one contained in the argument of the Petitioner, the said argument of the Petitioner's petition is legally justified in part.

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

**On Preliminary Injunction:**

To dismiss the Petitioner's petition for preliminary injunction.

**On the Merits:**

1. To dismiss the Petitioner's petition in part.
2. To declare that Article 70 paragraph (3) of Law Number 10 of 2016 concerning the Second Amendment of Law Number 1 of 2015 concerning the Enactment 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) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force if it is not interpreted as "leave without pay (for State Civil Servants) and are prohibited to use facilities related to their position for incumbent regional heads and/or vice regional heads, whether during the campaign period, the election silence period or on the election day."
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioner's petition.