



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 87/PUU-XX/2022**

Concerning

**Requirements for becoming a candidate for members
of the House of Representatives, Provincial Legislative Council,
and Regency/Municipal Legislative Council**

- Petitioner** : **Leonardo Siahaan**
- Type of Case** : Material 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** : Article 240 paragraph (1) letter g of Law 7/2017 is contrary to Article 28J paragraph (1) of the 1945 Constitution
- Verdict** : 1. To dismiss the Petitioner's petition in its entirety.
2. To declare that Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Election (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, provided that it is not interpreted as followed:
- (1) a candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council must be an Indonesian citizen and must fulfil the following requirements:
- ...
- (g)(i) has never been a convict under a court decision with permanent legal force for committing a criminal act that is punishable by imprisonment for 5 (five) years or more, except for a convict who committed a criminal act of negligence and a political crime in the sense of such act is declared a criminal offence under the positive law solely because the perpetrator has a different political view from the ruling regime; (ii) for a former convict, a period of 5 (five) years has passed after the former convict has

completed serving a prison sentence under a court decision with permanent legal force and has honestly or openly disclosed his/her identity background as a former convict; and (iii) is not a repeat offender;

3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the remainder of the Petitioner's petition.

Date of Decision : Wednesday, November 30, 2022

Overview of Decision :

The Petitioner is an individual Indonesian citizen who has the right to vote in the election, and he has fears of direct or indirect or at least potential losses due to the enactment of Article 240 paragraph (1) letter g of Law 7/2017.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the constitutionality of legal norms, *in casu* Article 240 paragraph

(1) letter g of Law 7/2017 against the 1945 Constitution, therefore the Court has the authority to hear the petition of the Petitioner.

Regarding the legal standing, the Petitioner argues that he has the right to vote and he has fears of direct or indirect or at least potential losses due to the enactment of the norms of Article 240 paragraph (1) letter g of Law 7/2017 in connection with the phrase "...unless openly and honestly disclosing to the public that the relevant person is a former convict"; as it may result in the practice of candidacy buying.

Pursuant to the description conveyed by the Petitioner in explaining his legal standing above, the Court is of the opinion that the Petitioner has been able to explain his constitutional rights which, according to him, have been impaired by the enactment of the legal norms that are being petitioned for review, namely the norms of Article 240 paragraph (1) letter g of Law 7/ 2017 in connection to the phrase "...unless openly and honestly disclosing to the public that the relevant person is a former convict". Such presumption of constitutional loss is specific and actual or at least potential. Therefore, the presumed loss of constitutional rights as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the legal norms being petitioned for review. Therefore, if the *a quo* petition is granted, the presumed constitutional loss as described will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Before considering the subject matter of the petition, pursuant to Article 54 of the Constitutional Court Law, since the *a quo* petition is clear, the Court is of the opinion that there is no urgency to ask for statements from the parties as described in Article 54 of the Constitutional Court Law.

Before further considering the subject matter of the Petitioner's petition, since the review of the constitutionality of the norms of Article 240 paragraph (1) letter g of Law 7/2017 has been carried out in petitions Number 81/PUU-XVI/2018 and Number 83/PUU-XVI/2018, the Court will first consider whether the *a quo* petition complies with the provisions of Article 60 paragraph (2) and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (Constitutional Court Regulation 2/2021), to determine whether the *a quo* norms may be re-reviewed. After careful examination by the Court, it turned out that Petition Number 81/PUU-XVI/2018 used

Article 28D paragraph (1) and Article 28J paragraph (2) of the 1945 Constitution as legal basis for review, meanwhile Petition Number 83/PUU-XVI/2018 used Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution as legal basis for review. On the other hand, the *a quo* petition uses Article 28J paragraph (1) of the 1945 Constitution as legal basis for review. Pursuant to the reasons for submitting the petition in Case Number 81/PUU-XVI/2018, the Petitioner wished for the phrase "unless openly and honestly disclosing to the public that the relevant person is a former convict" in Article 240 paragraph (1) letter g of Law 7/2017 to not be interpreted as "including former convict in corruption crime".

Meanwhile, in Case Number 83/PUU-XVI/2018, the Petitioner wished the candidate for Membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council, even though he/she has been sentenced to prison, he/she is not convicted of committing corruption crime, drug crime, sexual crime against children, and terrorism crime under a court decision with permanent legal force. Meanwhile, the constitutional reasons for the *a quo* petition is the provisions of norms of Article 240 paragraph (1) letter g of Law 7/2017 in connection with the phrase "...unless openly and honestly disclosing to the public that the relevant person is a former convict" is contrary to the 1945 Constitution and it does not have binding legal force on because it may result in the abuse of power, creating a high number of abstentions, and the possibility of nominating a former convict as a legislative member will spread the seeds of corruption to other legislative members or even will repeat corrupt practices that have been carried out previously and are contrary to Article 18 of Law 31/1999

Pursuant to the aforementioned description, there are differences in both the legal basis for review and the reasons used for submitting petition of judicial review between Petition Number 81/PUU-XVI/2018 and Petition Number 83/PUU-XVI/2018 and the *a quo* petition. Therefore, regardless of whether the Petitioner's *a quo* petition is legally grounded or not, pursuant to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of Constitutional Court Regulation 2/2021, the *a quo* petition may be re-submitted.

Regarding the Petitioner's argument, he questions the constitutionality of the norms of Article 240 paragraph (1) letter g of Law 7/2017 in connection with the phrase "...unless openly and honestly disclosing to the public that the relevant person is a former convict" is contrary to the 1945 Constitution, because it may result in the abuse of power, creating a high number of abstentions, and the possibility of nominating a former convict as a legislative member will spread the seeds of corruption to other legislative members or even will repeat corrupt practices that have been carried out previously and are contrary to Article 18 of Law 31/1999. Furthermore, regarding the public positions which are obtained by election (elected officials), in this case the elections of President, legislative members and regional heads, they cannot be separated from the model or procedure of organizing the elections, which are known as the general election regimes and the regional head election regimes. General elections may be in the form of elections of the President and/or Vice President, and may also be in the form of elections for Membership in the House of Representatives, Regional Legislative Council and Regional Representatives Council. Meanwhile, the regional head elections include the elections of Governor/Deputy Governor, Regent/Deputy Regent and Mayor/Deputy Mayor. In this regard, the Court, in the Decision of the Constitutional Court Number 85/PUU-XX/2022 which was declared in a plenary session open to the public on 29 September 2022, has emphasized that there is no longer a difference between the regime of general elections and regional head elections. Therefore, regarding one of the requirements to become a candidate for public elected official through the general elections, namely President/Vice President, members of the House of Representatives/Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council, and Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor, a person who has been sentenced to any crime as regulated in

Article 240 paragraph (1) letter g of Law 7/2017 for the candidates for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council, and Regional Representatives Council, and for the candidates of regional heads as regulated in Article 7 paragraph (2) letter g of Law 10/2016, the Court will further consider whether or not there is any inconsistency between the two norms, considering that both regulate the formal requirements to become a candidate for such public elected official.

In relation to the provisions of the norms of Article 240 paragraph (1) letter g of Law 7/2017 as petitioned for judicial review by the Petitioner, it substantially regulates the requirements for former convicts who become the candidates for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council. Meanwhile, the provisions of the norms of Article 7 paragraph (2) letter g of Law 10/2016 also regulate the things which are essentially the same as the provisions of the norms of Article 240 paragraph (1) letter g of Law 10/2016, namely regarding the requirements for a former convict to become a candidate for regional head, Governor /Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor. Therefore, by looking carefully at the two formal requirements to be able to become a candidate for public elected official, even though they substantially regulate the same thing, there are differences between the two. The very fundamental difference is that in the norm provisions of Article 240 paragraph (1) letter g of Law 7/2017, it is still an alternative, namely that the candidates for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council who keep the status of former convicts may directly nominate themselves provided that they are openly and honestly disclosing to the public that they are former convicts. Meanwhile, the provisions of the norms of Article 7 paragraph (2) letter g of Law 10/2016 regulate that the requirements are cumulative for former convicts who wish to nominate themselves in the elections of regional head, Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor. This means that a waiting period of 5 (five) years is required after the relevant person has completed serving their criminal sentence and openly and honestly disclosing to the public that the relevant person is a former convict. Such differences are caused by the conditionally constitutional interpretation of the provisions of the norms of Article 7 paragraph (2) letter g of Law 10/2016 by the Constitutional Court. In relation to one of the requirements to become a candidate for regional head as a former convict, the Constitutional Court through its decisions and most recently through the Decision of the Constitutional Court Number 56/PUU-XVII/2019 which was declared in a plenary session open to the public on 11 December 2019 has taken the stance as described in the legal considerations in Sub-Paragraph **[3.12.1]** and Sub-Paragraphs **[3.12.2]**.

By referring to the description of the legal considerations as outlined above, and upon also examining the excerpts of the legal considerations in these decisions, the empirical facts show that the candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council who has previously served any criminal sentence which carries the threat of imprisonment of 5 (five) years or more, unless openly and honestly disclosing to the public that the relevant person is a former convict as regulated in the norms of Article 240 paragraph (1) letter g of Law 7/2017 has evidently not been in line with the norms of the requirements to become a candidate for regional head as regulated in the norms of Article 7 paragraph (2) letter g of Law 10/2016 which have been given a conditionally constitutional interpretation by the Court, even though both are one of the formal requirements for public elected official, therefore such difference results in disharmony in the implementation of these norms to the legal subjects who actually have the same goal, namely to be chosen in the election. Therefore, the differences between the requirements to become a candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council and the regional head candidates, namely

the candidates for Governor/Deputy Governor, Regent/Deputy Regent, and Mayor/Deputy Mayor as former convict as considered above may result in violations of citizens' constitutional rights as regulated in Article 28J paragraph (1) of the 1945 Constitution. The factual difference lies in the norms of Article 240 paragraph (1) letter g of Law 7/2017 in connection with the phrase "unless openly and honestly disclosing to the public that the relevant person is a former convict" which is no longer in line with the interpretation made by the Court in its decision on norms of Article 7 paragraph (2) letter g of Law 10/2016.

Pursuant to the description of the legal considerations above, the Court is of the opinion that the provisions of the norms of Article 240 paragraph (1) letter g of Law 7/2017 need to be harmonized by also imposing a waiting period of 5 (five) years after the former convict has completed serving his prison sentence under the court decision with permanent legal force and by providing honesty or openness regarding his identity background as a former convict as a condition for being a candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council, in addition to other requirements which are also added according to the conditionally constitutional interpretation contained in Article 7 paragraph (2) letter g of Law 10/2016. This is because, as has been quoted in the legal considerations of the previous decisions, the waiting period of 5 (five) years after the convict has completed serving his/her sentence is a sufficient time period for self-introspection and to adapt to the local community for the candidate for regional head, including in this case the candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council. Likewise, the requirement of having to openly disclose to the public about his/her identity and not hiding his/her life background is implemented in order to provide consideration for potential voters in assessing or determining their choice. Because, in connection with this, the voters are able to critically assess the candidate and the advantages and disadvantages of such candidate must be known by the general public (*notoir feiten*). Therefore, it is up to the community or people as voters whether or not they wish to vote for a candidate who is a former convict. In addition, for the public elected officials, ultimately the people who hold the highest sovereignty will determine their choice.

Furthermore, in relation to the requirement of not being a repeat offender, it is important for the Court to reaffirm that because the empirical facts show that there are several regional head candidates who have served time in prison and have not been given sufficient time to adapt and prove that they have factually reintegrated into the society and then they turned out to again engaged in disgraceful behaviour and even repeating the same criminal act (*in casu* factually, especially criminal acts of corruption), so that it is further away from the goal of presenting leaders who are clean, honest and have integrity. Therefore, in order to protect the greater interests, namely in this case the public's interest in having leaders who are clean, have integrity, and are able to provide good public services and bring prosperity to the people they lead, the Court found no other way except to impose the cumulative conditions as stated in in the legal considerations of the Constitutional Court decisions that have been quoted above and most recently reaffirmed in the Decision of the Constitutional Court Number 56/PUU-XVII/2019. In addition, such steps are also considered important by the Court in order to provide legal certainty and restore the essential meaning of selecting candidates for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council, namely providing people who have the quality and integrity to become public officials and at the same time without eliminating the political rights of citizens who have been convicted to continue participating in government.

Pursuant to the description of the aforementioned legal considerations, the Court considers that it has been proven that there are constitutionality issues in the provisions of the norms of Article 240 paragraph (1) letter g of Law 7/2017 which regulate the requirements for former convicts who wish to nominate themselves as members of the

House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council so that they are in contrary to the provisions of Article 28J of the 1945 Constitution. Therefore, regarding the *a quo* norm, it must be aligned with the spirit contained in the provisions of the norms of Article 7 paragraph (2) letter g of Law 10/2016 as interpreted in the Decision of the Constitutional Court Number 56/PUU-XVII/2019.

Pursuant to all the descriptions of legal considerations as outlined above, because the Petitioner's argument stating that there is a constitutionality issue regarding the norms of Article 240 paragraph (1) letter g of Law 7/2017 can be proven, however, since the interpretation requested by the Petitioner is not the same as the interpretation given by the Court, the Petitioner's petition is legally justifiable in part.

Whereas pursuant to the above examination of the facts and law, the Court passed down a decision which verdicts are as follows:

1. To dismiss the Petitioner's petition in its entirety.
2. To declare that Article 240 paragraph (1) letter g of Law Number 7 of 2017 concerning General Election (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution and does not have binding legal force, provided that it is not interpreted as if it were formulated in full to read:

(1) a candidate for membership in the House of Representatives, Provincial Regional Legislative Council and Regency/Municipal Regional Legislative Council must be an Indonesian citizen and must meet the following requirements:

...

- g. (i) has never been a convict under a court decision with permanent legal force for committing a criminal act that is punishable by imprisonment for 5 (five) years or more, except for a convict who committed a criminal act of negligence and a political crime in the sense of such act is declared a criminal offence under the positive law solely because the perpetrator has a different political view from the ruling regime; (ii) for a former convict, a period of 5 (five) years has passed after the former convict has completed serving a prison sentence under a court decision with permanent legal force and has honestly or openly disclosed his/her identity background as a former convict; and (iii) is not a repeat offender;
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;
 4. To dismiss the remainder of the Petitioner's petition.