



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 2/PUU-XX/2022**

Concerning

**Constitutionality of Requirements to Never Commit Disgraceful Acts
to Run for Regional Head or Vice Regional Head**

- Petitioner** : **Hardizal, S.Sos., M.H.**
- Type of Case** : Examination of Law Number 10 of 2016 concerning Second Amendment to Law Number 1 of 2015 concerning Stipulation 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 (UUD 1945).
- Subject Matter** : The ambiguity of the phrase “and other act of violation of decency” in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 is in contrary to democratic principles in the Election of Governors, Regents, Mayors as regulated in Article 18 paragraph (4) of the 1945 Constitution, the guarantees of protection and legal certainty as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, the guarantees of equal opportunity in government as regulated in Article 28D paragraph (3) of the 1945 Constitution, the guarantees of the government’s responsibility in protecting, promoting, enforcing and fulfilling the human rights as regulated in Article 28I paragraph (4) of the 1945 Constitution
- Verdict** :
1. To grant the Petitioner’s petition in part;
2. To declare that the Elucidation of Article 7 paragraph (2) letter i of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning 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 in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as, “**except for the perpetrators of disgraceful acts who have obtained court decisions that have permanent legal force and have completed their criminal period, and honestly or openly announce their background as former convicts**”;

3. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioner's petition for the remainder.

Date of Decision : Tuesday, May 31, 2022.

Overview of Decision :

The Petitioner is an individual Indonesian citizen who is a former convict of a psychotropic case based on the Decision of the Sungai Penuh District Court Number 37/PID.B/2002/PN.SPN who has completed all the court decisions. The Petitioner feels that his constitutional rights as regulated in Article 18 paragraph (4), Article 28D paragraph (1), Article 28D paragraph (3) and Article 28I paragraph (4) of the 1945 Constitution, are potentially being prejudiced by the promulgation of the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016.

Regarding the authority of the Court, because of the petition is to examine the constitutionality of legal norms, *in casu* Law 10/2016 against the 1945 Constitution, the Court has the authority to hear the petition of the Petitioner;

Regarding the legal standing of the Petitioner, the Court is of the opinion that in his qualifications as an individual Indonesian citizen, the Petitioner has been able to explain specifically the loss of his constitutional rights which according to the Petitioner's opinion is prejudiced by the promulgation of the norms petitioned for review, namely the right to be democratically elected, the right to the fulfilment of legal certainty and legal justice, the right to equality before the law and government, the right to protection, promotion, enforcement and fulfilment of human rights. The Petitioner who wanted to nominate himself as vice mayor in the 2020 Sungai Penuh City Mayor and Vice Mayor Election and had obtained recommendations from the DPP (Regional Representative Council) of PDIP, DPP of PPP, and DPP of Partai Berkarya, but the recommendation of the political parties was subsequently withdrawn, which according to the Petitioner's opinion was caused by the status of Petitioner who is a former convict. Therefore, the Petitioner has been able to describe the existence of a causal (causality) relationship between the Petitioner's perceived constitutional loss and the promulgation of the norm petitioned for review. Therefore if the Petitioner's petition is granted, such loss will no longer occur. Regardless of whether or not the argument of the Petitioner's petition regarding the unconstitutionality of the legal norms being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Before considering the subject matter of the Petitioner's petition, the Court first examines whether the subject matter of the Petitioner's petition can be submitted for a review to the Court, because previously the Court has decided to review the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 in the Decision of the Constitutional Court Number 99/PUU-XVI /2018, dated December 18, 2019. However, the petition Number 99/PUU-XVI/2018 questions the phrase "narcotics users" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 while the *a quo* Petitioner's petition questions the phrase "and other act of violation of decency" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016. Although there are constitutionality issues in relation to the petition Number 99/PUU-XVI/2018 and the *a quo* petition of the Petitioner, but the constitutionality issues that the Petitioner puts forward in the *a quo* petition is different and has not been considered by the Court in the Decision of the Constitutional Court Number 99/PUU-XVI/2018. Therefore, the Court is of the opinion that the review of norms that questions the phrase "and other act of violation of decency" in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 in the *a quo* Petitioner's petition may be resubmitted to the Court.

Regarding the subject matter of the petition of the Petitioners, the Court is of the opinion that the state may set the rules regarding who can be categorized as eligible as voters and as candidates to be elected. In the case of such restrictions of constitutional

rights, it does not mean that the constitutional rights of the voters and the elected candidate have been violated. The restrictions are needed to create an orderly electoral system that will result in the government being led by the best candidate elected by the people.

Although the Court considers that the requirements for the regional head and vice regional head candidates are important for the initial selection, the Court has also ruled in its decision that the requirements stipulated by the law are unconstitutional and must be given interpretation. As stated in the Decision of the Constitutional Court Number 4/PUU-VII/2009, dated March 24, 2009. Since the *a quo* Decision of the Constitutional Court Number 4/PUU-VII/2009, the Court has also interpreted this requirement of never being convicted several times, the latest decision is the Decision of the Constitutional Court Number 56/PUU-XVII/2019, dated December 11, 2019.

To answer the question of constitutionality raised by the Petitioner, the Court considers previous decisions regarding former convicts who are sentenced with imprisonment of 5 (five) years or more where the Court has held the opinion that former convicts who have completed their sentence period can nominate themselves as regional heads and vice regional head as long as he fulfils the requirements to have passed the 5 (five) years period and honestly or openly announces his background as a former convict, and is not a repeat offender. Therefore, regarding the candidates for regional heads and vice regional heads who are former convicts with a criminal sentence of 5 (five) years or more, the Court has confirmed to give the opportunity to the relevant parties to be able to participate in the election of regional heads and vice regional heads as long as they have fulfil the requirements as specified in Article 7 paragraph (2) letter g of Law 10/2016 as interpreted in the Decision of the Constitutional Court Number 56/PUU-XVIII/2019. According to the Court, the final assessment of the candidates who are former convicts who participate in the election of regional heads and vice regional heads shall be the choice of the community/voters. Likewise, the Decision of the Constitutional Court Number 99/PUU-XVI/2018 has excluded the application of the requirement of not committing disgraceful acts for narcotics users for health reasons; or ex-narcotics users who, because of their own awareness, report themselves and have completed the rehabilitation process; or former narcotics users who are proven to be victims and who have been declared to have completed the rehabilitation process. So if a person fulfils the other requirements, he/she can nominate himself/herself as a candidate for regional head and vice regional head without being categorized as having committed a disgraceful act as referred to in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016.

Then the Court answered the question what about other former convicts who were not included in the provisions of Article 7 paragraph (2) letter g of Law 10/2016 as interpreted by the Decision of the Constitutional Court Number 56/PUU-XVIII/2019 and the former convicts who had finished their sentence period for committing disgraceful acts as contained in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 such as gambling, drunkenness, adultery, and drug dealers, including other acts of violation of decency? Regarding this matter, the Court is of the opinion that the requirement of never committing a disgraceful act as evidenced by a SKCK (police certificate) is actually only administrative in nature to prove that a person has or has never committed a disgraceful act. However, if it is related to the spirit contained in the norms of Article 7 paragraph (2) letter i of Law 10/2016 and its Elucidation, the SKCK is not the only parameter that someone who will run for regional head and deputy regional head is a legal subject who have a track record and that cannot immediately be concluded that they do not meet the requirements. Because a person could commit a disgraceful act due to negligence or carelessness, or the nature of his act is classified as mild/moderate compared to the perpetrator of a criminal act as regulated in Article 7 paragraph (2) letter g of Law 10/2016. The Court is of the opinion that there will be disparities in the perspective of legal justice and constitutional rights justice if the perpetrators of criminal acts punishable by 5 (five) years or more are given the opportunity to nominate themselves as regional heads as regulated in the norm of Article 7 paragraph (2) letter g of

Law 10/2016 which has been interpreted by the Decision of the Constitutional Court Number 56/PUU-XVII/2019, while for the perpetrators of acts that violate decency, some of which are contained in the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 and has been sentenced by the court and after serving such sentence period, the opportunity to run for regional head and vice regional head is closed even if other requirements are met by such person.

To fulfil the legal certainty and the sense of justice, in addition to provide equal opportunities for the perpetrators of disgraceful acts who have been sentenced by the court and have completed their sentence period to be able to nominate themselves in the election of regional heads and vice regional heads, even though the requirement is to attach the SKCK as required in the norm of Article 7 paragraph (2) letter i of Law 10/2016, it still applies to every candidate for the regional head and vice regional head, but whatever the model or format of the SKCK is, it should not be a barrier for the candidates for the regional head and vice regional head to be able to participate in the election of regional head and vice regional heads even if such person has committed a disgraceful act as long as such person has obtained a court decision and has finished serving his sentence period, and as long as other requirements are fulfilled.

Subsequently, the Court considers that the opportunity shall be given to the regional head and vice regional head candidates who have been sentenced by the court and have finished serving their sentence period due to committing disgraceful acts, but they may not eliminate any information regarding the identity of the regional head and vice regional head candidates. Therefore, to achieve the same goal, namely to provide complete information about the identity of the regional head and vice regional head candidates, in interpreting the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 it is also obligatory for the regional head and vice regional head candidates who have committed disgraceful acts, who have received court decisions and have completed their sentence period, to honestly or openly announce their background as former convicts, as also required in Article 7 paragraph (2) letter g of Law 10/2016.

Furthermore, the Court asks the organizers of the election of regional head and vice regional head, including in this case the Police who are authorized to issue SKCK, to immediately formulate the form/format of the SKCK as desired in the norms of Article 7 paragraph (2) letter i of Law 10/2016 by adjusting the spirit contained in the *a quo* decision.

Whereas based on the aforementioned legal considerations, the Court is of the opinion that it can accept the Petitioners' argument as long as it states that the Elucidation of Article 7 paragraph

(2) letter i of Law 10/2016 creates legal uncertainty and injustice. Also the *Petitum* of the Petitioner which petition for the court to declare that article as conditionally unconstitutional. However, in formulating its constitutional requirements, the Court has its own conclusions, as set out in the verdicts below. Therefore, the Court concludes that the Petitioners' petition is legally justifiable in part. In its verdict, the Court has granted in part the Petitioner's petition and stated that the Elucidation of Article 7 paragraph (2) letter i of Law 10/2016 is in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as **“except for the perpetrators of disgraceful acts who have obtained court decisions that have permanent legal force and have completed their criminal period, and honestly or openly announce their background as former convicts”**. Subsequently, the Court orders the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate and dismisses the remainder of the Petitioner's petition.