



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 68/PUU-XX/2022**

Concerning

State Officials, Including Ministers and Ministerial-Level Officials

- Petitioner** : **Partai Garuda Perubahan Indonesia (Partai Garuda)**
- Type of Case** : Judicial review of Law Number 7 of 2017 concerning General Elections (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of Article 170 paragraph (1) and Elucidation of Article 170 paragraph (1) of Law 7/2017 against the 1945 Constitution
- Verdict** : 1. To partially grant the Petitioner's petition;
2. To declare that the phrase "State Official" in Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "State officials who are nominated by a Political Party or Coalition Political Parties Contesting in the Election as candidates for President or candidates for Vice President must resign from their positions, except for the President, Vice President, Leaders and members of the MPR, Leaders and members of the DPR, leaders and members of the DPD, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors, including ministers and ministerial-level officials, as long as ministers and ministerial-level officials have obtained the approval and leave permission from the President";
3. To declare that the phrase "ministers and ministerial-level officials" in the Elucidation of Article 170 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "state officials", which in this provision shall be:
- Chief, deputy chief, junior chief and chief justice at the Supreme Court;
 - Chief, deputy chief, and justices in all judicial bodies, except ad hoc justices;
 - Chief, deputy chief, and members of the Constitutional Court;

- d. Chief, deputy chief and members of the Audit Board of the Republic of Indonesia;
 - e. Chief, deputy chief and members of the Judicial Commission;
 - f. Chief and deputy chief of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi);
 - g. Head of representative of the Republic of Indonesia in the foreign country who holds the position of Extraordinary and Plenipotentiary Ambassador; and
 - h. Other national officials as determined by law;
4. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;
 5. To dismiss the remainder of the Petitioner's petitioner.

Date of Decision : Monday, October 31, 2022

Overview of Decision :

The Petitioner argues that as a political party participating in the general election (the election), it has constitutional rights based on the provisions of Article 6A paragraph (2) of the 1945 Constitution to nominate the candidates for President and Vice President before the election, including nominating the definitive minister currently serving in the *Kabinet Indonesia Maju* as a candidate for President or Vice President in the election. The constitutional rights of the Petitioner shall be potentially harmed according to reasonable reasoning due to the enactment of the norms of Article 170 paragraph (1) of Law 7/2017 and its Elucidation which states that the minister as a state official must resign from his position when nominated by a political party or coalition of political parties as a candidate for President or a candidate for Vice President.

Regarding the authority of the Court, because the Petitioner petitioned for the review of the Law, *in casu* Law 7/2017 against the 1945 Constitution, the Court has the authority to adjudicate and decide on the *a quo* petition.

In relation to the legal standing of the Petitioner, because the Petitioner has been able to describe the presumed loss of the Petitioner's constitutional rights as guaranteed in the 1945 Constitution by the enactment of the norms of Article 170 paragraph (1) and the Elucidation of Article 170 paragraph (1) of Law 7/2017 submitted in the *a quo* petition for review, therefore, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

The Petitioner argues that as a political party it has constitutional rights as stipulated in Article 6 and Article 6A paragraph (2) of the 1945 Constitution to nominate the candidates for President or Vice President, including the candidates from among the "state officials" as stipulated in the provisions of Article 170 paragraph (1) of Law 7/2017. According to the Applicant the provisions in Article 170 paragraph (1) of Law 7/2017 and its Elucidations are the provisions that contain additional requirements for the Petitioner as a political party or coalition of political parties regarding the nomination of the candidates for the President or Vice-President in the general election (the election) because the resignation letter for the state official shall be registered by the political party or coalition of political parties to the KPU (General Election Commission) (*vide* Article 170 paragraph (2) of Law 7/2017). Even though the requirements for the candidates for president and vice president have been regulated in Article 6 of the 1945 Constitution *jo.* Article 169 of Law 7/2017 and the additional requirement which requires the state official, *in casu* the minister, to resign from his position when nominated as a candidate for the candidate for President or Vice President is a discriminatory treatment and in contrary to Article 28I paragraph (2) of the 1945 Constitution.

Whereas against the Petitioner's argument, the Court through the Decision of the Constitutional Court Number 41/PUU-XII/2014, the Decision of the Constitutional Court Decision Number 33/PUU-XIII/2015, and the Decision of the Constitutional Court Number

45/PUU-XV/2017, has taken the stance that Civil Servants/State Civil Apparatus, Employees of the State-Owned Enterprises/Regional-Owned Enterprises, and members of the legislature (DPR, DPD, and DPRD) must resign after being determined as the candidates for regional heads and deputy regional heads by the General Election Commission. With regard to such matter, because in fact both the appointer or the elected public officials/state officials are the positions that are closely related to the issue of neutrality in which there is a potential for abuse of authority, including the use of influence or the use of state-owned facilities in the presidential and vice-presidential election which is no different from the regional head election. Moreover, in the Decision of the Constitutional Court Number 85/PUU-XX/2022 which was declared in a hearing session open to the public on September 29, 2022 [*vide* Paragraph **[3.19]** p. 40], the Court no longer distinguishes between the general election and the regional head elections, so to distinguish the requirement for the resignation of the public officials/state officials, whether appointed or elected, is no longer relevant to be applied in the current context, because to fill such political positions, it requires qualified candidates from various elements and potential of Indonesian human resources. Moreover, to be nominated as the candidate for President or Vice President has special characteristics and requirements as stipulated in the procedures for nominating the President and Vice President. Therefore, to protect the constitutional rights of citizens, *in casu* to be nominated as President or Vice President, the Court has other considerations in relation to the issue of the constitutionality of the norms of Article 170 paragraph (1) of Law 7/2017 and its Elucidations.

Whereas from the perspective of there is any concern that the attachment of any position to an official being nominated as President or Vice President will affect the neutrality of the related person so that there is the obligation to resign, the Court is of the opinion that this is not in line with the protection of the constitutional rights owned by the related official. Moreover, in obtaining this position, the related official has been going on a long career journey, it could be that such time is the peak of the career of the related official. Therefore, without having to resign, the professional maturity of the related official can still be used in contributing to the development of the nation and state, even if the related official loses in the presidential and vice-presidential election. In addition, the existence of different treatment to the ministers or ministerial-level officials as state officials who are required to resign as referred to in the norm of Article 170 paragraph (1) of Law 7/2017 when nominated as the candidates for President or Vice President raises limitations in fulfilling the constitutional rights. The Court is of the opinion that these limitations and distinctions constitute the forms of discrimination against political parties when nominating their best cadres as the candidates for President or Vice President. Moreover, this can injure the constitutional rights of political parties due to the discriminatory treatment as guaranteed and protected by Article 28I paragraph (2) of the 1945 Constitution.

Whereas based on the description of the aforementioned legal considerations, the Court will then provide a review regarding the issue of the constitutionality of the norms of the law being petitioned for review, *in casu* Article 170 paragraph (1) of Law 7/2017, which relates to the phrase "state officials" who are nominated as the candidates for President or Vice President. With regard to such matter, because it is the only thing that distinguishes the argumentation of the *a quo* Petition with the petitions as mentioned above are arguments that excluding the state officials, *in casu* the ministers and minister-level officials, who want to be nominated as President or Vice President, as stated in the argument of the Petitioner's Petition and confirmed in the *petitum* of the Petitioner's petition to be excluded from having to resign. Therefore, as a juridical consequence as has been considered by the Court as mentioned above, the requirement for the resignation of public officials/state officials, including in this case the ministers and ministerial-level officials to be nominated as the candidates for President or Vice President by a political party or coalition of political parties, it is no longer relevant to be upheld and therefore the provisions for the exclusion of the requirement to resign must no longer be maintained in the norms of Article 170 paragraph (1) of Law 7/2017. Thus, the provisions of the norms of Article 170 paragraph (1) of Law 7/2017 must be interpreted as conditional, which full requirement shall be as stated in the *a quo* decision;

Whereas even though the Court in the aforementioned legal considerations has taken

the stance that the ministers or ministerial-level officials may be excluded from resigning if nominated by a political party or coalition of political parties as the candidates for President or Vice President, nevertheless it is important for the Court to emphasize that the position of ministers or ministerial-level officials are included in the cluster of executive power which is part of the power possessed by the President and Vice President. Therefore, for the sake of legal certainty and stability as well as the continuity of government, the ministers or ministerial-level officials are state officials, who shall be excluded if nominated by a political party or coalition of political parties as the candidates for President or candidate for Vice President, they must first obtain the approval and permission to leave from the President.

Whereas furthermore the Court will consider the Elucidation of Article 170 paragraph (1) of Law 7/2017 which is being petitioned for review by the Petitioner as a result of changes in the form of new meanings to the norms of Article 170 paragraph (1) of Law 7/2017. In this regard, due to the provisions of the norm of Article 170 paragraph (1) of Law 7/2017, in principal it is to emphasize the phrase "state officials" who are excluded from resigning in the event that they are nominated as the candidates for President or Vice President by a political party or coalition of political parties, *in casu* for ministers or ministerial-level officials, as contained in the Elucidation of Article 170 paragraph (1) letter g of Law 7/2017, with the declaration of ministers or ministerial-level officials including those excluded from the requirement to resign, as a juridical consequence along the phrase "the ministers and ministerial-level officials" contained in the Elucidation of Article 170 paragraph (1) letter g of Law 7/2017 must be declared as no longer having any relevance to be upheld, so it must be declared as unconstitutional. Therefore, the Elucidation of Article 170 paragraph (1) of Law 7/2017 in full shall be as stated in the *a quo* verdict.

Based on the description of the aforementioned legal considerations, the provisions of the norms of Article 170 paragraph (1) of Law 7/2017 and the Elucidation of Article 170 paragraph (1) letter g of Law 7/2017 have in fact caused discrimination as referred to in the norms of Article 28I paragraph (2) of the 1945 Constitution. Therefore, the arguments of the Petitioner's petition are partially legally reasonable. With regard to any other matters in the *a quo* petition, they shall not be considered further, because they are seen as irrelevant.

1. To partially grant the Petitioner's petition;
2. To declare that the phrase "State Official" in Article 170 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "State officials who are nominated by a Political Party or Coalition Political Parties Contesting in the Election as candidates for President or candidate for Vice President must resign from their positions, except for the President, Vice President, Leaders and members of the MPR, Leaders and members of the DPR, leaders and members of the DPD, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors, including ministers and ministerial-level officials, as long as ministers and ministerial-level officials have obtained the approval and leave permission from the President";
3. To declare that the phrase "ministers and ministerial-level officials" in the Elucidation of Article 170 paragraph (1) letter g of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "state officials", which in this provision shall be:
 - a. Chief, deputy chief, junior chief and chief justice at the Supreme Court;
 - b. Chief, deputy chief, and justices in all judicial bodies, except *ad hoc* justices;
 - c. Chief, deputy chief, and members of the Constitutional Court;
 - d. Chief, deputy chief and members of the Audit Board of the Republic of Indonesia;
 - e. Chief, deputy chief and members of the Judicial Commission;

- f. Chief and deputy chief of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi);
- g. Head of representative of the Republic of Indonesia in the foreign country who holds the position of Extraordinary and Plenipotentiary Ambassador; and
- h. Other national officials as determined by law;
- i. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;
- j. To dismiss the remainder of the Petitioner's petitioner.

Concurring Opinion

Against the *a quo* decision of the Court, I, Constitutional Justice Saldi Isra have concurring opinions. Because of these differences, I have a different construction regarding the conditionally granting the Petitioners' petition partially.

Whereas based on the aforementioned description, I grant the Petitioner's petition partially, so that the norm of Article 170 paragraph (1) of Law 7/2017 is in contrary to the 1945 Constitution of the Republic of Indonesia and conditionally does not have binding legal force as long as it is not interpreted as "State officials who are nominated by a Political Party Contesting in the Election as candidates for President or candidates for Vice President must resign from their positions, except for the President, Vice President, Leaders and members of the MPR, Leaders and members of the DPR, leaders and members of the DPD, governors, deputy governors, regents, deputy regents, mayors, and deputy mayors, including ministers and ministerial-level officials, as long as ministers and ministerial-level officials have obtained the approval and leave permission from the President and have taken leave/non-active as ministers and ministerial-level officials from the time they are nominated as candidates until the completion of the presidential and vice-presidential election stages. Meanwhile, with regard to Elucidation 170 paragraph (1) of Law 7/2017, it shall be adjusted according to the conditional meaning or new meaning of Article 170 paragraph (1) of Law 7/2017.