



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 3/PUU-XX/2022

Concerning

Terms of Village Head, Village Apparatus, and Term of Office of the Village Head

- Petitioner** : Endang Kusnandar, et al
- Type of Case** : Examination of Law Number 6 of 2014 concerning Villages (Law 6/2014) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Examination of Article 25, Article 39 paragraph (1), and Article 48 of Law 6/2014 against Article 18 paragraph (2) and paragraph (6) and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : 1. To declare that the petition of Petitioners I to Petitioners VI as long as it is related to Article 48 of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages (State Gazette of the Republic of Indonesia of 2014 Number 7 and Supplement to the State Gazette of the Republic of Indonesia Number 5495) is in admissible;
2. To declare that the petition of the Petitioner VII as long as it is related to Article 25 and Article 39 paragraph (1) of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages (State Gazette of the Republic of Indonesia of 2014 Number 7 and Supplement to the State Gazette of the Republic of Indonesia Number 5495) is inadmissible;
3. To dismiss the Petitioners' petition for the remainder.

Date of Decision : Wednesday, April 20, 2022

Overview of Decision :

Whereas the Petitioners are Indonesian citizens who serve as Village Heads (Petitioner I to Petitioner VI) and Village Apparatus.

Whereas regarding the authority of the Court, since the Petitioners petition for a review of the constitutionality of legal norms, *in casu* Article 25, Article 39 paragraph (1), and Article 48 of Law 6/2014 against the 1945 Constitution, the Court has the authority to hear the *a quo* Petitioner's petition.

Whereas regarding the legal standing of the Petitioners, the Court is of the opinion that Petitioners I to Petitioners VI have the legal standing to act as Petitioners in the review of Article 25 and Article 39 paragraph (1) of Law 6/2014 and Petitioner VII has the legal standing to act as Petitioner in the review of Article 48 of Law 6/2014.

Whereas because the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance in requesting the statements from the parties as stated in Article 54 of the Constitutional Court Law.

Whereas one of the objectives of the establishment of Law 6/2014 is to provide the recognition and respect for the existing villages with their diversity before and after the formation

of the Unitary State of the Republic of Indonesia, as well as preserving and advancing the customs, traditions and culture of the village community. The existence of such recognition and respect must be based on the principle of diversity in accordance with the value system as prevailing in the village community, while still heeding the shared value system in the life of the nation and state. In this regard, Law 6/2014 places a strong emphasis on diversity by declaring "village or what is called by any other name". Therefore, in Article 6 of Law 6/2014 it is stated that the designation of village or customary village can be adjusted to the designation as applicable in the local area. Furthermore, as explained in Article 6 of Law 6/2014, the regulation of villages and customary villages is to prevent overlapping areas, authorities, institutional duplication between villages and customary villages in 1 (one) area so that in 1 (one) area there are only such village or customary village.

Whereas regarding the constitutionality of the norms of Article 25 of Law 6/2014, it is important for the Court to emphasize the essence of Article 25 of Law 6/2014 which in principal states that the village head in a village does not have to be designated as the "village head" but it can be designated as any other names according to the conditions of each region. Likewise, the designation of the village can be designated as any other names. The use of other names as accommodated in Law 6/2014 is in line with the mandate and spirit behind the formulation of Article 18B paragraph (2) of the 1945 Constitution. By using this consideration, the village or what is called by another name did not appear suddenly but the designation has existed since before Indonesia's independence which was then preserved as a form of recognition of the principle of village origin rights. However, in terms of administering the village government, there are characteristics that are generally applicable to all of Indonesia so that Law 6/2014 is fully applicable. Meanwhile, customary village or what is called by other names has different characteristics from villages in general, mainly because of the strong influence of custom (*adat*) on the local government system, local resource management, and the socio-cultural life of the village community. Regarding the phrase "by other names", this choice shows flexibility in arrangements that in practice can be adapted to the diversity in administering the village government in Indonesia.

Whereas the existence of other designation of the Village Head has caused uncertainty and in fact often creates administrative difficulties because the designation must be stated on a letterhead or stamp, where not every agency understands the designation other than the term village head which is already commonly used, the Court is of the opinion that the issue is actually part of the application of norms that require the village head or what is called by other names and his apparatus to carry out, for example, socialization of other names from the village head in accordance with the Decree of his appointment. In other words, there is no issue regarding the constitutionality of norms in Article 25 of Law 6/2014.

Whereas regarding the norms of Article 39 paragraph (1) of Law 6/2014, Law 6/2014 clearly requires the term of office of the village head to be 6 (six) years and if re-elected then such person may hold his position for up to 3 (three) terms of office or equal to a maximum of 18 (eighteen) years either consecutively or non-consecutively. This is what distinguishes the village head from the Customary Village where the term of office of the village head does not follow the provisions of Article 39 of Law 6/2014 but shall be based on the provisions of Article 109 of Law 6/2014. The issue of insufficient time for the village head in carrying out his vision and mission during the term of office of 6 (six) years as stated by Petitioner I to Petitioner VI is not a matter of the constitutionality of norms. Moreover, when compared to the term of office of other public officials who are also directly elected, which is determined to be only 5 (five) years and can be re-elected for one term of office so that if they serve 2 (two) terms of office, the maximum period shall be 10 (ten) years. Meanwhile, the term of office of the Village Head can be a maximum of 18 (eighteen) years. Therefore, the Village Head should be able to maximize the implementation of his vision and mission if he is re-elected. Therefore, the issue of political stability as argued by Petitioners I to Petitioners VI because the incumbent Village Head had to compete again for the next term of office was actually an expression of the concerns of Petitioners I to Petitioners VI which were not related to the issue of the constitutionality of norms of Article 39 paragraph (1) of Law 6/2014.

Whereas regarding Article 48 of Law 6/2014, it is important for the Court to emphasize that the essence of Article 48 of the *a quo* Law which specifically regulates the Village Apparatus which is the staff element with the task of assisting the village head in policy formulation and coordination which is accommodated in the form of village secretariat, and the supporting element of the “village head” task in implementing policies that is accommodated in the form of technical implementers and regional elements. Therefore, the element of the Village Apparatus shall consist of the Village secretariat, regional implementers, and technical implementers. For the appointment of the Village Apparatus, the “Village Head” must first consult with the sub-district head acting on behalf of the Regent/Mayor. However, in carrying out his duties and authorities, the Village Apparatus shall be responsible to the “Village Head”.

Furthermore, regarding the issue of the designation of Village Apparatus which according to Petitioner VII is not in accordance with the local wisdom because it is uniformed, as previously considered by the Court, the designation of village and customary village or what is called by other names shall be based on origin rights, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia [*vide* Article 1 of Law 6/2014]. In fact, the regulation of village apparatus was left entirely to the regional government in accordance with the principle of regional autonomy as Petitioner VII argued. This is in line with the purpose of the establishment of Law 6/2014 which states that one of them is to provide recognition and respect for the existing villages with their diversity before and after the formation of the Unitary State of the Republic of Indonesia. Therefore, Law 6/2014 does not make any efforts to uniform the designation. In fact, the village can use another designation based on the village origin rights that have long been known by the village community. Therefore, the village can more easily carry out its obligations to develop village community empowerment, and can provide and improve services to village communities [*vide* Article 67 paragraph (2) letter d and letter e of Law 6/2014]. Based on these considerations, the Court is of the opinion that there is no issue regarding the constitutionality of the norms in Article 48 of Law 6/2014. Meanwhile, regarding the argument of Petitioner VII in relation to the ignorance of the Village Apparatus candidates regarding the duties and obligations to be held due to the uniformity of the designation of Village Apparatus, this is not a matter of the constitutionality of norms but rather the implementation of norms.

Whereas based on all of the aforementioned legal considerations, the Court is of the opinion that it has been found that the provisions of Article 25, Article 39 paragraph (1) and Article 48 of Law 6/2014 are in line with the principles of regional government as stipulated in Article 18 of the 1945 Constitution and have provided fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Therefore, the arguments of the Petitioners' petition are entirely legally unjustifiable.

Subsequently, the Court issued a decision which verdicts are as follow:

1. To declare that the petition of Petitioners I to Petitioners VI as long as it is related to Article 48 of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages (State Gazette of the Republic of Indonesia of 2014 Number 7 and Supplement to the State Gazette of the Republic of Indonesia Number 5495) is in admissible;
2. To declare that the petition of the Petitioner VII as long as it is related to Article 25 and Article 39 paragraph (1) of the Law of the Republic of Indonesia Number 6 of 2014 concerning Villages (State Gazette of the Republic of Indonesia of 2014 Number 7 and Supplement to the State Gazette of the Republic of Indonesia Number 5495) is inadmissible;
3. To dismiss the Petitioners' petition for the remainder.