



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 52/PUU-XX/2022

Concerning

Presidential Candidate Threshold (Presidential Threshold)

- Petitioner** : The Regional Representative Council of the Republic of Indonesia (*Dewan Perwakilan Daerah Republik Indonesia* or DPD RI) and Partai Bulan Bintang (PBB).
- 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 4 paragraph (1), 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 28D paragraph (1), Article 28D paragraph (3), Article 28J paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution.
- Verdict** : 1. To declare that the petition of Petitioner I is inadmissible;
2. To dismiss the petition of Petitioner II in its entirety.
- Date of Decision** : Thursday, July 7, 2022.

Overview of Decision :

Petitioner I as a state institution (DPD RI) as represented by elements of the leadership of DPD RI, namely the Chairman and 3 (three) Vice Chairmen of DPD RI in this case based on the results of the 8th Plenary Session of the DPD RI for Session III of 2021-2022 on February 18, 2022 which has decided that the DPD RI institutionally approved and agreed by deliberation and consensus to conduct a judicial review of Article 222 of Law 7/2017 concerning presidential candidate threshold (presidential threshold) against the 1945 Constitution to the Constitutional Court. According to Petitioner I, Article 222 of Law 7/2017 has derogated and restricted the rights and obligations of Petitioner I to promote and fight for equality for the sons and daughters of the region in running for president and vice president.

Meanwhile, Petitioner II as a legal entity in the form of a political party (PBB) which is a political party participating in the 2019 simultaneous elections based on the Articles of Association of PBB in this case as represented by Prof. Dr. Yusril Ihza Mahendra, S.H., M.Sc. As the General Chairman and Afriansyah Noor, M.Sc. as the Secretary General. Petitioner II should have the constitutional right to nominate the Presidential and Vice-Presidential Candidates as stipulated in Article 6A paragraph (2) of the 1945 Constitution. However, this right has been reduced due to the promulgation of Article 222 of Law 7/2017 which adds a requirement for a vote of 20%.

Regarding the authority of the Constitutional Court, the Court is of the opinion in accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution *junto*

Article 10 paragraph (1) of Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) and because the Petitioners petition for the examination of 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 since the Decision of the Constitutional Court Number 74/PUU-XVIII/2020 which was declared in a plenary session open to the public on January 14, 2021 and the Decision of the Constitutional Court Number 66/PUU-XIX/2021 which was declared in a plenary session open to the public on February 24, 2022, the Court has stated its position regarding the parties who have the right to petition for a loss of constitutional rights due to the promulgation of the norms of Article 222 of Law 7/2017, namely (i) a political party or coalitions of political parties participating in the election; and (ii) individual citizens who have the right to be candidates and supported by a political party or coalitions 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.

Based on these considerations, regarding the legal standing of Petitioner I, the Court is of the opinion that because the qualifications of Petitioner I is a state institution and is not a political party or coalition of political parties participating in the General Election, as has been confirmed in the decisions above. In addition, the Court considers that the assumption of constitutional loss as described by Petitioner I had no causal relationship with the exercise of the rights and obligations of Petitioner I. Therefore, the Court is of the opinion that Petitioner I does not have the legal standing to act as the Petitioner in the *a quo* petition.

Meanwhile, regarding the legal position of Petitioner II which is a political party, the Court considers that the qualifications of Petitioner II have fulfil the criteria as a party with legal standing to apply for a review of the norms of Article 222 of Law 7/2017, as the Court stated in the previous decision. Petitioner II has also explained about its constitutional rights which according to Petitioner II have been prejudiced by the promulgation of Article 222 of Law 7/2017 because the *a quo* Article has prevented Petitioner II as a political party participating in the General Election to nominate the Presidential and Vice Presidential candidates as guaranteed in the provisions of Article 6A paragraph (2) of the 1945 Constitution. Therefore, the Court is of the opinion that Petitioner II has the legal standing to file the *a quo* petition.

Whereas because the subject matter or substance of the petition of Petitioner II is clear, the Court is of the opinion that there is no urgency and relevance to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

However, because the constitutionality review of Article 222 of Law 7/2017 has been decided several times by the Court, the Court will first consider whether the petition of Petitioner II fulfil the provisions of Article 60 paragraph (2) of the Constitutional Court Law in conjunction with Article 78 paragraph (2) PMK 2/2021. Based on these provisions, an article whose constitutionality has been examined and has been decided by the Court can only be petition for re-examination if there is a different basis for an examination and/or reasons for the petition. Regarding this matter, after the Court carefully examined the petition of Petitioner II, it turned out that the basis for the examination used in the *a quo* petition, namely Article 1 paragraph (2), Article 4 paragraph (1), Article 28J paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution has never been used as a basis for examining the petitions that have been decided by the Court. In addition, there are differences in the reasons for the petition of Petitioner II with the petitions that have been decided by the Court previously, among others: (i) Article 222 of Law 7/2017 has made the general elections being controlled by the oligarchs and capital authorities, so that they are not the result of the will of the people's sovereignty or the substantive choice of political parties; (ii) Article 222 of Law 7/2017 has eliminated public participation and only accommodates the interests of the

political elite; and (iii) Article 222 of Law 7/2017 has created a polarization of the society. Therefore, the Court is of the opinion that the *a quo* petition can be resubmitted.

Furthermore, in considering the arguments of the petition of Petitioner II, the Court considers that the argument of Petitioner II is based on the assumption that various negative excesses (such as oligarchy and polarization of the society) have arisen due to the promulgation of the provisions of Article 222 of Law 7/2017. Regarding this matter, the Court is of the opinion that the argument of Petitioner II is legally unjustifiable, because there is no guarantee that with the elimination of the threshold requirements for the nomination of Presidential and Vice-Presidential candidates by a political party or coalition of political parties, various excesses as argued by Petitioner II will not happen again. Moreover, after reading all the decisions of the Court in relation to the issue of the threshold for the nomination of Presidential and Vice Presidential candidates by a political party or coalition of political parties, in principal the Court has stated that the threshold requirements for the nominations of President and Vice President are constitutional, meanwhile regarding the percentage of the presidential threshold for the nomination of presidential and vice presidential candidates, it is an open legal policy that is within the authority of the legislators. Therefore, although there is a difference between the arguments of Petitioner II and the previous petitions, the Court is of the opinion that the *a quo* argument of Petitioner II comes from the same issue, namely regarding the threshold for the nomination of Presidential and Vice Presidential candidates by a political party or coalitions of political parties in which the Court has stated its stance as described above.

Whereas just the same as in the previous decisions, regarding the constitutionality of the norms of Article 222 of Law 7/2017, 2 (two) Constitutional Justices, namely Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra remain in their position in submitting dissenting opinions as in the previous decisions.

Therefore, based on all of the aforementioned legal considerations, the Court is of the opinion that it turns out that there is no issue on the constitutionality of the norms of Article 222 of Law 7/2017 in relation to the essence of the norms of Article 1 paragraph (2), Article 4 paragraph (1), Article 28J paragraph (1), and Article 28J paragraph (2) of the 1945 Constitution, so that the Court is of the opinion that there is no fundamental reason that causes the Court to change its stance. Accordingly, the Court is of the opinion that the petition of Petitioner II is entirely legally unjustifiable and regarding the arguments and other matters, they shall not be considered further because they are irrelevant.

Accordingly, the Court subsequently issued a decision which verdicts state:

1. To declare that the petition of Petitioner I is inadmissible;
2. To dismiss the petition of Petitioner II in its entirety.