

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 56/PUU-XVII/2019**

**REGARDING**

**THE REQUIREMENT TO BECOME A REGIONAL HEAD CANDIDATE FOR FORMER CORRUPTORS**

**Petitioner** : Indonesia Corruption Watch (ICW) and the Association for Elections and Democracy (Perludem)

**Type of Lawsuit** : Judicial Review of Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning Determination of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into the Law (Law 10/2016) of the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution)

**Case of Lawsuit** : Constitutionality review of Article 7 paragraph (2) letter g of Law 10/2016 against Article 18 paragraph (4), Article 22E paragraph (1), Article 28D paragraph (1) of the 1945 Constitution

**Injunction** : In the Provision:

Granting the petition for the provision of the Petitioners in their entirety.

In the Substance of Petition:

1. Granting the petition of the Petitioners in part;

2. Rejecting the Article 7 paragraph (2) letter g of Law Number 10 of 2016 concerning 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 the Law (State Gazette of the Republic of Indonesia Number 130 of 2016, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution and does not have binding legal force conditionally, as long as it does not mean that it has passed the 5 (five) year period after the former convict is finished serving a prison sentence based on a court decision that has permanent legal force; so Article 7 paragraph (2) letter g 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 the Law (State Gazette of the Republic of Indonesia Number 130 of 2016, Supplement to the State Gazette of the Republic of Indonesia Number 5898) shall read in full:

Governor Candidates and Vice Governor Candidates, Regent Candidates and Vice Regent Candidates, and Mayor Candidates and Vice Mayor Candidates as referred to in paragraph (1) must meet the following requirements:

...

g. (i) have never been a convict based on a court decision that has obtained permanent legal force due to a criminal act threatened with imprisonment of 5 (five) years or more, except against the convict who committed the negligence and political criminal acts within the meaning of an act committed declared as a criminal act in positive law only because the perpetrators have different political views from the regime in power; (ii) for ex-convicts, has passed a period of 5 (five) years after the ex-convicts has finished serving a prison sentence based on a court decision that has permanent legal force and honestly or publicly announces his true background as a ex-convict; and (iii) not as a perpetrator of recurrent crimes;

3. Rejecting the petition of the Petitioners for the rest/ remainder.

**Date of Verdict** : Wednesday, December 11, 2019

**Verdict Summary** :

Whereas related to the authority of the Constitutional Court (the Court), because the petition for review is the law, in this case the Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Determination of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into the Law (Law 10/2016), the Court has the authority to adjudicate a quo petition.

Whereas with respect to the legal standing, Petitioner I is Indonesia Corruption Watch (ICW) which is a non-governmental organization which in Article 7 point 2 of its Articles of Association states that its external mission is to encourage policy reform and law enforcement efforts, so that there are guarantees of people's rights in realizing the political, legal, economic and bureaucratic system that are free from corruption represented by the Coordinator of the Workers' Board, in which the legal standing has been accepted by the Constitutional Court, based on previous decisions, namely Decision Number 5/PUU-IX/2011 and Decision Number 35/PUU-XI/2013. Petitioner II is the Association for Elections and Democracy (Perludem) which is a non-governmental organization which in Article 3 of the Articles of Association/By-laws declares, Perludem carries out activities which include reviewing elections and democracy, providing education about elections and democracy, providing training to the community about elections and democracy, and conducting election and democracy monitoring, represented by the Executive Director. Whereas irrespective of whether the Petitioners' argument is proven or not in contradiction with the norms of Law 10/2016 which are petitioned for review in a quo petition, the Court has the opinion, insofar as it relates to Article 7 paragraph (2) letter g of Law 10/2016, Petitioner I and Petitioner II, which hereinafter referred to as the Petitioners, have legal standing to act as Petitioners in a quo petition.

Whereas because a quo petition is clear, so based on Article 54 of the Constitutional Court Law, there is no urgency to hear the statements of parties as referred to in Article 54 of the Constitutional Court Law.

With regard to the petition for proposals filed by the Petitioners, because the substance of petition of the Petitioners has a close relationship with the stages of the implementation of the Regional Head Election in 2020 which is factually the stages relating to the nomination of the regional head which will soon begin, so that all parties can prepare themselves as well as possible, especially those who will run in the regional elections in 2020, then regardless of whether or not a quo petition is granted, for the sake of legal certainty for the community, it is important for the Court to give priority by accelerating a quo case decision and there is no deviation from the procedural law in the stages of the process of settling the judicial review case, the petition in the provision of the Petitioners, so that a quo case is prioritized to be decided has legal reasons.

Whereas with regard to the substance of petition of the Petitioners in principle arguing, the average verdicts against regional heads that were prosecuted by the Corruption Eradication Commission (KPK) were lower than the average prosecutor's demands, in addition to combating corruption, it is necessary to have legal instruments and court decisions, one of which was the revocation of certain rights, such as revocation of rights politics, but only 30% of regional heads convicted of political rights are revoked, the percentage is lower than the demands of the Corruption Eradication Commission (KPK). Based on Decision Number 4/PUU-VII/2009, the Court has decided Article 12 letter g and Article 50 paragraph (1) letter f of Law Number 10 of 2008 concerning General Elections of Members of the House of Representatives, the Regional House of Representatives, and the Municipal/Regencial House of Representatives (Law 10/2008) and Article 58 letter f of Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Regional Government (Law 12/2008) as conditionally unconstitutional legal norms if conditionally unconstitutional if not fulfilled the conditions: 1. This does not apply to elected officials, as long as there is no additional criminal sentence in the form of revocation of voting rights by a court decision that has permanent legal force; 2. Limited validity for a period of 5 (five) years after an ex-convict has finished serving a prison sentence based on a court decision that has permanent legal force; 3. Honesty or openness regarding his background as a ex-convict; 4. Not as a repeat perpetrator. However, Decision Number 42/PUU-XIII/2015 granted the Petitioner's petition to eliminate the five-year waiting period after convicts finished serving their sentences as candidates for regional heads. In this decision the Court also eliminated the prohibition requirement for repeat perpetrators. In its decision, the Court limitedly reiterated the obligation to announce to the general public that the person concerned is an ex-convict. According to the Petitioners, there are three other conditions, namely limitation for positions elected through the electoral process, as well as the political rights’ person concerned are not revoked by the court, then there is a condition for 5 (five) years after the ex-convicts has finished serving their sentence, and is not a repeat perpetrator, is a legal consideration that is very important to provide legal certainty and realize the objectives of the election itself, namely producing people who have the quality and integrity to become public officials, while not eliminating the political rights of citizens to participate in government. This has also been considered by the Court in previous decisions, because if it only requires an ex-convict, then simply announce publicly that the person concerned is an ex-convict, it has led to the practice of announcement that is careless, unfair, dishonest, and of course this is contrary to the principle of direct, general, free, secret, honest and fair elections. In addition, Decision Number 71/PUU-XIV/2016 has also provided exceptions, in which culpa levis criminal acts and political criminal acts are not a part that must be regulated in restrictions on the nomination of regional heads as petitioned in this petition. But with regard to the waiting period, according to the Petitioners, the 10-year waiting period is considered rational, so that ex-convicts can improve and prepare themselves to become regional heads, a public office that has great authority and responsibility. Moreover, the corruption they have committed is classified as serious crime and local government politics is an arena that is prone to corruption. Without improvement in the regional head nomination stage, it is feared that corruption in the region and by the regional head will continue to be repeated.

Before the Court considered that even though Article 7 paragraph (2) letter g of Law No. 10/2016 had been filed and was decided by the Court, as contained in Decision of the Constitutional Court Number 71/PUU-XIV/2016, the petition for review at that time was petitioned, among others is as long as the phrase "never been a convict based on a court decision that has obtained permanent legal force" from Article 7 paragraph (2) letter g of of said Law 10/2016. Meanwhile, the petition for review in a quo petition is Article 7 paragraph (2) letter g of Law 10/2016, as long as the phrase "has never been a convict based on a court decision that has obtained permanent legal force or for ex-convicts who has openly and honestly stated to the public that the person concerned is an ex-convict", moreover there are differences in the basic constitutional review used, in case Number 71/PUU-XIV/2016 using Article 1 paragraph (3), Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution and the Petitioners use Article 18 paragraph (4), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution as the basis for its review. Accordingly, a quo petition is different from the petition that has been decided by the Court as contained in the Constitutional Court Decision Number 71/PUU-XIV/2016. Therefore, a quo petition is not subject to Article 60 of the Constitutional Court Law, so the Court must consider the substance of the petition.

Whereas if referenced again by Court Decision Number 42/PUU-XIII/2015 which eliminates the cumulative requirements as contained in the injunction of the Constitutional Court Decision Number 4/PUU-VII/2009 which makes it an alternative condition, so that the requirements become loose are the considerations to return it to the public as the voters who have sovereignty to determine their choice. However, after careful observation of the empirical facts that have taken place it also turns out that the effort to return to the sovereignty of voters is not entirely able to present leaders who are clean, honest and have integrity. A number of empirical facts prove that among elected regional heads who have served a criminal sentence period as candidates for regional head only by taking alternatives to announce honestly and openly to the public that the relevant concerned ex-convict has turned out to repeat the criminal act. In other words, the person concerned has turned out to be a repeat perpetrator (recidivist). If we adhere to the principle of voter sovereignty, then there is no obstacle whatsoever for the person concerned to re-nominate as a candidate for the elected public official at a later date after the person concerned finished serving a criminal sentence, as long as the person concerned is willing to publicly announce that he/she is an ex-convict. Because, the basic proposition is that the person concerned has finished serving his/her criminal sentence and has received fostering in a correctional institution, so that he/she has constitutional rights to be elected or to hold certain positions in the government. However, in this case, the constitutional question that arises is: whether in the name of democracy (in this case the sovereignty of voters), such conditions are acceptable? With regard to this question, the Court has the opinion that such conditions cannot be tolerated even in the most liberal democracies. Because democracy is not merely talking about protecting individual rights but is also supported by values and morality, including the value of propriety, piousness, fairness, fairness, reasonableness, and jjustice). It is important for the Court to reconsider candidates for regional heads who have been convicted to be given enough time to make adaptations in the community to prove that after finishing their criminal sentence period, the person concerned has really changed himself to be good and tested, so that there is confidence from the voters that the person concerned will not repeat acts that have been convicted against him/her, including other actions that can damage the nature of clean, honest, and integrity leaders. The granting of such a grace period also at the same time provides a longer opportunity for the community to assess whether the person concerned has been deemed sufficient to show their sincerity to uphold the aforementioned democratic values. However, due to the existence of a recidivist, "an honest and open statement to the public that the person concerned is an ex-convict" is simply inadequate, so that the Court does not find another way except to reinstate the four cumulative conditions as set out in legal considerations of the Constitutional Court Decision Number 4/PUU-VII/2009 in the nomination of regional heads which is currently regulated in Article 7 paragraph (2) letter g of Law 10/2016. Meanwhile, with regard to other conditions, namely the condition of non-convicts who commit negligence and political criminal acts within the meaning of an act declared as a criminal act in positive law only because the perpetrators have political views that are different from the regime in power, as the establishment of the Court in Decision of the Constitutional Court Number 71/PUU-XIV/2016, dated July 19, 2017, the Court has the opinion that it is still relevant to be maintained. With regard to the waiting period, the waiting period must be re-imposed on ex-convicts who will propose themselves as candidates for regional head according to legal considerations in the Decision of the Constitutional Court Number 4/PUU-VII/2009. Likewise, the length of the Court's deadline also remains consistent with reference to the legal considerations of the Constitutional Court Decision Number 4/PUU-VII/2009, namely that candidates for regional heads who have finished serving a criminal sentence period are required to wait 5 (five) years to be able to nominate themselves to be regional head candidates, except for the regional head candidates who committed negligence and political criminal acts within the meaning of an act declared as a criminal act in positive law only because the convicts has a different political view from the regime in power. Whereas the Court's argument for imposing the waiting period as mentioned above is important for the Court to recite the legal considerations of the Decision of the Constitutional Court Number 4/PUU-VII/2009 which in essence is, "... a period of 5 (five) years was chosen for adaptation in accordance with the five-year mechanism in the General Elections in Indonesia, both the Election of Legislative Members, the Elections of the President and Vice President, and the Elections of Regional Heads and Vice-Regional Heads". Therefore, the Court's argument is also a form of confirmation that the Court does not agree with the argument of the Petitioners who petitioned a waiting period of 10 (ten) years after the ex-convicts finished serving a criminal sentence based on a court decision that has permanent legal force.

Therefore, as far as it concerns the ex-convicts, then it must be based on the Constitutional Court Decision Number 4/PUU-VII/2009 and hence the petition of the Petitioners have legal reasons for some.

Based on all the opinions above, the Court subsequently handed down an injunction that declared:

In the Provision:

To grant the petition for the provision of the Petitioners in their entirety. In the substance of Petition:

1. Granting the petition of the Petitioners in their entirety.

2. Declaring the Article 7 paragraph (2) letter g of Law Number 10 of 2016 concerning 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 the Law (State Gazette of the Republic of Indonesia Number 130 of 2016, Supplement to the State Gazette of the Republic of Indonesia Number 5898) is contrary to the 1945 Constitution and does not have binding legal force conditionally, as long as it is not interpreted to have passed the period of 5 (five) years after the ex-convicts has finished serving a criminal sentence based on a court decision that has permanent legal force; so Article 7 paragraph (2) letter g 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 the Law (State Gazette of the Republic of Indonesia Number 130 of 2016, Supplement to the State Gazette of the Republic of Indonesia Number 5898) in full reads:

Candidates for Governor and Candidates for Vice Governor, Candidates for Regent and Candidates for Vice Regent, and Candidates for Mayor and Candidates for Vice Mayor as referred to in paragraph (1) must meet the following requirements:

…

g. (i) have never been a convict based on a court decision that has obtained permanent legal force due to a criminal act threatened with imprisonment of 5 (five) years or more, except for the convicts of committing negligence and political criminal acts within the meaning of an act committed declared as a criminal act in positive law only because the perpetrators have different political views from the regime in power; (ii) for the ex-convicts, has passed a period of 5 (five) years after the ex-onvicts has finished serving a prison sentence based on a court decision that has permanent legal force and honestly or publicly announces his/her true background as an ex-convict; and (iii) not as a repreat perpetrator of crimes;

3. Rejecting the petition of the Petitioners for the rest/remainder.

This document is translated from Indonesian into English by me, **Drs. EMIL SUSANTO**,

the Authorized and Sworn Translator in Jakarta - Indonesia

JAKARTA, June 24, 2020