CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 117/PUU-XX/2022

Concerning

Requirements for Nominating President and Vice President

Petitioner	:	**The Berkarya Party (Partai Berkarya), represented by Muchdi Purwopranjono as the General Chair of the Berkarya Party Central Leadership Council and Fauzan Rachmansyah as the Secretary General of the Berkarya Party Central Leadership Council**
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 169 letter n and Article 227 letter i of Law 7/2017 against Article 1 paragraph (3), Article 7, Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	To dismiss the Petitioner's petition entirely
Date of Decision	:	Tuesday, January 31, 2023
Overview of Decision	:	

The Petitioner is a political party that participated in the 2019 General Election. However, the Petitioner does not qualify to participate in the 2024 Election.

Regarding the authority of the Court, because the Petitioner petitions for a review of Article 169 letter n and Article 227 letter i of Law 7/2017 against Article 1 paragraph (3), Article 7, Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, the Court has the authority to hear the Petitioner's petition.

Regarding the Petitioner’s legal standing, the Petitioner argues that they, as a political party, believe that they have the constitutional right to nominate a pair of candidates for president or vice president, including candidates currently in office or elected as President or Vice President in the previous election (*incumbent*) to seek re-election in the next election and hold office for five years. However, the existence of Article 169 letter n and Article 227 letter i of Law 7/2017 has limited or reduced the Petitioner's constitutional rights in the past 2019 General Election to nominate a candidate for President or candidate for Vice President due to the *a quo* provisions have provided the requirements for candidates for President or Vice President in which they shall have never served as President or Vice President for 2 (two) terms of office in the same position or often referred to for 2 (two) periods as evidenced by a statement letter

so that in the 2019 General Election the Petitioner as an election contestant could not nominate a candidate who had served 2 (two) times in the same position to be nominated again. The Court is of the opinion that the Petitioner has been able to prove that the Petitioner is a political party that has received legitimacy from the Ministry of Law and Human Rights, and the deed of establishment has stated who can represent the party in a trial before the court, namely the Petitioner's General Chair of the Central Leadership Council and Secretary General of the Central Leadership Council. In terms of the loss of its constitutional rights, the Court is of the opinion that the Petitioner, that was a political party contestant in the 2019 General Election, has been able to describe his constitutional rights guaranteed by the 1945 Constitution, which are presumed to have been harmed or be potentially harmed by the enactment of the norms of the law petitioned for review. The Petitioner has also been able to explain the existence of a causal relationship (*causal verband*) between the deemed potential loss of the constitutional rights, which, according to reasonable reasoning, can be ascertained to occur and the enactment of the norms of the law being petitioned for review. Therefore, regardless of whether or not the arguments in the Petitioner's petition are proven, the Court is of the opinion that Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Regarding the subject matter of the Petitioner's petition, which principally argues that the provisions of Article 169 letter n *jo* Article 227 letter i of Law 7/2017 are contrary to the 1945 Constitution and potentially harm or impede the Petitioner's constitutional rights in nominating a pair of candidates for President or Vice President, the Court principally considers as follows:

a. Whereas the touchstone and the reason for the *a quo* petition are different from the previous petition that the Court has decided, the Court is of the opinion that the *a quo* petition is not *ne bis in idem*.

b. Whereas Article 7 of the pre-amendment of the 1945 Constitution was considered to have opened loopholes for the New Order regime to manipulate in such a way that Soeharto had become the President for more than 32 years, and therefore the 1998 Special Session of the MPR agreed to limit the period of presidential tenure in a legal product called the MPR Decree, namely: MPR Decree Number XIII/MPR/1998 concerning Limitations on the Term of Office of the President and the Vice President. The Preamble letter c of MPR Decree Number XIII/MPR/1998 states, "In the course of the constitutional administration of the Republic of Indonesia, the absence of limitation to the number of times a President and Vice President can be re-elected to hold office has led to various interpretations that are detrimental to people's sovereignty/democratic life". Therefore, the MPR members agreed to amend the substance of Article 7 of the 1945 Constitution without waiting for the amendment to the 1945 Constitution according to Article 37 of the 1945 Constitution to become: "The President and Vice President of the Republic of Indonesia hold office for a period of five years and thereafter may be re-elected to the same position for only one term" [vide Article 1 of MPR Decree Number XIII/MPR/1998].

c. Whereas when an agreement to amend the 1945 Constitution was reached, the MPR adopted the substance of MPR Decree Number XIII/MPR/1998 to become material for amending the 1945 Constitution in the first amendment in 1999. One of the reasons for adopting the substance of the MPR Decree No. XIII/MPR/1998 to become a constitutional substance was that the provisions below the constitution were considered inadequate for fundamental matters such as limitation of the term of office period of the President and Vice President. The legislators amending the

1945 Constitution agreed that the substance of the norms of Article 7 of the 1945 Constitution was intended consecutively and non-consecutively [vide Comprehensive Text of the 1945 Constitution Book IV, Volume 1, p. 477]. When placed in the context of presidential democracy, such limitation of two consecutive times was meant to be the maximum limit for someone to become President or Vice President.

d. Whereas regarding the requirements to become President and Vice President are constitutionally provided in Article 6 of the 1945 Constitution. In this case, the norm of Article 6 paragraph (1) of the 1945 Constitution states, "Candidates for President and Vice President must be an Indonesian citizen from birth and have never accepted other citizenship at their own will, have never betrayed the country, and be mentally and physically able to carry out their duties and obligations as President and Vice President". Because it is impossible for constitutional norms to regulate these requirements in detail, Article 6 paragraph (2) of the 1945 Constitution further regulates stating, "The requirements to become President and Vice President are further regulated by law".

e. Whereas a requirement to become a candidate for President and a candidate for Vice President as provided in Article 169 letter n and Article 227 letter i of Law 7/2017 as mentioned above, namely having never served as President or Vice President for 2 (two) terms of office in the same position followed by a statement letter that they have never served for 2 (two) periods, is the norm intended to maintain the substance of the norms of Article 7 of the 1945 Constitution. The Elucidation of Article 169 letter n of Law 7/2017 that also emphasises explicitly the meaning of "has not served 2 (two) terms of office in the same position" to be such that the person concerned has never served in the same position for two terms of office, both consecutively or non-consecutively, even though the term of office is less than 5 (five) years, is also an emphasis of the intent of Article 7 of the 1945 Constitution. Thus, the provisions contained in Article 169 letter n and Article 227 letter i of Law 7/2017 are guidelines that general election organisers must follow in assessing the fulfilment of the requirements to become candidates for President and Vice President. In addition, such two norms aim to maintain consistency and avoid degradation of the norms of Article 7 of the 1945 Constitution.

f. Whereas in accordance with all of the above legal considerations, the court is of the opinion that it turns out that Article 169 letter n and Article 227 letter i Law 7/2017 do not raise the issue of legal uncertainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Accordingly, the Petitioner's arguments were entirely legally unjustifiable, and the Court passes down a decision in which the verdict is to dismiss the Petitioner's petition entirely.

Dissenting Opinion

Regarding the *a quo* Constitutional Court decision, 1 (one) Constitutional Justice, namely Constitutional Justice Daniel Yusmic P. Foekh, has a dissenting opinion as follows:

Whereas if one examines the provisions of Article 221 and Article 222 of Law 7/2017, pairs of candidates for President or Vice President shall be nominated by political parties participating in an election that meet the requirements for obtaining at least 20% (twenty per cent) of the seats in the DPR or obtaining 25% (twenty-five per cent) of nationally valid votes in the previous parliamentary elections. In this regard, the Petitioner is not a political party contestant in the 2024 General Election as acknowledged by the Petitioner in court, nor can the Petitioner prove that the

Petitioner is forming a coalition or joining other political parties to nominate a pair of candidates for President and Vice President in the 2024 Election. The legal facts further confirm the absence of loss and causal relationship between the Petitioner's loss and the enactment of Article 169 letter n and Article 227 letter i of Law 7/2017 so that there is no constitutional right of the Petitioner to be restored (redressability). Thus, the enactment of Article 169 letter n and Article 227 letter i of Law 7/2017 does not in any way harm the Petitioner's constitutional rights. Therefore the Petitioner does not have a legal standing in the *a quo* case, and the Court should declare the Petitioner's petition inadmissible (*niet ontvankelijke verklaard*).