



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 21/PUU-XX/2022

Concerning

Presidential Candidate Threshold (Presidential Threshold)

- Petitioner** : Ajbar, 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 1 paragraph (2), Article 1 paragraph (3), Article 6 paragraph (2), Article 6A paragraph (1), Article 6A paragraph (2), Article 6A paragraph (3), Article 6A paragraph (4), Article 6A paragraph (5), Article 22E paragraph (1), Article 22E paragraph (2), Article 22E paragraph (5), Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), Article 28J and the fourth paragraph of the Preamble to the 1945 Constitution of the 1945 Constitution.
- Verdict** : To declare that the Petitioner's petition is unjustifiable
- Date of Decision** : Wednesday, April 20, 2022.
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who have the right to be candidate and to vote in the General Election, in addition, the Petitioners are also members of the Regional Representative Council (*Dewan Perwakilan Daerah* or DPD) which in carrying out their duties have accommodated the aspirations, inputs, and responses of the people in the regions which state that the provisions of Article 222 of Law 7/2017 regarding the threshold requirements (presidential threshold) is in contrary to the principles of people's sovereignty, electoral justice, and the principles of Indonesian democracy;

Regarding the authority of the Court, since the petition of the Petitioners is a petition to examine the constitutionality of the legal norms, *in casu* Article 222 of Law 7/2007 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing of the individual citizens who are submitting the petition for the examination of the threshold requirement for presidential candidate *in casu* Article 222 of Law 7/2017, the Court has considered such matter in the Decision of the Constitutional Court Number 74/PUU-XVIII/2020, dated January 14, 2021, which subsequently reaffirmed in the Decision of the Constitutional Court Number 66/PUU-XIX/2021 dated February 24, 2022, which in principal state as follows:

“[3.6.2] ... it is clear that the Court has the precedent to give the legal standing to individual citizens who have the right to vote to examine the norms regarding the Presidential and Vice-Presidential candidate threshold. However, because there are differences in the mechanisms and systems used in determining the Presidential and Vice Presidential candidate threshold in the 2014 General Election with the 2019 Election and the next General Election in 2024, there has been a shift as

considered in the Constitutional Court Decision Number 74/PUU-XVIII/2020 whereas the parties who have the legal standing to submit the petition regarding the threshold requirements to nominate the Presidential and Vice Presidential candidates (presidential threshold) in *casu*, Article 222 of Law 7/2017 shall be a political party or coalition of political parties participating in the election.

[3.6.3] Whereas a political party or coalition of political parties participating in the General Election that have constitutional rights to petition for a review of Article 222 of Law 7/2017 is in line with the constitutional mandate, namely Article 6A paragraph (2) of the 1945 Constitution which determines that the nomination of Presidential and Vice-Presidential candidates shall be determined by a political party or coalition of political parties, not by individuals. This is also in line with Article 8 paragraph (3) of the 1945 Constitution which explicitly stipulates that only a political party or coalitions of political parties whose candidates for President and Vice President received the first and second most votes in the previous general election may nominate two pairs of candidates for President and Vice President to be elected by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*), if the President and the Vice President pass away, resign, dismissed, or unable to perform their obligations during their term of office simultaneously. The constitutional provisions further emphasize that the Court that the party with the legal standing to petition for the constitutionality review of Article 222 of Law 7/2017 is a political party or coalition of political parties participating in the General Election, not an individual citizen who has the right to vote.”

Based on the consideration of such decision, regarding the qualifications of the *a quo* Petitioners as individuals who have the right to vote in 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. With such an analogy, the assumption of a constitutional loss, *in casu* the inhibition of the right to vote experienced by the Petitioners is legally unjustifiable. In addition, regarding the assumption that the Petitioners' constitutional rights have been prejudiced due to the obstruction of their right to vote, the Court is of the opinion that Article 222 of Law 7/2017 does not limit the number of pairs of Presidential and Vice-Presidential candidates who are entitled to participate in the Presidential and Vice-Presidential election. Therefore, in addition to the Petitioners not having a loss of constitutional rights with the promulgation of the norms of Article 222 of Law 7/2017, there is no causal relationship between the *a quo* norms and the assumption that the Petitioners are having a loss of their constitutional right to vote;

Meanwhile, regarding the qualifications of the Petitioners as members of the DPD, the Court did not find any constitutional loss on the side of the Petitioners and there were no causal relationship with the implementation of the duties and authorities of the Petitioners in absorbing the aspirations of the regional community, because the enforcement of the norms of Article 222 of Law 7/2017 does not reduce the opportunity for the best sons and daughters of the region to become the Presidential or Vice Presidential candidates as long as they fulfil the requirements and are proposed by a political party or coalition of political parties participating in the General Election. The Petitioners also do not meet the individual qualifications of citizens who have the right to be elected so that they are considered to have a loss of constitutional rights with the promulgation of the norms in Article 222 of Law 7/2017, because there is no evidence of support for the Petitioners to nominate themselves or to be nominated as Presidential and Vice Presidential candidates from a political party or coalition of political parties participating in the General Election or at least in submitting their petition together with the supporting political party.

Whereas based on the entire description of the aforementioned legal considerations, the Court is of the opinion that the Petitioners do not have the legal standing to file the *a quo* petition.

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