



THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF INDONESIA

THE SUMMARY OF DECISION
CASE NUMBER 42/PUU-XIX/2021

Regarding

Periodization of Term of Office of Village Heads

- Petitioner** : **Nedi Suwiran**
- Type of Case** : Review over Law Number 6 of 2014 regarding Villages (Law 6/2014) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Review over Article 39 paragraph (2) and the Elucidation of Article 39 of Law 6/2014 against the 1945 Constitution
- Verdict** : 1. To grant the Petitioner's petition in part.
2. To declare that the Elucidation of Article 39 of Law of the Republic of Indonesia Number 6 of 2014 regarding Villages (State Gazette of the Republic of Indonesia of 2014 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5495) is contradictory with the 1945 Constitution of the Republic of Indonesia and conditionally has no legally binding effect to the extent that it is not interpreted as follows, "**A village head who has served for 1 (one) term pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 2 (two) terms. Likewise, a village head who has served for 2 (two) terms pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 1 (one)**". Therefore, the Elucidation of Article 39 of Law of the Republic of Indonesia Number 6 of 2014 regarding Villages (State Gazette of the Republic of Indonesia of 2014 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5495) which originally reads as follows, "A Village Head who has served for one term of office pursuant to Law No. 32 of 2004 is given an opportunity to be re-nominated for a maximum of 2 (two) terms of office. Meanwhile, a Village Head who has served for 2 (two) terms of office pursuant to Law No. 32 of 2004 is given an opportunity to be re-nominated for only 1 (one) term of office" shall afterwards be read as follows, "**A village head who has served for 1 (one) term pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 2 (two) terms. Likewise, a village head who has served for 2 (two)**

terms pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 1 (one)”.

3. To order that this decision be incorporated into the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the rest of the Petitioner's petition

Date of Decision : Thursday, September 30th, 2021

Overview of Decision :

Whereas the Petitioner is an Indonesian citizen who is serving as the Head of Sungai Ketupak Village, Cengal District, Ogan Komering Ilir Regency.

Whereas in relation to the jurisdiction of the Court, given that the Petitioner's petition is to review the constitutionality of legal norms, in this case Article 39 paragraph (2) and the Elucidation of Article 39 of Law 6/2014, against the 1945 Constitution, the Court has the jurisdiction to hear the petition of the Petitioner in this case.

Whereas in relation to the legal standing of the Petitioner, according to the Petitioner he has not satisfied the requirement for the 3 consecutive or non-consecutive instances as of the commencement of a village head's office pursuant to Law 32/2004. In fact, his office as a village head was granted for the first time pursuant to Law 22/1999. As a result of this uncertainty, the village head election process has been postponed so that the Petitioner thinks that there was no legal certainty of his constitutional right as guaranteed by the 1945 Constitution. Based on the description stated by the Petitioner in explaining his legal standing above, according to the Court, the Petitioner has explained his constitutional right which, in the Petitioner's opinion, is impaired by the enactment of the norms of Article 39 paragraph (2) and the Elucidation of Article 39 of Law 6/2014 for which the review has been requested. The alleged constitutional damage as mentioned above is specific and actual in nature. Therefore, without any intention to examine the concrete situation encountered by the Petitioner, the alleged damage of constitutional rights as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the legal norms for which the review has been requested. If the Petitioner's petition is granted then the alleged constitutional damage as explained above shall no longer occur. Therefore, notwithstanding the existence of absence of the issue related to the constitutionality of norms as maintained by the Petitioner, according to the Court the Petitioner has the legal standing to act as Petitioner under the relevant Petition.

Whereas given the clarity of the petition in this case, the Court is of the opinion that it is not urgent or relevant to require information from the parties specified in Article 54 of the Constitutional Court Law.

Whereas prior to examining further the main arguments in the petition, it is important for the Court to first consider as follows:

Whereas the limitation of the term of office of a village head is one of significant spirits desired by the legislators. Actually, as of the enactment of Law 5/1979, the limitation does not apply only to the term of office but also to the periodization of the term of office. It is reasonable to state that such limitation is not only intended to ascertain that the transition of leadership will occur on all levels of government, including in the village government, but also intended to prevent any abuse of power (*power tends to corrupt*) for being in power for a lengthy period.

The Petitioner's arguments essentially state that the material content of Article 39 paragraph (2) and the Elucidation of Article 39 of Law 6/2014 gives rise to multiple interpretations and thus they are contradictory with the 1945 Constitution. The Petitioner maintains that, on one hand the limitation of the term of office of the village head is clear and it gives a legal certainty because the term of office of a village head shall not be more than 3 (three) terms. However, on the other hand, the elucidation of the relevant provision which relates the parameter for calculating the 3 (three) consecutive terms of office of the village head with Law 32/2004 has caused ambiguity (multiple

interpretation) for the Petitioner to be re-nominated in simultaneous elections of village heads that will be held in the near future. In relation to the Petitioner's arguments in this case, the Court has examined as follows:

Whereas in order to prevent arbitrary acts and distinct types of abuse by a village head, in relation to the calculation of the periodization of the village head's term of office, although the village head's term of office is based on a different law, the calculation of one term of office is not precluded by a change of law. In other words, the calculation of the periodization of the village head's term of office is not merely based on Law 32/2004. This means that for a village head who has served for three terms, even though they are based on a different law, including laws existing prior to the enactment of Law 6/2014, if he has served for 3 (three) terms, the 3 (three) periods shall be taken into account. Therefore, the calculation of 3 (three) consecutive or non-consecutive instances pursuant to the norm of Article 39 paragraph (2) of Law 6/2014 shall be factually based on how many times a person has been elected as village head. Furthermore, the periodization consisting of 3 (three) terms of office shall apply to either village heads serving in the same village or those serving in different villages. Upon the foregoing consideration, the Petitioner's argument that Article 39 paragraph (2) of Law 6/2014 is contradictory with Article 28D paragraph (1) of the 1945 Constitution is not legally justifiable.

Whereas the Elucidation of Article 39 of Law 6/2014 must be adjusted so as not to cause multiple interpretations and legal uncertainty. Therefore, the Elucidation of Article 39 of Law 6/2014 must be declared to be contradictory with Article 28D paragraph (1) of the 1945 Constitution to the extent that it is not construed as follows: "A village head who has served for 1 (one) term pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 2 (two) terms. Likewise, a village head who has served for 2 (two) terms pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 1 (one)".

Whereas, as a matter of fact, it is highly possible that a village head has been elected for more than 3 (three) periods before the decision in this case, and to establish a legal certainty and avoid chaos in a village which has elected a village head, the relevant village head will continue to perform their duties until the expiry of their term of office in accordance with Law 6/2014.

Whereas upon all of the above considerations, the Court is in the opinion that the Petitioner's argument in respect of Article 39 paragraph (2) of Law 6/2014 has apparently not caused multiple interpretations and legal uncertainty so that it is not contradictory with Article 28D paragraph (1) of the 1945 Constitution and it is thus legally unjustifiable. In the meantime, the Petitioner's argument regarding the Elucidation of Article 39 of Law 6/2014 which gives rise to multiple interpretations and legal uncertainty in contradiction with the 1945 Constitution is legally justifiable in part.

Afterwards, the Court issued a decision with the following verdicts:

1. To grant the Petitioner's petition in part.
2. To declare that the Elucidation of Article 39 of Law of the Republic of Indonesia Number 6 of 2014 regarding Villages (State Gazette of the Republic of Indonesia of 2014 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5495) is contradictory with the 1945 Constitution of the Republic of Indonesia and conditionally has no legally binding effect to the extent that it is not interpreted as follows, "**A village head who has served for 1 (one) term pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 2 (two) terms. Likewise, a village head who has served for 2 (two) terms pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 1 (one)**". Therefore, the Elucidation of Article 39 of Law of the Republic of Indonesia Number 6 of 2014 regarding Villages (State Gazette of the Republic of Indonesia of 2014 Number 7, Supplement to the State Gazette of the Republic of Indonesia Number 5495) which originally reads as follows, "A Village Head who has served for one term of office pursuant to Law Number 32 of 2004 is given an opportunity to be re-nominated for a maximum of 2 (two) terms of office. Meanwhile, a Village Head who has served for 2 (two) terms

of office pursuant to Law No. 32 of 2004 is given an opportunity to be re-nominated for only 1 (one) term of office” shall afterwards read as follows. **“A village head who has served for 1 (one) term pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 2 (two) terms. Likewise, a village head who has served for 2 (two) terms pursuant to either Law of the Republic of Indonesia Number 6 of 2014 regarding Villages or previous laws is still given an opportunity to serve for 1 (one)”.**

3. To order that this decision be incorporated into the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the rest of the Petitioner's petition.