



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 8/PUU-XX/2022

Concerning

Presidential Candidate Threshold (Presidential Threshold)

- Petitioner** : Tata Kesantra, et al.
- Type of Case** : Examination of Law Number 7 of 2017 concerning General Election (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Article 222 of Law 7/2017 is in contrary to Article 6 paragraph (2), Article 6A paragraph (2), Article 6A paragraph (3), Article 6A paragraph (4), Article 6A paragraph (5), Article 22E paragraph (1), 28C paragraph (2), Article 28D paragraph (1), Article 28D paragraph (3), Article 28J paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution.
- Verdict** : To declare that the Petitioners' petition is unjustifiable.
- Date of Decision** : Tuesday, March 29, 2022.
- Overview of Decision** :

The Petitioners are Indonesian citizens living, working, and/or studying abroad (*diaspora*) who have the same constitutional rights as citizens living in the country, *in casu* the right to vote the Presidential and/or Vice-Presidential candidates as well as the right to be candidate for President and/or Vice President. The Petitioners deemed that their constitutional rights have been violated with the promulgation of Article 222 of Law 7/2017 because the *a quo* article has reduced or limited the constitutional rights of the Petitioners to vote (right to vote) and to be elected (right to be a candidate) in the Presidential/Vice Presidential election and therefore must be seen as a constitutional loss, both actual and potential.

That the presidential threshold requirement in Article 222 of the General Election Law is also in contrary to Article 28C paragraph (2) of the 1945 Constitution because it hinders the efforts of the Petitioners to fight for their rights to develop the society, nation and state through the positions as President and/or Vice President. The *a quo* article is also in contrary to Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution because it makes the Petitioners not have the same opportunity to actively interact and build relationships with the major parties that have fulfilled the presidential threshold requirement.

Regarding the authority of the Court, since the petition of the Petitioners requests to examine the constitutionality of legal norms, *in casu* Article 222 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court is of the opinion that because the Petitioners' domicile is abroad, there are certain requirements that must be fulfilled in the Petitioners' power of attorney, in addition to the general requirements as stipulated in Article 123 paragraph (1) of HIR, namely that the power of attorney must obtain the legalization from the Embassy of the Republic of Indonesia (*Kedutaan Besar Republik Indonesia* or KBRI) or the Representative Office of the Republic of Indonesia in each country

where the Applicants reside at the time the power of attorney is drawn up and signed. After carefully examining the power of attorney submitted by the Petitioners, out of the 27 Petitioners, only 8 Petitioners have fulfilled the formal requirements for such power of attorney. Accordingly, the Court is of the opinion that the 19 Petitioners who have not completed their power of attorney with the legalization from the local Indonesian Embassy shall be formally disabled and therefore do not meet the qualification requirements as individual petitioners.

Furthermore, in considering whether or not there is a perceived loss of constitutional rights (constitutional injury) experienced by Petitioner VI, Petitioner VIII, Petitioner IX, Petitioner XIX, Petitioner XX, and Petitioner XXII to Petitioner XXIV, the Court shall refer to the legal considerations in the Decision of the Constitutional Court Number 74/PUU-XVIII/2020, dated January 14, 2021 and subsequently reaffirmed in the Decision of the Constitutional Court Number 66/PUU-XIX/2021, dated February 24, 2022 which in principal states that regarding the perceived loss of constitutional rights experienced by any individuals who have the right to vote in the general elections, the Court is of the opinion that there are rules of the game related to the threshold requirements on the nomination of Presidential and Vice Presidential candidates as stipulated in Article 222 of Law 7/2017 for which the Petitioners have petition for a constitutional review, the rules has been enforced before the 2019 general election, in which the Petitioners also have the right to vote and have known that the result of their voting right in the 2019 legislative election will also be used as part of the threshold requirements for the upcoming nomination of the presidential and vice presidential candidates in the 2024. Whereas regarding the qualifications of the Petitioners as individual Indonesian citizens who have the right to be elected as candidates (right to be candidate) for President and/or Vice President, in reviewing the constitutionality of Article 222 of Law 7/2017, the loss of the constitutional right to the right to be candidate for individual Indonesian citizens shall be as long as the Petitioners have the support of a political party or coalition of political parties participating in the General Election to nominate themselves or being nominated as a pair of candidates for President and Vice President or to submit their petition together with the supporting political party. Those requirements cannot be fulfilled by the Petitioners in the *a quo* petition, so that the Court considers that there is no loss to the right to be candidate for President and/or Vice President as deemed by the Petitioners. Likewise regarding to the perceived loss to the right to obtain equal access in elections and the right to advance themselves in fighting for the development of the community, nation and state as well as participating in the development as argued by the Petitioners, the Court did not find a causal relationship between the norms requested for a constitutional review and the assumption that the constitutional rights of the Petitioners have been prejudiced, both actual and potential. Therefore, according to the Court, the Petitioners have no legal standing to file a petition.

Therefore, because the Petitioners do not have the legal standing to act as Petitioners, the subject matter of the Petitioners' petition shall not be considered.

Accordingly, the Court subsequently issued a decision which verdict states that the Petitioners' petition is unjustifiable.