



**THE CONSTITUTIONAL COURT  
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
ON CASE NUMBER 22/PUU-XVIII/2020**

**Concerning**

**Resign-To-Run for Legislative Members in Governor, Regal, and Mayor Election**

<b>Petitioner</b>	: <b>Anwar Hafid, et al.</b>
<b>Case</b>	: Judicial Review Number 10 of 2016 on the Second Amendment to Law 1 of 2015 on Government Regulation In Lieu of Law 1 of 2014 on Governor, Regal, and Mayor Election enacted as Law Against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
<b>Case of Lawsuit</b>	: Testing Article 7 paragraph (2) point s Law 10/2016 and Article 27 paragraph (1), Article 28D paragraph (3), and Article 28H paragraph (2) UUD 1945
<b>Injunction</b>	: In the Provision  Announced that the Petitioners' provision is not admissible  In the Merits of the Case  1. Announced that the Petitioner IV case is not admissible; 2. Dismiss the Petitioners' case
<b>Date of Decision</b>	: Wednesday, 25 November 2020
<b>Decision Overview</b>	:

The Petitioner I, the Petitioner II and the Petitioner III are Indonesian citizen each legislative members of DPR RI period 2019-2024 (the Petitioner I) and West Sumatera Province DPRD period 2019-2024 (the Petitioner II and the Petitioner III), and the Petitioner IV is Indonesian Citizen and a voter in 2019 General Election, the Petitioners argued constitutionally burdened by the norm under Article 7 paragraph (2) point s Law 10/2016.

In relation to the Court authority for the Petitioner's case is a challenge to the constitutionality of Article 7 paragraph (2) point s Law 10/2016, the Court is competent to decide the case;

In relation to the legal standing of the Petitioners, the Court adjudicated as follows:

1. The Petitioner I is an Indonesian Citizen, a member of the DPR RI period 2019-2024 of Democrat Party intended to run in Central Sulawesi Governor Election in 2020, and the norm challenged herein prevented constitutional rights on equality before the law and government and to obtain allowances and privileges to obtain the opportunities and benefits to reach the equality and justice. And in relation to the Petitioner I position in capacity as a member DPR RI, the Constitutional Court in the Constitutional Court Decision Number 20/PUU-XIV/2016 had stated its adjudication that the legal standing will be considered severally according to the burden over the rights and/or constitutional authority as described in specific. In consideration of the foregoing, the Petitioner I in fact burdened by the provisions under Article 7 paragraph (2) point s Law 10/2016 and as a member of DPR the Petitioner I argued that he has exclusive rights which is the rights inherent with DPR members in relation to his personal constitutional rights to challenge the constitutionality of the norm herein. Thereby, the Court adjudicated the Petitioner I has the legal standing to act as the Petitioner for the case.

2. The Petitioner II and the Petitioner III is an Indonesian citizen and at the present serves as a member of West Sumatera Province DPRD period 2019-2024, who will run as the head of the

region in the 2020 Simultaneous Local Election. The provisions of the norm challenged herein caused the Petitioner II and the Petitioner III unable to serves their office until their term of office as the West Sumatera Province DPRD member concluded and prevented them to be elected in the 2020 Simultaneous Local Election thereby prevented the constitutional rights for equality before the law and the government and to obtain allowances and privileges to obtain the opportunities and benefits to reach the equality and justice. In consideration of the Petitioner II and the Petitioner III arguments, The Court adjudicated, the Petitioner II and the Petitioner III has the legal standing to act as the Petitioner for the case.

3. The Petitioner IV is an Indonesian citizen and a voter in 2019 General Election. According to the Petitioner IV, the provisions under the norm challenged herein burdened his constitutional rights as voter to equality before the government and to obtain opportunities to reach justice by representation given to his elected legislative members in 2019. In consideration of the argument, the Court adjudicated, the provisions under the norm challenged herein is a requirements for Indonesian citizen who run for local government head office, moreover the vote used by the Petitioner IV is to elect DPRD members instead of local government head. Therefore, the Court adjudicated the Petitioner IV is not entitled to the legal standing to act as the Petitioner for the Case.

Thereby, in consideration of the foregoing only the Petitioner I, the Petitioner II and the Petitioner III (the Petitioners) who has the legal standing to act as the Petitioner for the case.

In relation to the provisional case the Petitioners who request the Court to speed up the process because the Petitioner will enter Candidate Registration Stage in 28 August 2020 to 3 September 2020. In this matter the Court adjudicated there is no significant reason will prevent the simultaneous election which compelled the Court to examine and decide the case, moreover such

had been considered by the legislative members who will run in the election. Thereby, the Petitioner's provisional case is unfounded thereby it shall be announced as inadmissible.

Furthermore, in relation to the provisions under Article 60 paragraph (2) Constitutional Court Law and Article 42 paragraph (2) Constitutional Court Regulation Number 06/PMK/2005, the Court adjudicated because of the fundamental difference and constitutional reason in the Case Number 45/PUU-XV/2017 the case formality, had complied Article 60 paragraph (2) Constitutional Court Law and Article 42 paragraph (2) Constitutional Court Regulation Number 06/PMK/2005, thereby the case could be filed again.

The issue on resign-to-run for any legislative member who will run for local government head office, the Court had decided by the Constitutional Court Decision Number 33/PUU-XIII/2015, in particular the paragraph [3.20] to Paragraph [3.24] which supported by the Constitutional Court Decision Number 45/PUU-XV/2017. In consideration of the decisions, the Court will adjudicate the Petitioners' argument, as follows:

That in relation to the Petitioners' argument which stated there is no difference between DPR members, DPD members, DPRD members, and local government head because of position category, which is "political position", according to the Court, the issue is not solely on collegial collective but related to the responsibility and trust given by the people thereby when DPR members and DPRD members elected and serves as legislative members who in person then choose to become a local government head then they aware that they had released their responsibility and trust as legislative member to be elected as local government head which means different responsibilities and trust even though under the same position category. Thereby the Petitioners' argument is unfounded.

That in relation to the Petitioners' argument which stated legislative members and minister position is under the same category which is political position thereby the difference between the two positions when running as local government head in violation to UUD 1945 57/PUU-XI/2013. To such argument, the Court adjudicated, if viewed the decision used in the Petitioners' argument even though minister position is under political position category, however minister position is not an elected official as with the case of legislative member, moreover minister position is not political position with responsibilities to the constituent as with the case of legislative members which shall not be interrupted by any shift to any other position. Thereby the Petitioners' argument is unfounded.

That in relation to the Petitioners' argument which stated the legislative members will not misuse their authorities because of good control mechanism both internal and external. According to the Court, the norm under Article 7 paragraph (2) point s Law 10/2016 is established under the Constitutional Court Decision Number 33/PUU-XIII/2015 which adjudication stated that in the event of resignation when deemed qualified as candidate by the KPU/KIP because related to the responsibility and trust given by the people to them. Thereby, the restriction solely not because of any chance to misuse the authority, but according to the Court it is related to the responsibilities and trusts given by their constituent. Thereby the Petitioners' argument is unfounded.

That in relation to the Petitioners' argument which stated that such "resign-to-run" requirements may be applies only to anything what's available for a legislative member not to the membership itself. The Court adjudicated, the arguments really ignore the principles of justice and equality for anyone who run for local government head office as guaranteed under Article 27 paragraph (1) and Article 28D paragraph (3) UUD 1945. In the Constitutional Court Decision Number 33/PUU-XIII/2015 which supported by the Constitutional Court Decision Number 45/PUU-XV/2017

which provide opportunities for all political position categories when they will run for local government head shall resign when being qualified as candidate by the KPU/KIP. Thereby, when the Petitioners wanted it only applies to what's available for them as legislative member not to the membership itself it is a discrimination, because pose a different action for the same event which is running for local government head office. Thereby, according to the Court, the Petitioners' argument is unfounded.

That in relation to the Petitioners' argument which stated that Article 7 paragraph (2) point s Law 10/2016 in contradiction to Article 28D paragraph (2) UUD 1945. According to the Court, in reference to the Constitutional Court Decision Number 16/PUU-VIII/2010 Paragraph [3.19.4] the Petitioners are not in specific position for affirmative action because the Petitioners' position is not a person or a group of people affected by marginality, underdeveloped, in exile, limited, segregated, participation gap in the politic and public life which source is continuing structural and socio-cultural gap (discrimination), either formal or informal, in public or private life. In addition, the phrase "anyone may have the rights to allowance and privilege" under Article 28H paragraph (2) UUD 1945 shall be read entirely and the phrase shall not be separated from the phrase "to obtain equal opportunities and benefits to reach equality and justice". By the reading as such, it is more clearly no other specific events could justify the Petitioners to hide behind constitutionality as stated under Article 28H paragraph (1) UUD 1945. Thereby, according to the Court the Petitioners' argument is unfounded.

Thereby the Court decided to announce:

In the Provision

Announce that the Petitioners' provisions is not admissible

In the Merits of the Case

1. Announced that the Petitioner IV case is not admissible;
2. Dismiss the Petitioners' case