



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 31/PUU-XXI/2023

Concerning

Submission Period for Petition and Settlement of Disputes on the
Results of the Presidential and Vice-Presidential Election

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| Petitioner | : Herifuddin Daulay, ST. |
| Type of Case | : Judicial Review of Law Number 24 of 2003 concerning the Constitutional Court, as amended by Law Number 7 of 2020 concerning the Third Amendment to Law Number 24 of 2003 concerning the Constitutional Court (Constitutional Court Law) and Law Number 7 of 2017 concerning General Election (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution). |
| Subject Matter | : Judicial Review of Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017. |
| Verdict | : On Preliminary Injunction: To declare that the <i>petitum</i> of the Petitioner for Preliminary Injunction is inadmissible. On the Merits: <ol style="list-style-type: none">1. To grant the petition of the Petitioner in part;2. To declare that the phrase “3 x 24 (three times twenty-four) hours since” in Article 74 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 7 of 2020 concerning the Third Amendment to the Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force, to the extent that it is not interpreted as “3 (three) days after”, so that the provisions in Article 74 paragraph (3) of Law Number 24 of 2003 concerning the Constitutional Court, in full shall become “A petition may only be filed within a maximum period of 3 (three) days after the General Election Commission announces the decision results of the national general elections”.3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia;4. To dismiss the remainder of the petition of the Petitioner. |
| Date of Decision | : Thursday, 25 May 2023. |

Overview of Decision :

The petitioner is an individual Indonesian citizen who works as a technical teacher participating in trials of cases of disputes regarding the results of the presidential and vice-presidential election (General Election) with the aim of participating in guarding the honest and fair presidential and vice-presidential elections as mandated in Article 22E paragraph (1) of the 1945 Constitution. However, the Petitioner was hindered from participating in the trial of the disputes of the Presidential and Vice Presidential election case in the 2019 Election due to the norms regarding the stipulation of the time period in Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017, therefore the Petitioner feels that he is hindered from exercising his rights in the Presidential and Vice Presidential election.

Regarding the authority of the Court, because the Petitioner petitions for judicial review, Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear and decide on the *a quo* petition.

Regarding the legal standing of the Petitioner, because the Petitioner has been able to describe between the presumed loss of the constitutional rights of the Petitioners as guaranteed in the 1945 Constitution and the existence of Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) 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 submitted the *a quo* case in the framework of defending the country in preparation to ensure that the 2024 election is able to run in accordance with the principles, at least the principles of honesty and fairness. Therefore, it is hoped that the Constitutional Court is willing to make the *a quo* petition as (one of) the priority petitions given the short duration until the 2024 Presidential and Vice-Presidential Elections.

Regarding the argument for the Petitioner's petition for preliminary injunction and by linking it to the *petitum* for the preliminary injunction as set out in pages 58 to 60, the Court is of the opinion that there is no sufficient description and correlation in such *petitum*. Moreover the *a quo petitum* for preliminary injunction is irrelevant for consideration because it was already decided in the Decision of the Constitutional Court Number 1/PHPU-PRES/XVII/2019 which was declared in a plenary session open to the public on 24 June 2019. In addition, such *petitum* does not show any connection with the norms of Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017 which are being petitioned for review in the *a quo* petition. The Court is of the opinion that the Petitioner's Petition for Preliminary Injunction has no relevance so it does not need to be considered any further;

The *a quo* subject matter of the Petition is related to the discrepancies in determining the deadline for submitting the petition and resolving disputes over the results of the Presidential and Vice-Presidential election as set forth in the norms of Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law as well as Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017. These discrepancies have the potential to cause constitutional issues in submitting the petition and resolving disputes over the results of the Presidential and Vice-Presidential elections.

Whereas regarding the argument of the Petitioner, before further considering the "period of time for submitting a petition for a dispute over the results of the Presidential and Vice-Presidential Election", it is important for the Court to emphasize the provisions concerning "the period of time for submitting a petition for a dispute over the results of the Presidential and Vice-Presidential Election", normatively, it is stipulated by 2 (two) laws, namely the Constitutional Court Law and Law 7/2017. In this case, the norms of Article 74 paragraph (3) of the Constitutional Court Law states, "The petition may only be submitted within a period of no later than 3 x 24 (three times twenty-four) hours since Komisi Pemilihan Umum (General Election Commission) announcing the determination of the election results nationally", meanwhile the norms of Article 475 paragraph (1) of Law 7/2017 states, "in the

event of a dispute over the determination of the vote acquisition results for the Presidential and Vice Presidential General Election, the pairs of candidates may submit an objection to the Constitutional Court no later than 3 (three) days after the determination of the results of the Presidential and Vice Presidential Election by Komisi Pemilihan Umum (General Election Commission)". In accordance with these two provisions, the time period for submitting a petition may be made "within a period of no later than 3 x 24 (three times twenty-four) hours since Komisi Pemilihan Umum (General Election Commission) announcing the determination of the election results nationally" and "no later than 3 (three) days after the determination of the results of the Presidential and Vice-Presidential election by Komisi Pemilihan Umum (General Election Commission)".

Within the limits of reasonable reasoning, the existence of these two deadlines may lead to discrepant interpretations or meanings as the Court resolves concrete cases, *in casu* resolves the disputes over the results of the Presidential and Vice-Presidential elections. At the very least, these discrepancies may occur when determining: whether the petition is submitted no later than 3x24 (three times twenty-four) hours or 3 (three) days after the determination of the results of the Presidential and Vice-Presidential Election nationally by Komisi Pemilihan Umum (General Election Commission). Due to such discrepancies in the interpretation of determining the deadline for submitting disputes over the results of the Presidential and Vice-Presidential Elections, there is a room for violations of the principle of legal certainty as stipulated in the 1945 Constitution. Therefore, the Court needs to give interpretation to the provisions in the norms of Article 74 paragraph (3) of the Constitutional Court Law which states, "The petition may only be submitted within a period of no later than 3 x 24 (three times twenty-four) hours since Komisi Pemilihan Umum (General Election Commission) announcing the determination of the election results nationally", it shall be interpreted as "The petition may only be submitted no later than 3 (three) days after Komisi Pemilihan Umum (General Election Commission) announces the determination of the results of the general election nationally". This new interpretation is aligned with the provisions in the norms of Article 475 paragraph (1) of Law 7/2017 which states, "in the event of a dispute over the determination of the vote acquisition results for the Presidential and Vice Presidential General Election, the pairs of candidates may submit an objection to the Constitutional Court no later than 3 (three) days after the determination of the results of the Presidential and Vice Presidential Election by Komisi Pemilihan Umum (General Election Commission)". In addition to providing legal certainty as stipulated in the 1945 Constitution, this alignment will also provide benefits for the pairs of candidates who would submit disputes over the results of the Presidential and Vice-Presidential Election to the Court. By interpreting the word "since" to "after" and "phrase 3 x 24 (three times twenty-four) hours" to "3 (three) days", the petitioner in submitting a dispute over the results of the Presidential and Vice Presidential election will have time allowance in submitting the dispute over the results of the Presidential and Vice-Presidential election. In this case, the choice to use the word "after" and not grant the 7 (seven) day option cannot be separated from the principle of a speedy trial in resolving the disputes over the results of the Presidential and Vice-Presidential election in the design of the authority of the Court as set forth in Article 24C paragraph (1) of the 1945 Constitution.

Pursuant to these considerations, because the time period as petitioned by the Petitioner is not in accordance with the interpretation of the time period granted by the Court, the Petitioner's argument regarding the time period for submitting a petition for disputes regarding the results of the Presidential and Vice-Presidential Election, as referred to in the norms of Article 74 paragraph (3) of the Constitutional Court Law, is contrary with the 1945 Constitution, such argument is legally reasonable in part;

Whereas furthermore in relation to the Petitioner's argument regarding "the period of time for the Court to examine, hear and decide the cases" as set forth in the norms of Article 78 letter a of the Constitutional Court Law and Article 475 paragraph (3) of Law 7/2017 which in principal states the period of time for the Court to examine, hear and decide the cases within 14 (fourteen) business days is contrary to the 1945 Constitution. As argued by the Petitioner, the *a quo* period of 14 (fourteen) business days is insufficient for the Court to

resolve the dispute over the results of the Presidential and Vice-Presidential election. Therefore, the time limit in the two norms as stipulated in the law will become constitutional if it is interpreted as 30 (thirty) business days. According to the Petitioner, the period of 30 (thirty) business days is not intended to be entirely spent to examine, hear and decide the cases, but to provide the widest possible opportunity for the Court to elaborate on the disputes over the results of the Presidential and Vice-Presidential Election until the moment the decision is declared;

Regarding the *a quo* argument of the Petitioner, the Court is of the opinion that the provisions concerning the period for the Court to examine, hear and decide the cases of disputes regarding the results of the Presidential and Vice-Presidential election as set forth in the norms of Article 78 letter a of the Constitutional Court Law which states, "The decision of the Constitutional Court regarding the petitions of disputes over the results of the general election shall be decided within a period of: a. No later than 14 (fourteen) business days since the petition is recorded in the Constitutional Case Registration Book, in the case of the Presidential and Vice Presidential General Election", and the provisions in the norms of Article 475 paragraph (3) of Law 7/2017 which states, "The Constitutional Court shall decide the disputes arising from objections as referred to in paragraph (1) and paragraph (2) no later than 14 (fourteen) days after receipt of the objection by the Constitutional Court", it is indeed must be conducted within a limited time period. Constitutionally, such a time limit cannot be removed from the design of the Presidential and Vice Presidential Election system as contained in the norms of Article 6A paragraph (4) of the 1945 Constitution which opens up the possibility of a second round election. In such a position, if there are two rounds of general elections, it is possible to submit petitions of disputes over each election results. That means, the addition or extension of a longer period of time than what is specified in the norms of Article 78 letter a of the Constitutional Court Law and the norms of Article 475 paragraph (3) of the Law 7/2017 potentially disrupts the political schedule, *in casu* the deadline for taking the oath or promise as President and Vice President as contained in the norms of Article 9 of the 1945 Constitution. Furthermore, the addition or extension of the time period for examining, hearing and deciding the cases as argued by the Petitioners is inconsistent with the principle of a speedy trial in resolving the disputes over the results of the Presidential and Vice-Presidential general elections.

In accordance with the above considerations, "the period of time for the Court to examine, hear and decide on the cases of disputes regarding the results of the presidential and vice-presidential general election" in the norms of Article 78 letter a of the Constitutional Court Law and Article 475 paragraph (3) of Law 7/2017, it is insufficient to decide the cases of disputes of the results of the Presidential and Vice-Presidential election, if it is not interpreted as 30 (thirty) days, such argument is contrary to the 1945 Constitution, it is legally unreasonable.

Therefore regarding the subject matter of the Petitioner's petition, the Court declares that the arguments of the Petitioner's petition regarding the time period for submitting the petition and the time period for resolving the disputes regarding the results of the Presidential and Vice-Presidential Election as stipulated in Article 74 paragraph (3) and Article 78 letter a of the Constitutional Court Law and Article 475 paragraph (1) and Article 475 paragraph (3) of Law 7/2017 is legally reasonable in part.