



Analysis of judges' considerations in deciding to limit the term of office of the Village Head based on the constitutional court decision number 42 / PUU-XIX / 2021

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Received Date: May 12, 2023

Revised Date: July 9, 2024

Accepted Date: August 30, 2024

ABSTRACT

Background: The issue of the term limits for village heads has become a critical legal concern in Indonesia, especially in relation to the interpretation of Article 39 of Law No. 6 of 2014 on Villages. The regulation stipulates that a village head who has served one term can re-run for a maximum of two additional terms, and a village head who has served two terms can only run for one more term. However, the application of this rule has led to ambiguities, particularly regarding the calculation of term limits for village heads who served under previous laws. These inconsistencies pose challenges in maintaining legal clarity and ensuring fairness in village governance. **Methods:** This study employs a qualitative legal analysis, focusing on judicial reasoning and the constitutional review conducted by the Constitutional Court of Indonesia, specifically in Case Number 42/PUU-XIX/2021. The research examines the implications of the Court's ruling on the interpretation of the term limits for village heads, evaluating the potential legal uncertainties and their consequences. The analysis includes a review of relevant laws, constitutional provisions, and the Court's reasoning. **Findings:** The study finds that the Constitutional Court's decision in 2021 brought clarity by ruling that the provisions of Article 39 of Law No. 6/2014 on Villages were in conflict with the 1945 Constitution of Indonesia. The Court determined that the term limit provisions should be interpreted in a way that considers the factual circumstances of each village head's service, regardless of the legal framework that was in place during their previous terms. This decision eliminates ambiguity, ensuring that village heads who have served for three terms are not subject to conflicting legal interpretations. **Conclusion:** The Constitutional Court's ruling has resolved the confusion surrounding the term limits for village heads by clarifying that the term limits should be calculated based on actual service, rather than outdated legal provisions. This decision ensures consistency and legal certainty, preventing potential abuses of power and promoting transparency in village governance. **Novelty/Originality of this article:** This article offers a fresh perspective on the interpretation of village head term limits, providing an in-depth analysis of the Constitutional Court's decision and its implications for Indonesian legal practices. It contributes to the understanding of how legal ambiguities can be resolved through judicial review, highlighting the need for clear legislative frameworks to avoid multiple interpretations and ensure legal consistency.

KEYWORDS: constitutional court; Indonesia governance; law no. 6/2014; legal interpretation; village head term limits.

1. Introduction

Villages play a crucial role in achieving the goals of independence set out in the 1945 Constitution of the Republic of Indonesia, with the right of origin and traditional rights to regulate the interests of their communities. As the basis for governance, villages are regulated in Law No. 6/2014, which underlines the village as a legal community unit with

Cite This Article:

Rahmawati, P. L., & Zain, M. F. (2024). Analysis of judges' considerations in deciding to limit the term of office of the Village Head based on the constitutional court decision number 42 / PUU-XIX / 2021. *Strengthening Dynamic System e-Government and Public Services*, 1(2), 98-104. <https://doi.org/.....>

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the authority to manage government affairs and local community interests, which are carried out based on community initiatives and recognized traditional rights. Villages are within the framework of decentralization under the authority of the regency, thus becoming an integral part of the regional government system. Over time, the term of office of the Village Head began to be regulated in more detail, starting with Law No. 23/2004 and further refined in Law No. 6/2014. Limiting the term of office aims to ensure dynamic and accountable leadership at the village level, reflecting a response to changing administrative needs and village development.

Recently, there has been a discourse on the revision of the Village Law that involves broader aspects, including the extension of the term of office of the Village Head. The Minister of Villages, Development of Disadvantaged Regions, and Transmigration explained that this revision is important to strengthen the position of villages in the national government structure, as well as to increase the allocation of development funds sourced from the APBN. The revision also considers the welfare of the Village Head and village officials, given their increased responsibilities in implementing village development. The government hopes that these changes will improve village development policies and village community empowerment, so as to encourage more effective and sustainable governance, and improve the overall welfare of rural communities.

Limiting the term of office of the Village Head is regulated in Article 39 paragraph (2) of Law Number 6/2014, stipulating that a Village Head can serve up to three terms, consecutively or separately. This regulation aims to avoid the domination of power by one individual over a long period of time and to open up opportunities for new, fresher and more dynamic leaders. According to Law No. 32/2004, a Village Head can serve one term and run for two additional terms, while those who have served two terms can only run once more. This is reinforced by Constitutional Court Decision No. 42/PUU-XIX/2021, which states that the maximum term of office for a Village Head is 18 years to prevent a monopoly of power. This decision rejected the petition of a Village Head candidate who wanted to stand for reelection after serving for 24 years, which clearly violated the existing provisions. This limitation is in line with democratic principles that apply to other public offices, such as President and Governor, which also have term limits to maintain a balance of power and avoid abuse of authority. Thus, limiting the term of office of the Village Head is a way to strengthen objective, accountable, and democratic village governance.

In Islamic law, there is a concept known as *maslahah*, which refers to things that are rationally beneficial, even though they are not directly regulated in sharia, either through prohibitions or commands. This concept, when applied as a guideline or rule, can provide significant benefits to society. Sa'id Ramadhan argues that *maslahah* can be used as a source of law or the basis for the formation of law to resolve certain problems, provided that it meets five criteria. These criteria are: in harmony with the objectives of sharia, not contradicting the Qur'an, As-Sunnah, and qiyas, and not contradicting the greater benefit known as *Dhawabit al-Maslahah* (Ulya, 2019). By fulfilling these criteria, *maslahah* can be a guideline in formulating rules that support public welfare.

This study uses the concept of *maslahah* to assess the relevance of limiting the term of office of the Village Head in Indonesia. In the context of modern democracy, limiting the term of office for the Village Head is important in order to maintain a balance of power and prevent excessive accumulation of power. This limiting rule is contained in Article 39 paragraph (2) of Law Number 6/2014, which regulates the duration of the Village Head's term of office. This research aims to analyze whether the Constitutional Court Decision, particularly Decision Number 42/PUU-XIX/2021, is in accordance with the principles of *maslahah*. Thus, this research focuses on the suitability of limiting the term of office of the Village Head with the concept of *maslahah* in an Islamic perspective.

2. Methods

The research method in this study applies a qualitative approach that focuses on normative legal studies or literature, which involves analyzing legal norms, regulations, laws, court decisions, and other legal documents relevant to answering the existing problems (Sunaryo, 2019; Muhaimin, 2020). This research studies and analyzes the Constitutional Court Decision Number 42/PUU-XIX/2021 on limiting the term of office of the Village Head, with primary data sources including the 1945 Constitution of the Republic of Indonesia, the Constitutional Court Decision, and Law Number 6/2014 on Villages. Secondary data was obtained from books, journals, articles, and other literature relevant to the legal issues being examined (Muhaimin, 2020). A statutory approach was applied to study and examine regulations related to limiting the term of office of the Village Head, with a focus on Article 39 paragraph (2) of Law Number 6/2014 (Marzuki, 2015). A conceptual approach is also used to analyze thoughts or doctrines in legal science that provide an understanding of legal concepts, principles, and notions relevant to the research topic, as well as to analyze the relationship between the concept of *maslahah* and Constitutional Court Decision Number 42/PUU-XIX/2021 related to limiting the term of office of the Village Head (Marzuki, 2017).

The content analysis method is used to analyze text with the aim of producing precise inferences (Ahmad, 2018). The author analyzes the Constitutional Court Decision Number 42/PUU-XIX/2021 and draws conclusions from the results of the analysis. This analysis is then linked to the views of Islamic law on limiting the term of office of the Village Head through the concept of *maslahah*. By using this method, it is felt that it is able to describe the situation and facilitate a high understanding of the relevance of limiting the term of office of the Village Head in the perspective of Islamic law, as well as assessing whether the decision of the Constitutional Court is in accordance with the principles of *maslahah* in Islamic law. The results of this study are expected to provide a contribution to the understanding of law, especially related to limiting the term of office of the Village Head in harmony with the principles of Islamic law.

3. Results and Discussion

The Constitutional Court has the authority to hear cases at the first and final levels, and provide final decisions in terms of judicial review of laws against the 1945 Constitution, as stipulated in Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of Law Number 24 of 2003 which was updated by Law Number 7 of 2020, and Article 29 paragraph (1) letter a of Law Number 48 of 2009 concerning Judicial Power. With this authority, the Constitutional Court can examine various legal regulations, including those relating to the term of office of the Village Head. This research aims to explore the judges' reasoning in Constitutional Court Decision Number 42/PUU-XIX/2021 related to limiting the term of office of the Village Head, which has a significant impact on village governance and democracy at the local level. It is important to study and examine the legal basis and reasons underlying the judge's decision, because the judge's consideration in each decision must pay attention to juridical and non-juridical aspects. Judges must analyze the facts revealed in the trial by considering legal sources such as legislation, jurisprudence, and applicable customs, in order to reach a decision that is fair and in accordance with the law. In addition, the principles of justice and legal firmness must be considered so that the resulting decision is not only legally valid but also reflects the values that live in the society.

In Constitutional Court Decision No. 42/PUU-XIX/2021, the applicant, an Indonesian citizen, claimed that his constitutional rights were impaired by the vagueness of Article 39 paragraph (2) of Law No. 6/2014, which limits the term of office of the Village Head to a maximum of three times, whether consecutive or not. The applicant argued that the regulation prevented him from standing for re-election as Village Head. Article 39(2) stipulates that a person who has served as Village Head once under Law No. 32/2004 may

still run for office two more times, while a person who has served twice may only run for office once more. The applicant, who had previously served as Village Head under Law No. 22/1999 and then twice under Law No. 32/2004, received a letter from the Regent of Ogan Komering Ilir explaining that he could not run for re-election. The applicant felt that he had not violated the provisions of Law No. 6/2014 and considered that his constitutional rights had been violated, so he applied to the Constitutional Court for protection of his rights.

To understand the Court's reasoning in deciding this issue, it is important to look at the background of village governance in Indonesia and the development of the regulations governing it. Villages are the lowest level of government in the Unitary State of the Republic of Indonesia (NKRI) system, and regulations regarding the position of Village Head have changed over time. For example, in Law No. 5/1979, Article 7 regulates the term of office of the Village Head for eight years with one additional period, so that the total term of office of a Village Head at that time did not exceed 16 years. These regulatory changes reflect the dynamics of the village governance system, which continues to evolve to adapt to the needs of better governance and responsiveness to community aspirations.

It is important to understand that the provisions in Law No. 5/1979 are a continuation of Law No. 19/1965 on Praja Villages, which aimed to accelerate the formation of third-level regions in Indonesia. However, Law 19/1965 did not set a limit on the term of office of the Village Head, only stipulating that the maximum term of office was eight years without clarity on whether the Village Head could be re-elected after that period. This uncertainty prompted the issuance of Law 5/1979, which more clearly limited the term of office of the Village Head, with the aim of strengthening the village governance system through more detailed regulations. This change represented an attempt to create clearer village governance that was in line with the administrative needs of the time.

In the reform era, Law No. 22/1999 on Regional Government integrated village governance with regional government. Article 96 of Law 22/1999 stipulates that the maximum term of office for a village head is ten years or two terms, with flexibility for districts to adjust according to local social and cultural conditions. However, Law 32/2004 replaced Law 22/1999 and emphasized that the term of office of the Village Head cannot exceed ten years, with the term of office specified in Article 204, which states that the Village Head serves for six years and can be re-elected for only one term. However, Law 32/2004 makes an exception for customary law communities that have different provisions according to local regulations, so limiting the term of office can be adjusted to the prevailing local provisions.

The enactment of Law No. 6/2014 on Villages supports the regulation of village governance separated from Law No. 23/2014 on Regional Government. Article 39 of Law 6/2014 stipulates that the term of office of the Village Head is six years from the time of inauguration and can serve up to three terms, whether consecutively or not. If a Village Head resigns before the end of his or her term of office, the period is still counted as one six-year term. The explanation of the terms "consecutive" and "non-consecutive" clarifies that a Village Head who has served one term under Law 32/2004 may stand for re-election for up to two additional terms. However, if already serving two terms, only one additional term is permitted. This limitation regulates not only the duration of the term of office, but also the number of periodizations, with the aim of encouraging leadership rotation at the village level and minimizing the risk of abuse of authority that can occur if someone serves too long, as well as reducing the potential for corruption, collusion, and nepotism.

In Constitutional Court Decision Number 42/PUU-XIX/2021, the Court considered the provisions in Article 39 paragraph (2) of Law No. 6/2014 related to the term of office of the Village Head which is limited to three periods, whether consecutive or not. In this case, the Court considers that the provision is in accordance with the principles of democracy and sound governance, considering that the purpose of limiting is to keep the village government system running dynamically and avoid the potential for abuse of power. Article 39 also clarifies that Village Heads who have served one term under Law 32/2004 can still nominate themselves for two subsequent terms, while those who have served two terms are only allowed to nominate themselves for one additional term. Thus, this decision

reinforces the importance of limiting terms of office to ensure fair and transparent village governance.

The Constitutional Court then assessed whether this provision was in line with constitutional principles, particularly those relating to legal firmness and citizens' political rights. The Applicant argued that Article 39(2) and the Explanation of Article 39 of Law 6/2014 could lead to different interpretations, potentially contradicting the 1945 Constitution. On the one hand, limiting the term of office provides legal certainty as it ensures that the term of office of the Village Head does not exceed three times. However, on the other hand, the explanation of how the term of office is calculated in relation to certain parameters gives rise to vagueness and potentially confusing interpretations. This led to doubts about the applicant's right to stand for re-election in the upcoming Village Head election, as these different interpretations of the calculation of the term of office created uncertainty that interfered with the applicant's political rights. As a result, there are concerns about legal uncertainty that could prejudice the applicant's right to participate in the simultaneous Village Head elections.

The Constitutional Court in its decision considered the Petitioner's argument regarding the limitation of the term of office of the Village Head contained in Article 39 paragraph (2) of Law 6/2014, which stipulates a six-year term with a maximum limit of three terms. The Court was of the opinion that this limit reflects the principle of democracy in line with the spirit of the 1945 Constitution, which is also seen in limiting the terms of office of the President, Vice President, and Regional Heads. The purpose of this limit is to provide space for leadership regeneration and prevent concentration of power that could lead to abuse of power. Limiting the term of office of the Village Head is clearly regulated in Law 6/2014, although there are exceptions for customary law communities that are regulated by regional regulations. Unlike previous laws, such as Law 19/1965 and Law 22/1999, which used the phrase "at most" for the term of office, as well as Law 5/1979 and Law 32/2004, which limited the term to two terms, Law 6/2014 stipulates that the Village Head can serve up to three terms, either consecutively or non-consecutively, with the term of office calculated from the time of inauguration. This limitation is expected to maintain transparency and accountability in village governance, as well as prevent potential abuse of power.

The Constitutional Court faced a challenge in determining the appropriate way to calculate the maximum three-term limit for Village Heads, in accordance with Article 39 of Law No. 6/2014. This article outlines that Village Heads who have served one term under Law No. 32/2004 can still stand for two additional terms, while those who have served two terms are only allowed to stand for one more term. The Court identified potential ambiguity in the application of this rule, as it could allow the Village Head to serve more than three terms, which is contrary to the purpose of limiting terms of office in Law 6/2014. This ambiguity arises because the term of office calculated under the previous law could create an opportunity for the Village Head to run for more than three terms, which should not be allowed. Therefore, the Court considers it important to adjust the interpretation of this rule to guard against a concentration of power that is inconsistent with the spirit of limitation set out in the law.

Based on these legal considerations, the Court proposes that the Explanation of Article 39 of Law 6/2014 be adjusted to avoid multiple interpretations. The appropriate explanation is that Village Heads who have served one term of office, both under Law 6/2014 and previous laws, are still entitled to nominate themselves for two additional terms, while those who have served two terms may only nominate themselves once more. Thus, although there are different regulations on the term of office of the Village Head in various laws, the calculation of the term of office must still take into account the number of terms that have been served. This three-term limit should apply consistently, whether the Village Head is serving in the same village or a different village, to prevent deviations in legal interpretation that could harm the interests of village governance and democracy.

4. Conclusions

Constitutional Court Decision Number 42/PUU-XIX/2021 on limiting the term of office of the Village Head provides an important consideration, in which the petition was partially granted. The Court considered that the explanation of Article 39 of Law No. 6/2014 was not in line with the 1945 Constitution and only applied under certain conditions, which created legal uncertainty. This uncertainty arises because there is still potential for Village Heads who have served more than three terms to still be counted under the provisions of Law 32 of 2004. This could lead to misunderstandings regarding the validity of the term of office, which should be limited to three periods. Therefore, the Court emphasized the need for further clarity regarding the limitation of three terms of office in the Village Law so as not to cause confusion in the future.

The Constitutional Court in its decision also decided to amend the explanation of Article 39 paragraph (2) of Law 6/2014 to make it more consistent with applicable legal principles. The amendment aims to ensure that the term of office of the Village Head is clearly calculated based on the number of terms that have been served, without doubt or ambiguity. The three-term limit applies to Village Heads serving in both the same and different villages. This step was taken to prevent potential abuse of power and ensure transparency in village governance. The legal clarity established in this decision is expected to improve the application of term of office provisions, maintain legal consistency, and prevent interpretations that could be detrimental to the democratic system at the village level.

Author Contribution

The author contributed fully to the research.

Funding

This research did not receive funding from anywhere.

Ethical Review Board Statement

Not applicable.

Informed Consent Statement

Not applicable.

Data Availability Statement

Not applicable.

Conflicts of Interest

The authors declare no conflict of interest.

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