



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 12/PUU-XXI/2023**

**Concerning**

**Requirements for Former Convicts in Running as Prospective Members  
of the Regional Legislative Council**

<b>Petitioner</b>	: <b>Perkumpulan untuk Pemilu dan Demokrasi (Perludem or the Association for General Elections and Democracy), represented by Khoirunnisa Nur Agustyati as the Chair of Perludem and Irmalidarti as the Treasurer of Perludem</b>
<b>Type of Case</b>	: 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)
<b>Subject Matter</b>	: Article 182 letter g of Law 7/2017 is contrary to Article 1 paragraph (2) and paragraph (3), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
<b>Verdict</b>	: <b>On Preliminary Injunction:</b> To dismiss the Petitioner's petition for preliminary injunction.

**On the Merits:**

1. To partially grant the Petitioner's petition;
2. To declare that the norms of Article 182 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) are contrary to the 1945 Constitution and does not have conditionally legal binding force to the extent that it is not given meaning as follows:

Individuals, as referred to in Article 181, may be eligible to become Election Contestants after fulfilling the following requirements:

g. (i) having never been a convict under a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, except for a convict who commits criminal negligence and a political crime in the sense of the act is stated as a criminal act in positive law only because the perpetrator has a different political view from the regime in power; (ii) for

former convicts, having passed a period of 5 (five) years after the former convicts have finished serving their sentence of imprisonment under a court decision that has permanent legal force and honestly or openly announcing their identity background as former convicts; and (iii) not being repeat offenders;

3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

**Date of Decision** : Tuesday, February 28, 2023

**Overview of Decision** :

The Petitioner is the Association for General Elections and Democracy (Perludem), a Non-Governmental Organization or Civil Society Organization (LSM). In this case, it is represented by Khoirunnisa Nur Agustyati as the Chair and Irmalidarti as the Treasurer of Perludem. The Petitioner is of the opinion that Article 182 letter g of Law 7/2017 has indirectly harmed the Petitioner's efforts and endeavours so far to realize strict requirements for each former convict who will take part in the General Election process for candidates for the Regional Representatives Council (DPD), which is a representative institution that is also elected through General Elections. The *a quo* provisions cause the practice of electing members of the DPD to be dishonest and unfair so that the Petitioner is harmed because the objectives of the establishment of the Petitioner's organization have become irrelevant, and the activities that the Petitioner has carried out to achieve the objectives of the organization have become in vain.

Regarding the Court's authority, because the Petitioner is petitioning for a review of the Law *in casu* Article 182 letter g of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

The Petitioner's legal standing as a private legal entity is consistent with the 2011 Deed of the Perludem Foundation and the 2020 Deed of Statement of Decision of the Trustees of the Perludem Foundation, and in this case, is represented by the Chair and the Treasurer. Regarding the loss of constitutional rights, the Petitioner has been able to explain specifically his constitutional rights, which in the Petitioner's opinion, have been or at least are potentially harmed by the enactment of the legal norms being petitioned for review. The presumption of loss arises because of the causality (*causal verband*) between the norms being petitioned for review and the loss presumed to be experienced by the Petitioner regarding the Petitioner's constitutional rights guaranteed by the 1945 Constitution, so that if the petition is granted, then such loss will no longer occur. Therefore, regardless of whether or not the unconstitutionality of the norms of Law 7/2017 petitioned for review, the Court is of the opinion that Petitioner has the legal standing to submit the *a quo* petition.

Regarding the petition for preliminary injunction to make the *a quo* petition a priority in the examination, regardless of whether or not there is a petition for preliminary injunction from the Petitioner, the Court has by itself passed down a decision towards the *a quo* petition in a short time without having to hear the parties referred to in Article 54 of the Constitutional Court Law. Moreover, the Court is of the opinion that the *a quo* petition has an urgency to be decided immediately. Thus, the Petitioner's petition of preliminary injunction is irrelevant for further consideration and therefore it is legally unjustifiable.

Furthermore, regarding the Petitioner's petition, it is evident that the substance of the Petitioner's petition relates to the requirements for former convicts to contest in a General Election. Thus, the constitutional issues that the Court must answer in the *a quo* case are, firstly, whether the cumulative requirements for former convicts who will contest in a General Election as stated in Constitutional Court Decision Number 56/PUU-XVII/2019 for former convicts' candidacy for regional heads and Constitutional Court Decision Number 87/PUU-

XX/2022 for former convicts' candidacy for DPR and DPRD members, must also be applied for former convicts' candidacy for DPD members because the positions are also elected through General Elections. In addition, whether it is necessary to add the requirement of not being subject to additional sentences in the form of the revocation of voting rights by a court decision that has permanent legal force so that the five-year grace period is calculated after the completion of all sentences including additional sentences unless the additional sentence is imposed for life. Regarding the *a quo* Petitioner's argument, the Court considered as follows:

1. Whereas the harmonization of the norms regarding the requirements for former convicts who will run for candidacies for regional heads and members of the DPR and the DPRD has provided legal certainty and, at the same time, has restored the essential meaning of the election of candidates for Governor, Regent and Mayor as well as candidates for members of the DPR, the provincial DPRD, and the regency/municipal DPRD, namely to produce people who have the quality and integrity to become public officials and at the same time to not eliminate the political rights of citizens who have been convicts to continue to participate in the government. However, not all public positions elected in elections have the same meaning. Such differences in meaning can be read, among other things, from the requirements to become a candidate for DPD member;
2. Whereas regarding a requirement to become a candidate for DPD member, namely as set forth in the norm of Article 182 letter g of Law 7/2017, as petitioned for review by the Petitioner, it essentially regulates the requirements for former convicts who will run for candidacies for DPD members. When read carefully, the norms given meaning above essentially regulate the same thing as the norm of Article 182 letter g of Law 7/2017, namely public positions elected in elections. Therefore, the absence of giving meaning in Article 182 letter g of Law 7/2017 opens the possibility that candidates for DPD members with the status of former convicts may run for candidacies without first fulfilling the meaning as intended in Constitutional Court Decision Number 56/PUU-XVII/2019 and Constitutional Court Decision Number 87/PUU-XX/2022. Therefore, the substance of the norms of Article 182 letter g of Law 7/2017 is not in line with the spirit of the two decisions, even though regional heads, members of the DPR and the DPRD, as well as members of the DPD, are public positions elected in elections (elected officials). The existence of such a distinction results in inconsistency and disharmony in the application of these norms to legal subjects who have the same goal, namely to be elected in elections. Therefore, the differentiation in the requirements for former convicts to become a candidate for DPD members may result in the violation of citizens' constitutional rights as stipulated in Article 28D paragraph (1) of the 1945 Constitution;
3. Whereas regarding the *petitum* of the Petitioner's petition that also requires an additional meaning, namely "not being subject to additional sentences in the form of the revocation of voting rights by a court decision that has permanent legal force", the Court is of the opinion that, on the one hand, such additional meaning will result in different requirements between those for candidates for regional heads, DPR members and DPRD members and those for candidates for DPD members. This can create inconsistency and disharmony in the norms of the candidacy requirements for all positions elected in elections. While on the other hand, the additional meaning potentially brings legal uncertainty. Because, an additional sentence is a type of punishment that is optional that can be imposed by judges in concrete cases handled by the scope of judicature outside the Court. In addition, in the imposition of temporary additional sentences, it is not easy to find a measure of the time between the imposition of additional sentences and the waiting period (juncture) for former convicts to submit themselves as candidates for election, making it difficult to implement them. Meanwhile, the imposition of additional sentences of permanent or lifelong revocation of political rights is outside the context of

former convicts referred to in the decisions above. Thus, to create equal treatments for all candidates who will contest public positions which are elected through elections (elected officials), until now, the Court remains with its previous stance, and there is no solid reason for the Court to add additional sentences in the cumulative requirements as petitioned by the Petitioner.

In accordance with the entire description of the considerations above, the Court considers that it has been proven that the provisions of the norms of Article 182 letter g of Law 7/2017, which regulate the requirements for former convicts who will run for candidacies for DPD members have been proven to have problems with the constitutionality of norms as argued by the Petitioner. Still, because the meaning petitioned by the Petitioner is different from the Court's meaning, then the Petitioner's petition is partially reasonable.

Accordingly, the Court subsequently passes down a decision in which the verdicts are as follows:

### **On Preliminary Injunction:**

To dismiss the Petitioner's petition for preliminary injunction.

### **On the Merits:**

1. To partially grant the Petitioner's petition;
2. To declare that the norms of Article 182 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) are contrary to the 1945 Constitution and does not have conditionally legal binding force to the extent that it is not given meaning as follows:  
Individuals, as referred to in Article 181, may be eligible to become Election Contestants after fulfilling the following requirements:
  - g. (i) having never been a convict under a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, except for a convict who commits criminal negligence and a political crime in the sense of the act is stated as a criminal act in positive law only because the perpetrator has a different political view from the regime in power; (ii) for former convicts, having passed a period of 5 (five) years after the former convicts have finished serving their sentence of imprisonment under a court decision that has permanent legal force and honestly or openly announcing their identity background as former convicts; and (iii) not being repeat offenders;
3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the Petitioner's petition in terms of other and the rest.