



**THE CONSTITUTIONAL COURT  
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
ON CASE NUMBER 67/PUU-XVIII/2020**

**Concerning**

**Term of Office of Regional Heads in the Law on the Governors, Regents and Mayors  
Election**

**Petitioner : Mohammad Kilat Wartabone and Imran Ahmad**

**Case :** Judicial Review Number 39 of 1999 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 the Governors, Regents, and Mayors Election to Become Laws (UU 10/2016) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)

**Case of Lawsuit :** Testing Article 7 paragraph (2) letter n of Law 10/2016 against the 1945 Constitution

**Injunction :** Within the Province

Rejected the Petitioners' provisional request

In the Principal of the Application

Rejected the petition of the Petitioners in its entirety.

**Date of Decision** : Thursday, January 14, 2021.

**Decision overview** :

That Petitioner I is an individual as Indonesian citizen who is a candidate for regional head who has received support through individual channels to advance in the 2020 simultaneous elections in Bone Bolango Regency, Gorontalo Province. Petitioner II is an individual as Indonesian citizen registered as a resident of Bone Bolango Regency, Gorontalo Province who has the right to vote and the Chair or coordinator of the ID Card Collection Team supported by Individual Candidates H. Moh Kilat Wartabone and Syamsir Djafar Kiayi at the Bone Bolango Regency level in the Election of Regent and Deputy of Bone Bolango Regency in 2020.

Regarding the authority of the Court, as the petition of the Petitioners regarding the review of Article 7 paragraph (2) letter n of Law 10/2016 against the 1945 Constitution, the Court has the authority to hear a quo petition.

Regarding the legal standing of the Petitioners, the Petitioners are candidates for regional heads in Bone Bolango Regency and the Success Team for Pairs of Candidates for Regional Heads, which due to the existence of norms being tested causes the term of office of regional heads to be unclear. In the considerations, the Court considers the legal position of the Petitioners regardless of whether or not the Petitioners' argument is proven against the norms of Article 7 paragraph (2) letter n of Law 10/2016 and the 1945 Constitution and states that the Petitioners have legal standing to file a quo case.

The Petitioners filed a provision petition that the Court prioritizes the examination of cases before the registration stage in the 2020 Governor, Regent and Mayor elections.

With regard to the provisional application, according to the Court, the judicial review is not adversarial and not interpreting, but rather examines the applicability of general legal

norms or provisions that apply to all citizens and are not limited by a certain deadline. In addition to these reasons, the Court must comply with the provisions of the procedural law in examining the constitutionality of the law in which Petitioner I as long as it fulfills the requirements stipulated in the legislation, is not hindered by his constitutional right to register as a candidate in the contestation of the regional head election. Likewise with Petitioner II, the enactment of e a quo norm in no way prevented him from becoming a successful team in the contestation in question.

Whereas the reasons for the above-mentioned legal considerations, the Petitioners' provision for provisions are not legally grounded.

Whereas in relation to the subject matter of the petition, the argument of the Petitioners Article 7 paragraph (2) letter n of Law 10/2016 as the main problem in a quo petition did not provide a sense of justice. Thus, it is considered contrary to the principle of proportionality, creating unequal treatment among officials who have the same authority. Hence, it has the potential to be used as a legal smuggling space by deliberately delaying the process of determining to become a substitute regent so that it is considered contrary to Article 28D paragraph (1) of the 1945 Constitution

For the arguments of the Petitioners, the Court considers that in principle the constitutional loss suffered by the Petitioners originated from a concrete case related to the mechanism for replacing the regional head *in casu* H. Abdul Haris Nadjamuddin who served as Regent in Bone Bolango Regency in the 2010-2015 period. At that time, as H. Abdul Haris Nadjamuddin was involved in a criminal case, he was suspended. Thus, administratively, to fill the vacancy of the temporarily suspended regional head, the regional head's authority was exercised by the deputy regional head. In a concrete case in Bone Bolango Regency for the period 2010-2015, the Regent's authority was exercised by Deputy Regent Hamim Pou (Relevant Party) as the Regent's Official. Further developments, due to the death of Regent H.

Abdul Haris Nadjamuddin on December 23, 2012 then Deputy Regent Hamim Pou, who previously since Regent H. Abdul Haris Nadjamuddin was a suspect was appointed as the Regent's Officer, was appointed the definitive Regent of Bone Bolango and inaugurated by the Governor of Gorontalo on 27 May 2013 or almost five months after H. Abdul Haris Nadjamuddin died. With the stipulation of Hamim Pou (Relevant Party) as the definitive Regent within about five months of the Regent H. Abdul Haris Nadjamuddin being permanently incapacitated (because he died) then starting from 27 May 2013 until 17 September 2015 the end of the term of office of the Regent of Bone Bolango Regency. In 2010-2015, Hamim Pou only served a term of two years and three months. Meanwhile, there was a concrete event that there was a gap of about five months between the Regent who was permanently absent (due to death) and the time of his inauguration as the definitive Regent. Thus, the Petitioners argued that this was a form of " smuggling in law " because there were indications that the Regent's officials deliberately stalled the time of the process of determining and/or becoming a substitute regent, so that the term of office of Deputy Regent Hamim Pou as the definitive Regent of Bone Bolango Regency to replace Regent H. Abdul Haris Nadjamuddin is less than two and a half years. As a result, Hamin Pou's term of office for two years and three months has been calculated as zero or not one period as legal considerations for the Constitutional Court Decision Number 22/PUU-VII/2009.

In addition, according to the Court related to the norms of Article 7 paragraph (2) letter n Law 10/2016, it has regulated the limitation of the periodization of the term of office of regional heads (either governors, regents and mayors) is a maximum of two periods, normatively the provisions referred to have not been able to answer the calculation of the periodization the term of office of the regional head who cannot complete the term of office before the end of his term of office for five years. The importance of determining the calculation in question is not only related to the term of office of the regional head who stops

before the end of his term of office, but also concerns the determination of the periodization of the term of office of the deputy regional head who continues the remaining term of office of the regional head. In this regard, for reasons, among other things, in order to provide legal certainty in calculating the periodization of the term of office of a deputy regional head who continues the term of office of a regional head who stopped before the end of his term of office, the Court in the Decision of the Constitutional Court Number 22/PUU-VII/2009 considers as following:

According to the Court, the problem is what if the first term of office is not full because the Petitioner replaces the Regent/Mayor Officer who stops permanently, for example, Petitioner II serves as Regent of Karimun for the first term for less than one year (less than half his term of office), while the Related Party I serving as Mayor of Surabaya for two years and nine months or more than half of the term of office. Elucidation of Article 38 of Government Regulation 6/2005 states that the calculation of two terms of office is calculated from the time of inauguration. This explanation does not distinguish whether a person is fully in office during the term of office or not. The Court considers it unfair if a person has served less than half the term of office, the same as those who have served half or more. Therefore, based on the principle of proportionality and a sense of justice as referred to in Article 28D paragraph (1) of the 1945 Constitution which reads, "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law," as the Court is of the opinion that half a term or more is counted as one term of office. It means that if someone has served as a Regional Head or as an Acting Regional Head for half or more term of office, then the person concerned is counted as having served one term of office.

According to the Court, by carefully understanding the legal considerations above, the substances relating to the tenure of regional heads and deputy regional heads have been considered in such a way as to provide legal certainty. It means that the norm of Article 7

paragraph (2) letter n of Law 10/2016 which states, "He has never served as a Governor, Deputy Governor, Regent, Deputy Regent, Mayor, and Deputy Mayor for 2 (two) terms of office in the same position. for Governor Candidates, Deputy Governor Candidates, Regent Candidates, Deputy Regent Candidates, Mayor Candidates, and Deputy Mayor Candidates", must be interpreted as the legal considerations of the Constitutional Court Decision Number 22/PUU-VII/2009 referred to.

Based on the meaning, in particular the consideration which states, "The Court is of the opinion that half a term of office or more is counted as one term of office. That is, if a person has served as a Regional Head or as a Regional Head Officer for half or more term of office, then the person concerned is counted as having served one term of office", so that the question of the petition of the Petitioners requesting that the phrase as intended in the Petition of the Petitioners states, "serving as Governor, Regent, Mayor" in Article 7 paragraph (2) letter n of Law 10/2016 is stated to be contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as "serving as Governor, Regent, Mayor and/or becoming an official. Governor, Regent, Mayor" has been answered explicitly in the legal considerations of the Decision of the Constitutional Court Number 22/PUU-VII/2009. Therefore, the Court is of the opinion that there is no constitutionality problem in the norms petitioned for review by a quo Petitioners.

Another matter that is also considered by the Court is related to the arguments of the Petitioners regarding the existence of legal smuggling with regard to the concrete cases put forward by the Petitioners, the argument according to the Court is an argument that is not within the authority of the Court to provide an assessment, considering the stipulation of a person appointed as Head area that replaces the Regional Head who is permanently absent is the realm of norm implementation and is not related to the unconstitutionality of the norm. Moreover, as the norm of Article 7 paragraph (2) letter n relates to the terms of candidacy, legally the party

who feels aggrieved can file an objection or legal action to the institution determined by law. Based on these legal considerations, the Petitioners' argument regarding the unconstitutionality of the norms of Article 7 paragraph (2) letter n of Law 10/2016 is groundless according to law.

Hence, The Court handed down a decision ruled as follows:

**In Provision**

Rejected the Petitioners' provisional request

**In the Principal of the Application**

Rejected the petition of the Petitioners in its entirety