



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 44/PUU-XX/2022**

Concerning

**Recruitment of Candidates for Regional Heads and Vice Regional Heads
as well as the President and Vice President**

- Petitioner** : **A. Ramos Petege, et al**
- Type of Case** : Examination of Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties (Law 2/2011) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
- Subject Matter** : Examination of Article 29 paragraph (1) letter c and letter d, as well as paragraph (2) of Law 2/2011 against Article 6A paragraph (1) and paragraph (2), Article 22E paragraph (1) and paragraph (2), Article 28D paragraph (3) of the 1945 Constitution.
- Verdict** : To dismiss the petition of the Petitioners in its entirety
- Date of Decision** : Thursday, July 7, 2022

Overview of Decision :

The Petitioners are individual Indonesian citizens (Petitioner I, Petitioner II and Petitioner IV), as well as individual Indonesian citizens who work as members of the Dogiyai Regency DPRD (Regional People's Representative Assembly) of who were elected for the 2019-2024 period from one of the political parties participating in the 2019-2024 election (the Petitioner III) who feel disadvantaged by the recruitment system for the candidates for the regional heads and vice regional heads as well as the President and Vice President through a political party and coalitions of political parties.

Regarding the authority of the Court, since Petitioners petition for the review of Article 29 paragraph (1) letter c and letter d, as well as paragraph (2) of Law 2/2011 against Article 6A paragraph (1) and paragraph (2), Article 22E paragraph (1) and paragraph (2), Article 28D paragraph (3) of the 1945 Constitution, the Court has the authority to hear the petition of the Petitioners;

Regarding the legal standing of the Petitioners, whereas in principal the Petitioners argue that the Petitioners as citizens (the people) have constitutional rights to be candidate and to vote based on equal rights as regulated in laws and regulations. They believe that their constitutional rights are prejudiced due to the promulgation of the norms for which the review is being petitioned. According to the Petitioners, the promulgation of these norms has resulted in the absence of regulations regarding the mechanism for determining, nominating, and/or proposing candidates for president and/or vice president, regional heads and/or vice regional heads in an open, participatory, and transparent manner based on the capabilities and capacities of the candidates. This is because the process is entirely within the internal political parties as the only institutions that can nominate the candidates for president and/or vice president and regional heads and/or vice regional heads.

Regarding the arguments of the Petitioners, the Court is of the opinion that Petitioner I, Petitioner II, and Petitioner IV, as individual Indonesian citizens who wish to elect state leaders in this case the President and Vice President and to elect regional heads and vice regional heads directly, but were not involved from the start by the political parties, are able to describe specifically the existence of a causal relationship (*causal verband*) between the perceived loss of constitutional rights of the petitioners as citizens who have the right to vote and the promulgation of the norms of Article 29 paragraph (1) letter c and letter d, as well as paragraph (2) of Law 2/2011. The voters should first choose the candidates for leadership in accordance with the choices that are in their hearts through the preliminary election. Therefore, the Court is of the opinion that Petitioner I, Petitioner II, and Petitioner IV have specifically explained the perceived loss of their constitutional rights that occurred with the promulgation of the norms of the law for which judicial review was being petitioned. Meanwhile, the Court is of the opinion that Petitioner III, who is an individual Indonesian citizen, although currently a member of a political party and a member of the Regional People's Representative Assembly of Dogiyai Regency, has the same position as Petitioner I, Petitioner II and Petitioner IV who were also not being involved from the start in the nomination process for the candidates for President and Vice President as well as regional heads and vice regional heads. Accordingly, Petitioners I, Petitioners II, Petitioners III, and Petitioners IV (hereinafter shall be referred to as the Petitioners) have the legal standing to act as Petitioners in this *a quo* petition;

Whereas in relation to the subject matter of the Petitioners' petition, which in principal argues that the norms being petitioned for a review by the Petitioners have created legal uncertainty in its implementation, because the recruitment of candidates for regional heads and/or vice regional heads as well as president and/or vice president is carried out in a "democratic and open" in accordance with the Articles of Association and Bylaws (AD and ART) of political parties, but instead being carried out without clear parameters. This has led to the centralization of authority in the hands of political party elites (*c.q.* the general chairman) to recruit candidates for president and vice president or regional heads and vice regional heads who are legitimized in the AD and ART of the political parties although often they ignore the "democratic and open" principle. This is clearly in contrary to the constitutional norms of Article 6A paragraphs (1) and (2) of the 1945 Constitution which requires direct elections, both at the time of nomination in the internal political parties and in the general elections. Regarding the arguments of the Petitioners, the Court in principal is of the opinion as follows:

- a. Whereas because the *a quo* petition is clear, therefore the Court is of the opinion that there is neither urgency nor need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law;
- b. Whereas regarding the recruitment of candidates for regional heads and vice regional heads through political parties which are only determined by the political party elites without involving the voters in the preliminary election as stipulated in Article 29 paragraph (1) letter c of Law 2/2011, the Court has affirmed such matter in the Decision of the Constitutional Court Number 5/PUU-V/2007 which was declared in a plenary session open to the public on July 23, 2007, in Sub-paragraph [3.15.8], Sub-paragraph [3.15.9], Sub-paragraph [3.15.10], Sub-paragraph [3.15.11], Sub-paragraph [3.15.13], Sub-paragraph [3.15.16], and Sub-paragraph [3.15.17], which have considered the permissibility of nominating the candidates for regional heads and vice regional heads without having to go through a political party/coalition of political parties.
- c. Whereas based on the aforementioned considerations, the Court has taken the position that the nomination of regional heads and vice regional heads does not have to go through a political party or coalition of political parties. This means that the citizens, including the Petitioners who have the right to vote and the right to be candidate, can channel their aspirations to vote or nominate themselves as candidates for regional heads and vice regional heads through individual channels without having

to go through a political party or coalitions of political parties. In this regard, the recruitment procedure, nomination mechanism, and registration for individual candidates have been regulated in laws and regulations without eliminating the rights of citizens who have the right to vote and to be candidate. Therefore, for Indonesian citizens, including the Petitioners who believe that they have the candidates for regional heads and vice regional heads can encourage these candidates to become candidates for regional heads and vice regional heads without having to go through a political party or coalitions of political parties, but through individual (independent) channels with the mechanism as stipulated in the laws regulations. Therefore, the Petitioners no longer need to worry that all candidates for regional heads and vice regional heads must be endorsed by a political party or coalitions of political parties. Regarding the authority of the political parties to recruit candidates for regional heads and vice regional heads as stipulated in Article 29 paragraph (1) letter c of Law 2/2011, it is a form of the embodiment of the objectives and functions of political parties. In this regard, the specific objective of political parties is to increase the political participation of members and the public in the context of organizing political and governmental activities [vide Article 10 paragraph (2) letter a of Law 2/2008]. In addition to these specific objectives, the recruitment process by the political parties is also part of the implementation of the functions of political parties, namely as a means of political recruitment in the process of filling political positions through democratic mechanisms by paying attention to gender equality and justice [vide Article 11 paragraph (1) letter e of Law 2 /2008]. How the recruitment process should be carried out, it is in the authority of the political parties to arrange in accordance with the AD (articles of association) or principal regulations of political parties and ART (bylaws) which will further elaborate on the AD of political parties [vide Article 1 point 2 and number 3 and Article 2 paragraph (4) of Law 2/2011] .

- d. Whereas in relation to the recruitment of citizens by the political parties to become candidates for President and Vice President, the Court has also affirmed such matter in the Decision of the Constitutional Court Number 56/PUU-VI/2008 which was declared in a plenary session open to the public on February 17, 2009, in Sub - paragraph **[3.15.3]** number 4, and number 7, Paragraph **[3.16]** number 2, letter a and letter b, Paragraph **[3.17]** and Paragraph **[3.18]**, who have considered that the nomination of President and Vice President must go through a political party or coalition of political parties.
- e. Whereas based on the aforementioned considerations, the Court is of the opinion that the nomination of the candidates for President and Vice President must go through a political party or coalition of political parties as has been confirmed in Article 6A paragraph (2) of the 1945 Constitution, so that those who have the authority to recruit presidential and vice-presidential candidates shall be a political party/coalition of political parties.
- f. Whereas Article 29 paragraph (2) of Law 2/2011 in principle determines that the recruitment process for the candidates for regional heads and vice regional heads as well as the candidates for president and vice president is carried out in a democratic and open manner in accordance with the AD and ART as well as laws and regulations. The phrase “democratic and open” began to appear for the first time in the same article in the previous Law (Law 2/2008). In relation to the democratic and open process, no further explanation was given, but it was based on the AD and ART of political parties. If this provision is related to Article 5 of Law Number 8 of 2015 concerning Amendments to Law Number 1 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law (UU 8/2015), then the actual recruitment of the candidates is not part of the stages in the regional heads election. In this case, the stages of regional heads elections shall include the preparation and implementation stages. In the stage of holding regional heads elections, the organizers, *in casu* the

regional general election commission shall carry out activities starting with the announcement of the registration of the pairs of Candidates for Governors and Vice Governor, pairs of Candidates for Regents and Vice Regents, as well as pairs of Candidates for Mayors and Vice Mayors, followed by the registration activities [*vide* Article 5 paragraph (3) letter c and letter d of Law 8/2015]. Meanwhile, if it is related to Article 167 of Law Number 7 of 2017 concerning General Elections (Law 7/2017) it also does not determine that the recruitment of prospective candidates is part of the implementation of the general election (*pemilu*). Therefore, the recruitment process is entirely within the domain of political party authorization as mentioned above.

- g. Whereas there is no constitutionality issue with the norms of Article 29 paragraph (2) of Law 2/2011 because it is in line with the constitutional mandate which lays the foundation of democracy in the recruitment process for the candidates for regional heads and vice regional heads as well as the candidates for president and vice president. To realize the purpose of Article 29 paragraph (2) of Law 2/2011, it is entirely up to the AD/ART of each political party. This means that AD/ART as the rules of the game that drive the wheels of political party organization must really regulate the recruitment process which shall be based on democratic and open principles [*vide* Article 2 paragraph (4) letter g of Law 2/2011]. Therefore, whether to use the mechanism of the preliminary elections or conventions in the recruitment process for the candidates for regional heads and vice regional heads as well as the candidates for president and vice president, all of that within the domain of the political party's authority to regulate it in the AD/ART of each political party. Therefore, the AD/ART of each political party in its implementation needs to be reviewed or considered so that it is always in accordance with democratic and open principles as referred to in Article 29 paragraph (2) of Law 2/2011. Regarding the implementation of these principles in the AD/ART, it can be a matter of public concern to participate in assessing it.
- h. Whereas based on all the legal considerations as described above, the Court is of the opinion that it is evident that there is no issue regarding the constitutionality of the norms against Article 29 paragraph (1) letter c and letter d as well as Article 29 paragraph (2) of Law 2/2011.

Based on the above legal considerations, the Petitioners' arguments are legally unjustifiable in their entirety, and the Court issued a decision which verdict states that the Petitioners' petition is entirely dismissed.