



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 16/PUU-XXI/2023

Concerning

Threshold for Nominating President and Vice President (Presidential Threshold)

- Petitioner** : The Nusantara Awakening Party (PKN), represented by Gede Pasek Suardika as the General Chair and Sri Mulyono as the Secretary-General
- 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** : The provision for nominating pairs of candidates for President and Vice President in Article 222 of Law 7/2017 is contrary to the general elections principles of direct, free, secret, honest and fair, principles of equal standing in laws and the government, and principles of fair legal certainty and equality before the law guaranteed in Article 6A paragraph (2), Article 22E paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To declare the Petitioner's petition inadmissible
- Date of Decision** : Thursday, March 30, 2023
- Overview of Decision** :

Whereas the Petitioner is a Political Party that participated in the 2024 General Election, represented by the General Chair and the Secretary-General. The Petitioner is of the opinion that there was discrimination in terms of re-registration between old political parties and new parties, even though the process they went through to become election participants was relatively the same.

Regarding the authority of the Court, because the *a quo* submitted petition is a review of the constitutionality of the norms of Law, *in casu* Article 222 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioner's legal standing, the Court needs to relate the Petitioner's *petitum* in its petition petitioning the Court to declare that Article 222 of Law 7/2017 means "Requirements for nominating pairs of candidates do not apply to political party participants in elections that have never participated in elections in the previous period". Regarding the Petitioner's *petitum* as such, which is related to the

Petitioner's legal standing in the case of reviewing the constitutionality of Article 222 of Law 7/2017, the Court in its legal considerations Sub-paragraph [3.6.2] in Constitutional Court Decision Number 52/PUU-XX/2022 pronounced in a plenary session open to the public on 7 July 2022, considers that the parties that have legal standing to submit petitions of reviews of the norms of Article 222 of Law 7/2017 are (i) political parties or coalitions of political parties participants in elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participants in General Elections to nominate themselves or be nominated as pairs of candidates for President and Vice President or include supporting political parties to submit petitions jointly. In addition, the Court has also decided on reviews of the constitutionality of Article 222 of Law 7/2017 submitted by Petitioners of Political Parties, namely, among other things, in Constitutional Court Decision Number 73/PUU-XX/2022 pronounced in a plenary session open to the public on 29 September 2022. The Court, in the previous decision, granted the legal standing to the political party as a Petitioner in the petition for review of Article 222 of Law 7/2017 because the petitioner was a political party who was concerned about the minimum number (minimum threshold) of votes acquired by political parties or coalitions of political parties to be able to nominate a pair of candidates for President and Vice President. The same applied to the Petitioner in Constitutional Court Decision Number 53/PUU-XV/2017 pronounced in a plenary session open to the public on 11 January 2018, namely the Safe Peaceful Islamic Party (IDAMAN), the Court also granted legal standing even though the party had never participated in Elections when submitting the petition for review of Article 222 of Law 7/2017, but the issue at that time was the threshold, not the nomination of candidates for President and/or Vice. The *a quo* Petitioner, however, does not question the minimum number (minimum threshold) of votes acquired by political parties or coalitions of political parties to be able to nominate a pair of candidates for President and Vice President. Instead, the Petitioner petitions for the Court so that, as a political party participant in Elections that has never participated in previous period elections, it becomes eligible to participate in nominating a pair of candidates for President and Vice President. As a further consideration, as a political party that has never participated in an election, the Petitioner's acceptability and quality have not been tested by public opinions, and this relates to or has an impact on the quality of the candidates for President and/or Vice President it proposes.

Whereas in addition, the Court is of the opinion that the provisions of Article 222 of Law 7/2017 stating, "Pairs of Candidates shall be nominated by Political Parties or Coalitions of Political Parties Participants in General Elections 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 General Election", is intended to regulate the minimum number (minimum threshold) of acquired votes as a requirement that applies to political parties or coalitions of political parties Participants in General Election that have participated in the previous Election in nominating a pair of candidates for President and Vice President. Thus, because the Petitioner is a political party that has never participated in the previous General Election and has just become a political party participant that will take part in the General Election in 2024, while the norm contained in Article 222 of Law 7/2017 applies to political parties that have participated in a General Election and have obtained votes of specific number, the Court is of the opinion that the threshold/provision in Article 222 of Law 7/2017 cannot be applied to the Petitioner. In this regard, Constitutional Justice Suhartoyo has proposed the same stance of

dissenting opinion as in previous decisions.

Whereas the Court is of the opinion that the Petitioner has no legal standing to submit the *a quo* petition. Nevertheless, without intending to consider the subject matter of the petition, the Court is of the opinion that the provision of Article 222 of Law 7/2017, which provides the requirements for nominating pairs of candidates for President and Vice President in accordance with the acquisition of the DPR seats or nationally valid votes in the previous parliamentary General Election, does not imply impeding the Petitioner's constitutional rights as a new political party to participate in nominating a pair of candidates for President and Vice President in the upcoming General Election after the 2024 General Election because the Petitioner can still join another political party or coalition of political parties that have met the threshold requirement in nominating President and Vice President.

Whereas pursuant to these legal considerations, the Court is of the opinion that the Petitioner has no legal standing to submit the *a quo* petition. Therefore, the Court does not consider the subject matter of the petition, so in its verdict, the Court declares the Petitioner's Petition inadmissible.

Dissenting Opinion

Regarding the Court's decision, 1 (one) constitutional judge has a dissenting opinion, namely Constitutional Justice Saldi Isra, as follows:

Whereas pursuant to the description of the provisions of Article 51 paragraph (1) of the Constitutional Court Law and the requirements for the loss of constitutional rights and/or authorities, the Petitioner is a party that has a direct interest in the process and procedures of the nomination of president and vice president. In this case, constitutionally, the norm of Article 6A paragraph (2) of the 1945 Constitution states, "Pairs of candidates for President and Vice President are nominated by political parties or coalitions of political parties participating in general elections prior to the holding of the general elections". In some events of dissenting opinion regarding the constitutionality of the threshold for nominating candidates for president and vice president, it is principally argued that, pursuant to the provisions of Article 6A paragraph (2) of the 1945 Constitution, all political parties that have been declared or determined as political parties participating in a period of the general election have the right to nominate or propose pairs of candidates for President (and Vice President). In its position as a constitutional norm which explicitly determines subjects entitled to nominate candidates for President (and Vice President), further provisions (namely laws) on nominations may not reduce the rights of parties specified by the Constitution to have the right to nominate candidates for the President (and Vice President).

Whereas pursuant to the General Election Commission Decree Number 518 of 2022 concerning the Determination of Political Parties Participants in the General Election of the Members of the House of Representatives and the Regional Legislative Council and Aceh Local Political Parties Participants in the General Election of the Members of the Aceh House of Representatives and Regency/Municipal Legislative Council Year 2024, dated 14 December 2022, PKN has been designated as one of the political parties participants in the 2024 General Election. Thus, constitutionally, there is insufficient reason to declare that the Petitioner does not meet the requirements stipulated in the norms of Article 6A paragraph (2) of the 1945 Constitution. This means that, as a political party participant in the 2024 General Election, there is no doubt for the Petitioner to submit an examination of the unconstitutionality of the norms of Article 222 of Law 7/2017.

Whereas factually, regarding the Petitioner's legal standing in assessing the constitutionality of the norms of Article 222 of Law 7/2017, for instance, the Court in Paragraph [3.6.2] of Constitutional Court Decision Number 52/PUU-XX/2022, among other things, considered, "Therefore, it becomes clear that the Court's stance that the parties who have legal standing to submit a petition for review of the *a quo* norms of Article 222 of Law 7/2017 are (i) political parties or coalitions of political parties participants in general elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participants in general elections to nominate themselves or be nominated as pairs of candidates for president and vice president or include supporting political parties to submit petitions jointly". Thus, every political party declared as a participant in a general election has the constitutional right to submit a petition for review of the norms of Article 222 of Law 7/2017.

Whereas pursuant to the description conveyed by the Petitioner in explaining its legal standing, the Petitioner has or is able to explain its qualifications as a political party participant in the 2024 general election, which in this case is represented by the General Chair and the Secretary-General. The Petitioner has been able to explain its constitutional rights presumed to have been harmed by the enactment of the norms of the law being petitioned for review, in which the presumed loss arises due to the causal relationship (*causal verband*) between the norms being petitioned for review and the presumptions of the Petitioner's loss of the constitutional rights guaranteed by the 1945 Constitution. As a political party participant in the 2024 General Election, it is clear and certain that the Petitioner is or has been potentially harmed in terms of constitutional rights of nominating candidates for president and vice president by the enactment of the norms of Article 222 of Law 7/2017. Thus, regardless of whether the unconstitutionality of the norms of Article 222 of Law 7/2017 being petitioned for review is proven or not, the Court should give legal standing for the petitioner to submit the *a quo* petition.

Whereas because the Petitioner has the legal standing to submit the *a quo* petition, regarding the subject matter of the petition, Constitutional Justice Saldi Isra still take the same legal position as the previous dissenting opinions in several decisions regarding the unconstitutionality of the norms of Article 222 of Law 7/2017 and until now there has been no reason for the stance to change or shift, namely: the existence of the number or percentage threshold of nominating candidates of a president and vice president is contrary to the 1945 Constitution, *in casu* Article 6A paragraph (2) of the 1945 Constitution.