

The Term of Office of the Village Head following Constitutional Court Decision No.42/PUU-XIX/2021

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Date of Submission: 01-02-2024

Date of Acceptance: 10-02-2024

ABSTRACT

The purpose of this study is to examine the legal consequences and impacts in the administration of village governance of the issuance of Constitutional Court Decision No. 42/PUU-XIX/2021, especially on the nomination and election process of the Village Head. The background of this research stems from the submission of a judicial review petition to the Constitutional Court on the provisions of Article 39 paragraph (2) of Law No. 6/2004 on Villages, along with its explanation, which for the petitioner has deprived him of his constitutional right to participate in the Village Head Election. This case occurred in Sungai Ketupak Village, Cengol Subdistrict, Ogan Kemiring Ilir Regency, South Sumatra Province. The method used in this research is the method: Yuridis - normative, descriptive and by using secondary sources and descriptive analysis - qualitative. The results of this study indicate the creation of good legal consequences for the issuance of the Constitutional Court's decision above, especially in political life and democracy at the village level.

Keywords: *Village Law, Village Head Term of Office, Constitutional Court Decision No. 42/PUU-XIX/2021.*

I. Background

The Village is a legal community unit that has certain territorial boundaries and is authorized to regulate and manage the government and the interests of the local community based on its own initiative, origin rights or traditional rights that are recognized and respected in the system of government of the unitary state of the Republic of Indonesia (NKRI). The Village Government is the Village Head or what is called by other names such as Nagari assisted by village officials as an element of organizing the Village Government. The Village Consultative Body (BPD) or what is called by other names is an institution that carries out government functions whose members are representatives of the village population based on regional representation and are determined democratically as stated in

article 1 numbers 1, 2, 3, and 4 of Law No. 6 of 2014 concerning Villages. According to Robert Dahl, there are three main principles in the implementation of democracy: competition, participation and political and civil liberties (George Sorensen, 2003: 10). Village Head Election is a manifestation of village democracy in order to determine leadership and quality. Village Head Election or often abbreviated as Pilkades is a direct election of the Village Head by local villagers, somewhat different from the Lurah which is a position held by civil servants or ASN appointed by the Regent or mayor. The Village Head is a position that can be held by any elected citizen. (Hasanul Bulqiyah, dkk,2019:68).

In the normative prospective, democracy is a system that is absolutely responsible to its citizens. The importance of people's participation in a democracy is because it determines the survival of a country, thus the people have the power to make decisions in politics and government through representation or directly, as well as through expressions of opinion both oral and written which are protected by law.(Gejong,2007:20).

After the issuance of Law No. 6 of 2014 on Villages, which replaced Law No. 32 of 2004 on Regional Government, through the provisions of Article 31 paragraphs 1 and 2. Village Head Elections are held simultaneously in all regencies. Meanwhile, according to Permendagri No. 112/2014 article 1 paragraph 5, the election of the Village Head is the exercise of popular sovereignty in the village in order to elect the Village Head which is Direct, General, Free, Secret, Honest and Fair.(AgusSofyan,2021:25).Meanwhile, the process and procedures for elections are regulated by their respective Regional Regulations, which refer to Law No. 6/2014 on Villages.

In the election of the Village Head, if the community does not participate in the election, the democratic process will not run smoothly. This happened in the election of Candidates for Village Head of Sungai Ketupak, Cengal District, Ogan Komering Ilir Regency, South Sumatra, where until the deadline date for registration of Candidates,

none of the residents were willing to register themselves. This made the Village Head concerned, Nedi Suwiran, who had served as Village Head for 1 term of office under Law No. 22 of 1999, and for 2 terms of office under Law No. 32 of 2004, want to exercise his constitutional right to obtain equal opportunities in government, as provided by Article 28D paragraph 3 of the 1945 Constitution.

Therefore, he filed a petition for judicial review to the Constitutional Court against the provisions of Article 39 paragraph 2 of Law No. 6 of 2004 which stipulates that the term of office of the Village Head "Can Only" be held for a maximum of 3 terms. After some time, the Constitutional Court issued Decision No. 42/PUU-XIX/2021 dated September 24, 2021, which has permanent force, which states that it grants the applicant's request in part and declares Article 29 of Law No. 6 of 2014 concerning Villages contrary to the 1945 Constitution and has no conditional binding legal force. The decision of the Constitutional Court which grants the petition in part will have an impact on the nullification of a norm, so that it no longer has binding legal force, and the principle of "Ergo omnes" applies, which means that it has general binding force in the same cases.

Research Question

1. What are the legal consequences of the issuance of Constitutional Court Decision No. 42 / PUU - XIX / 2021 relating to the nomination of the Village Head? ?
2. What is the impact of the Constitutional Court Decision above on village governance?

A. Therule of law

The concept of the rule of law is a product of history, whose understanding continues to develop following the history of the development of society in the state. The earliest roots of the idea of the rule of law can be traced back to the Ancient Greeks and Romans with the concept of popular sovereignty. However, nowadays the discussion on the rule of law refers more to the modern concept of both Continental Europe with the concept of "reehstarts: and Anglo Saxon with the concept of the "rule of law"

It is undeniable that the development of law in the world has gone through a long transformation. Each country has a different way of developing law in accordance with its worldview. The legal history of each country is not the same, each has its own characteristics. The history of the UK, for example, is different from that of China because both have different cultures and civilizational developments. Likewise, Indonesia

will certainly be different. (Ahmad IrawanHamzani, 2014: 136-142).

Theological discourse on the "rule of law" is rooted in the meaning of the word "law" itself, which differs between the Western tradition and the Eastern tradition. In general, in the Western tradition, law is interpreted as something straight, firm as reflected in the literal meaning of the word "recht. (Dutch German) which is synonymous with "right" (English) and "droit" (French), meaning straight, right, good and right. However, the Western tradition distinguishes between the term "law" and the term "law". Some European languages use the terms "recht" (Dutch, German), "law" (English), "droit" (French) to mean "law". While for the term law, the terms "iset" (Dutch), "gezeta" (German), "lot" (French), "ley" (Spanish), and "act" (English) are used. (AidulFitriciadaAzhari, 2012 : 489-505).

In general, the conception of the State of Law is always oriented towards two different legal traditions, namely the Common law system and the Civil law system. Both legal systems use different terms for the concept of "State of Law", namely "Rechtstaat" and "The rule of law". In the Continental European legal system the term "rechtstrat" is also referred to as "Conceptof legality" or "Etat de Droit". As for the term "The rule of law", it became popular in the English legal tradition with the "Common law" system.

The two understandings, namely "rechtstaat" and "The rule of law" have different legal system backgrounds. "Rechtstaat" is known to have emerged as an effort to oppose the absolutism of the king or ruler which is revolutionary in nature and rests on the Continental European legal system called the "Civil law system". Meanwhile, "The rule of law" can be said to have developed evolutionarily based on the legal system "Common law system". Both legal systems in principle lead to one understanding, and the main understanding is the "State of Law". Both legal systems view law as an effective means of organizing the life of the nation and state. (HaposanSiallagan, 2016 : 131 – 137).

B. The Legal Power of the Constitutional Court Decision

The decision of the Constitutional Court (MK) is a decision that is not only binding on the parties (interparties) but also must be obeyed by anyone (ergo omnes). The principle of "Ergo-omnes" is reflected in the provision stating that the decision of the Constitutional Court (MK) can be implemented immediately without requiring a decision of the authorized official, unless the legislation regulates

otherwise.

The above provisions reflect the binding legal force and because the nature of the law is public, it applies to anyone, not only to the parties to the case. While the decision of the Constitutional Court (MK) has permanent legal force and is final, it is stated in Article 10 paragraph (1) of Law No. 8 of 2011 concerning the Constitutional Court which says "The decision of the Constitutional Court is final, which means that it immediately obtains legal force since it is pronounced and no legal remedies can be taken."

This shows that the decision of the Constitutional Court (MK) is different from other judicial decisions which are binding for the litigants only (inter parties). Therefore, all parties are obliged to obey and implement the decision of the Constitutional Court (MK) which is the first and last court, so there are no other legal remedies that can be taken.

A decision that, if there are no other legal remedies that can be taken, means that the decision has permanent legal force (in kracht van qewijsde) and has binding force (resjuncta pro veritatehabetur). Strictly speaking, Constitutional Court decisions that have permanent legal force immediately have binding legal force to be implemented.

The implementation of the Constitutional Court's binding decisions has experienced difficulties, at least showing the wide variety of problems and patterns of implementation. The problem is caused by at least three things, namely:

a. As stated in Article 24E paragraph (1) of the 1945 Constitution, the Constitutional Court's decision is only final, but not accompanied by the word binding, so it is often perceived as not binding.

b. The Constitutional Court does not have an executing unit to ensure the implementation of its final decisions.

c. The final decision of the Constitutional Court is very dependent on the other branches of state power, namely the executive and legislative branches, namely awareness and willingness to implement the final decision of the Constitutional Court. (MararuarSiahaan, 2012: 201)

From the three reasons above, it is clear that in the field, the Constitutional Court's decision is very vulnerable and has the potential to experience problems in its implementation. This is because it solely relies on normative and imperative provisions, both in the 1945 Constitution, in the Constitutional Court Law and in the Constitutional Court's decision itself. All of that is apparently not enough to guarantee that there are no problems in the implementation of the decision. Normative-

imperative provisions regarding the finality of the validity of the Constitutional Court's decision do not necessarily eliminate obstacles in its implementation. Because in reality, the Constitutional Court's decision cannot be enforced if it is only understood as a stand-alone entity, separate from other things outside of it in its interaction.

A judicial decision is an act of a Judge as an authorized state official pronounced in a public session and made in writing to end the dispute brought by the parties to him. But a legal action that will resolve the dispute before him, then the judicial action is a state action whose authority is delegated to judges either based on the 1945 Constitution or the Law.

In the trial and procedural law of the Constitutional Court, this means that the decision is final and binding. This final decision is immediately binding, which means that all parties, whether individuals, legal entities or state institutions, must comply with and implement the decision that has been made.

Somewhat different from other courts, the Constitutional Court basically does not recognize the name "Constitutional Court Decision", unless it is specifically mentioned in handling cases of authority disputes between state institutions that derive authority from the 1945 Constitution. As mentioned in Article 63 of the Constitutional Court Law, which states that the "Constitutional Court" can issue a stipulation ordering the Petitioner and or Respondent to temporarily stop the implementation of the disputed authority until there is a Constitutional Court decision.

The above article states that the judge's action to "temporarily suspend" the exercise of the disputed authority is the same as the judge's decision, actually referring to the temporary action taken before the final opinion that ends the dispute. Although Article 63 of the UUMK states that what is issued by the Constitutional Court is in the form of a stipulation, the decision is an interim decision issued before the final decision that decides the main dispute.

Meanwhile, cases involving judicial review of laws do not regulate interlocutory decisions at all, although in some cases it is often proposed by the applicant that an interlocutory decision be issued by the Constitutional Court.

C. Village Arrangements

Villages in Indonesia have existed since a hundred years ago, from era to era, this village, nagari, or clan exists and remains to this day. Majapahit has disappeared as well as Sriwijaya, the Dutch East Indies, the Japanese occupation

government has disappeared, but this village, nagari, clan still exists. In the course of this history, it can be concluded that a country will exist as long as this village, nagari, clan exists as long as the country is able to unite itself with the village, nagari or clan. (Nasroen, 1995; 41).

The term "Village" etymologically comes from the word "Swadesi" which means an area, place or independent part of autonomy (Eka Sihombing, 2020; 155). A village can be said to be the result of a combination between the activities of a group of people and their environment. The result of this combination is a form or appearance on the face of the earth caused by physiographic, social, economic, political and cultural elements that interact with each other and also relate to other areas. (Bintarto, 1986; 11).

The definition of a village according to Article 1 point 1 of Law No. 6/2014 on Villages, is:

"Villages and customary villages or what is called by other names, hereinafter referred to as villages, are legal community provisions that have certain territorial boundaries and are authorized to regulate and manage elements of government, local community interests based on community initiatives. The rights of origin and/or traditional rights are recognized and respected within the system of government of the Unitary State of the Republic of Indonesia".

Some of the characteristics of the Village include;

- 1) Villages are generally located at or very close to farming centers;
- 2) In these areas, agriculture is the dominant economic activity;
- 3) The strengthening factor of the land determines the style of life of the community;
- 4) Unlike cities or large towns where most of the population is immigrant, the rural population is more "self-replaced"
- 5) Social control is more informal and interaction between villagers is more personalized in face-to-face meetings;
- 6) There is a relatively high level of homogeneity and social ties are relatively tighter than in the city (Ramlan dan Eka Sihombing, 2021; 4)

A. Type of Research

This research is of the "normative juridical" type using secondary data in the form of primary legal materials and secondary legal materials. Primary legal materials include: 1945 Constitution, UUNo.60 of 2014 concerning villages and

Constitutional Court decision No.42 / PUU-XIX / 2021, while secondary materials are books, journals and other materials related to the theme being researched.

B. Nature of Research

This research is "Descriptive analytical" to describe the research problem as complete as possible to be able to provide an explanation that starts especially on issues related to the content of the regulation. No. 42/PUU-XIX/ 2021.

C. Data Collection and Data Analysis Techniques

The collection of research data is carried out by literature study of legal materials that have been determined, both primary legal materials and secondary legal materials. Then the data is analyzed "qualitatively" to explain the problems that are the subject of research.

II. RESEARCH RESULTS AND DISCUSSION

A. Chronology of the case against Law No. 6/2014 on Villages

NetiSuwirah whose address is Ketupak River RT.01 RW. 01 Ketupak River, Cengal, OganKomerlinglir Regency gave power of attorney to Gunalan whose address is Dusun RT. 18 RW. 08 Sungai Jeruju, Cengal, OganKomerlinglir Regency based on a Special Power of Attorney dated August 6, 2021 acting for and on behalf of the Grantor, hereinafter referred to as the Applicant, has conducted a judicial review of Law No. 6 of 2014 concerning Villages against the 1945 Constitution on July 29, 2021 based on the Deed of Acceptance of the application file No. 33/PUU/PAN.MK /AP3/07/2021 and has been recorded in the Electronic Constitutional Case Register Book (EBRPK) with no. 42/PUU-XIX/2021 on August 25, 2021 which was corrected and received by the registrar of the Constitutional Court on September 14, 2021.

The issue in the petition is that Law No. 6 of 2014 which regulates the Village in its provisions there are rules beyond the intent and constitutional rights of the petitioner because there is a causal relationship between the loss of the Petitioner's constitutional right to participate in government with the provisions of Article 39 paragraph (2) of Law No. 6 of 2014 and its explanation. Therefore, the fourth requirement insofar as the causal relationship between the loss and the enactment of the Law petitioned for review has been met.

If the petition is granted, the calculation of the term of office of the Village Head will be clearer and more specific in confirming the

maximum number of 3 terms of office of the Village Head based on Law No.32 of 2004 so that the Petitioner and also other Indonesian citizens who are and will return to serve as Village Heads really get legal certainty in the limits of participation to become contestants in the next Village Head election. Therefore, the fifth requirement is as long as there is a possibility that with the granting of the petition, the loss and or constitutional authority argued will not or no longer occur.

The object of the judicial review is Article 39 paragraph (2) of Law No. 6 of 2014 which regulates the requirements for the nomination of the Village Head, which has resulted in the postponement of the election of the Village Head of Sungai Ketupak, Cengol District, OganKomerlingllir Regency, South Sumatra Province due to the provisions of Article 34 paragraph (2) of Law No. 6 of 2014.

On April 1, 2021, the Village Head Election Committee of Sungai Ketupak Village, Cengol District, OganKomerlingllir Regency, South Sumatra Province issued announcement No.02/PPKDSK/IV/2021 dated April 1, 2021 concerning the Opening of Registration for Candidates for Village Head of Sungai Ketupak Village, starting from April 1, 2021 until April 16, 2021, but until the registration deadline date there were no candidates for Village Head so that the Village Head Election committee again issued announcement No. 03/PPRSDK/IV/2021 dated May 7, 2021 concerning the Opening of Registration for Candidates for Village Head until the end of June 14, 2021.

Based on the announcement of the Village Head Election Committee which has been issued twice, the Applicant together with other Indonesian citizens who have the constitutional right to obtain equal opportunities in government as provided by Article 28 D paragraph (3) of the 1945 Constitution which states:“Every citizen is entitled to equal opportunity in government”.

That the Applicant served as Village Head for 1 term of office based on Law No. 22 of 1999 and for 2 terms of office based on Law No. 32 of 2004, but because in the provisions of Article 39 the Village Head can only be held for a maximum of 3 terms of office, while in the explanation of the article based on 3 terms of office of the Village Head whose appointment was based on Law No. 32 of 2004, it is clear that there is a causal relationship between the loss of the Applicant's constitutional right to participate in government with the enactment of Article 34 paragraph (2) of Law No. 6 of 2014 and its explanation.

Therefore, the fourth requirement, insofar as there is a causal relationship between the loss and the enactment of the law in question, has been met. If the petition is granted, the calculation of the term of office of the Village Head will be clearer and more specific in confirming the maximum number of 3 terms of office of the Village Head under Law No. 32/2004

Based on the description put forward by the Applicant in explaining his position, according to the Constitutional Court, the Applicant has explained his constitutional rights which according to the Applicant's argument have been impaired by the enactment of Article 39 paragraph (2) and its explanation in Law No. 6 of 2014 as petitioned for review. The argument of constitutional loss is specific and actual. Thus, the argument of the loss of constitutional rights described by the Plaintiff has a causal relationship with the enactment of the norms of the Law petitioned for review. If the petition is granted then the argument of constitutional loss as described will certainly no longer occur. Therefore, regardless of whether or not there is a constitutional problem with the norms argued by the Applicant according to the Constitutional Court, the Applicant has the legal standing to act as an Applicant in the petition.

In the 1945 Constitution, the sovereignty of the people is always associated with the principle of the rule of law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, as a consequence, democracy cannot be carried out based on the struggle of political power alone, but must also be implemented in accordance with the rule of law.

In carrying out its duties, the Constitutional Court as the guardian of the constitution and the giver of justice, will not be able to play its role in realizing the ideals and objectives of the rule of law in providing justice and welfare for citizens if the Constitutional Court cannot or is prohibited from complying with the judicial process by deciding legal facts that injure human rights, especially political rights.

However, in the issue of the position of village head as decided by the Constitutional Court based on case number 42/PUU-XIX/2021, limiting the term of office of the Village Head is one of the most important things in political life. It is intended not only to limit the term of office, but also to limit the period of office, in order to open up opportunities for the transfer of leadership generations at all levels of government, including leadership at the village level. It also prevents the abuse of power by a person due to the length of time he or she has been in power.

The impact of the Constitutional Court's decision No. 42/PUU-XIX/2021 is to change the explanation of Article 39 paragraph (2) of Law No. 6 of 2014 concerning villages, which originally read "Village heads who have served 1 term of office based on Law No. 32 of 2004 are given the opportunity to re-nominate a maximum of 2 terms of office". Meanwhile, "Village heads who have served 2 terms of office based on Law No. 32 of 2004 are given the opportunity to re-nominate only 1 term of office". to read in full "Village heads who have served 1 term, both based on Law No. 6 of 2014 concerning villages and based on previous laws, are still given the opportunity to serve 2 terms, both based on Law No. 6 of 2014 and based on previous laws, are still given the opportunity to serve 1 term of office".

Thus, in the election of the Village Head, a person who runs for the position of Village Head has the opportunity to serve three terms.

Based on the Constitutional Court's decision above, there are several implications for Law No. 6/2014 on Villages. Some of the implications are as follows:

1. Implications of Closed Enforcement of Constitutional Rights Citizens are the main institutions that organize and organize people's lives. The way the state regulates citizens is by forming regulations that are normalized into law. The law makes variations based on the norms of the 1945 Law, so that the law can be called constitutional. However, when the law injures the constitutional rights of citizens, then citizens can fight for their constitutional rights through the "Judicial review" process submitted to the Constitutional Court and in the "Judicial review" process the Constitutional Court can change the contents of the law because it is considered contrary to the 1945 Constitution..

BAB V CONCLUSION

A. Conclusion

1. The essence of the Constitutional Court Decision No. 42/PUU-XIX/2021 relating to the nomination requirements and the term of office of the village head is none other than to provide legal certainty for the transfer of leadership generations at all levels of government, including village-level government. This is also intended to prevent abuse of power due to the length of time a person has been in power.

2. The impact of the Constitutional Court's decision above, especially on the organization of village governance, is in the form of the following implications:

a. The implication is that the enforcement of citizens' constitutional rights is more secure because of legal certainty.

b. The implication of this is the opening of opportunities for any citizen who meets the requirements to run for village head.

c. The implications for the expansion of the constitutional system in our country, especially the strengthening of the principle of "Check and Balances" between power-holding institutions in our country, namely the "legislature", "executive" and "judiciary".

B. Suggestion

In accordance with the decision of the Constitutional Court No. 42/PUU-XIX/2021, the Village Head Election Organizing Committee that has been appointed by the BPD must be more careful in the process of selecting candidates for the Village Head so as not to harm participants who register as candidates for the Village Head, and not to obstruct the constitutional rights of candidates for the village head.

REFERENCES

- [1]. Ahmad Irwan Hamzani. 2014. Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya, Jurnal Yustitia No. 3 Vol. 3.
- [2]. Agus Sofyan. 2021. Partisipasi Masyarakat Dalam Pelaksanaan Pemilihan Kepala Desa. Jurnal Dinamika No. 1 Vol. 8.
- [3]. Aidul Fitrinta Azhari. 2012. Negara Hukum Indonesia: Dekolonisasi dan Rekonstruksi Tradisi. Jurnal Lusjurnal Quia lustum No. 4 Vol. 9
- [4]. Astim Riyanto. 2002. Filsafat Hukum. Bandung: Yappendo.
- [5]. Eka Sihombing. 2020. Hukum Pemerintahan Daerah. Malang : Setara Press. Gejong. 2007. Pemerintahan Daerah: Kajian Politik dan Hukum. Bogor: Ghalia Indonesia.
- [6]. Indonesia.
- [7]. G. Sorensen. 2003. Demokrasi dan Demokratisasi. Yogyakarta : Pustaka Pelajar. Haposan Siallagan. 2016. Penerapan Prinsip Negara Hukum di Indonesia. Jurnal Sotio Humaniora No. 2 Vol. 18.
- [8]. Hasanul Bulqiah, dkk. 2019. Pemilihan Kepala Desa dan Partisipasi Masyarakat Marjinal. Jurnal Wacana Politik. No. 1 Vol. 4.
- [9]. Hidajat. 2012. Teori-Teori Politik. Malang: Setara Press.
- [10]. Kushandajani. 2015. Implikasi Undang-Undang Nomor 6 Tahun 2014 tentang Desa terhadap Kewenangan Desa. Jurnal Justitia No. 2 Vol.

- 4.
- [12]. MadeHendraWijaya.2015.KarakteristikKons
epNegaraHukumPancasila.
 - [13]. JurnalAdvokasiNo.2Vol5.
 - [14]. MararnarSiahaan.2012.HukumAcaraMahka
mahKonstitusi.Jakarta:SinarGrafika.
 - [15]. Nasroen.1995.DaerahOtonomTingkatTerbaw
ah.Jakarta:Beringin.Ralan,dkk. 2021. Hukum
PemerintahanDesa. Medan :Enam Media.
 - [16]. R.Bintarto.1986.Desal-
Kota.Bandung:Alumni.
 - [17]. Tengku Erwinsyahbana, dkk. 2008.
Prespektif NegaraHukum
IndonesiaBerdasarkanPancasila. Jurnal
INANo.1Vol. 2

