



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 120/PUU-XX/2022

Concerning

End of Term of Office (*Akhir Masa Jabatan* or AMJ) for Provincial General Election Commission Members and the Regency/Municipal General Election Commission Members Whose Term of Office Ends in 2023 and 2024

- Petitioner** : Bahrain and the Center for Strategic and Indonesian Public Policy (CSIPP), represented in this case by Moch. Luqman Hakim as the Chair of the Foundation and Maula Dzikril Hakim as the Management Treasurer of the Foundation
- 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** : Article 10 paragraph (9) of Law 14/2005 is contrary to Article 1 paragraph (2), Article 22E paragraph (1) and paragraph (5), and Article 28D paragraph (1) of the 1945 Constitution.
- Verdict** : 1. To declare that the petition of Petitioner II is inadmissible;
2. To dismiss the remainder of the petition of the Petitioners.
- Date of Decision** : Tuesday, June 27, 2023
- Overview of Decision** :

Petitioner I is an individual Indonesian citizen with the right to vote in the 2024 General Election and Simultaneous Elections. He used his voting right in the 1999, 2004, 2009, 2014, and 2019 elections and the 2017 DKI Jakarta Regional Head General Election. In addition, Petitioner I also describes that he is a former Advocacy Director of the Indonesian Legal Aid Foundation (YLBHI), concerned about the realization of the 2024 General Election and Simultaneous Elections which is going to be held directly, publicly, freely, confidentially, honestly and fairly as guaranteed in Article 22E paragraph (1) of the 1945 Constitution, but has the potential, either directly or indirectly, to not be realized because of the provisions of Article 10 paragraph (9) of Law 7/2017 regarding the end of the term of office (AMJ) for Provincial KPU (*Komisi Pemilihan Umum* or General Election Commission) members and Regency/Municipal KPU members in 2023 and 2024 which is at the same time as the 2024 general

election and simultaneous elections stages which have entered a crucial stage, so that it is almost certain that the 2024 general election and simultaneous elections stages are disrupted because, in the midst of implementing the 2024 general election and simultaneous elections stages, a selection of Provincial KPU members and Regency/Municipal KPU members must be held in most parts of Indonesia, in a very large number.

Petitioner II is the Center for Strategic and Indonesian Public Policy (CSIPP), which describes itself as a Non-Governmental Organization or Civil Society Organization (LSM) that grows and develops independently of its own will and desires in the society and is established in accordance with awareness of the realization of democracy and democratization in Indonesia. Petitioner II participates in activities that encourage the realization of policies in the field of elections so that honest, fair, and integrity elections are realized. The constitutional loss suffered by Petitioner II is that the AMJ for Provincial KPU and Regency/Municipal KPU members falls concurrently with the 2024 general election and simultaneous elections stages, potentially disrupting the realization of the 2024 general election and simultaneous elections which are honest and fair as set forth in Article 22E paragraph (2) of the 1945 Constitution.

Regarding the authority of the Court, because what the Petitioners are petitioning for is a review of the constitutionality of norms of law, *in casu* Article 10 paragraph (9) of Law 14/2005 against the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding the Legal Standing, Petitioner I has been able to specifically describe his constitutional rights, which are, in fact or at least potentially, presumed to be harmed by the enactment of the norms of Article 10 paragraph (9) of Law 7/2017. In addition, it has also been shown that there is a causal relationship (*causal verband*) between such presumption of loss and the enactment of the norms of the article of law being petitioned for review, which, if the petition is granted, the presumption of loss that is factual and/or potential as mentioned by Petitioner I will no longer occur and/or will not occur. Thus, regardless of whether Petitioner I's petition is proven or not, in the Court's opinion, Petitioner I has the legal standing to act as the Petitioner in the *a quo* petition. Furthermore, regarding Petitioner II, in the Court's opinion, the existence of provisions on the norms of the article being petitioned for review does not necessarily make Petitioner II, *in casu* the Center for Strategic and Indonesian Public Policy (CSIPP) has been able to presume that its constitutional rights have been harmed, because Petitioner II, acting for and on behalf of the Center for Strategic and Indonesian Public Policy (CSIPP), does not have the right to vote in elections. Moreover, regarding the activities carried out by Petitioner II as contained in the Articles of Association (AD/ART), they are not explicitly engaged in the election sector. Therefore, in the Court's opinion, there was no potential or factual loss of constitutional rights suffered by Petitioner II, and there was no correlation between the object being petitioned for review and the enactment of the norms being petitioned for review. So, Petitioner II has no legal standing to act as a Petitioner in the *a quo* petition.

In accordance with the description put forward by the Petitioners in describing their legal standings as described above, in which Petitioner I (hereinafter referred to as the Petitioner) has the legal standing to submit a petition for review of the norms of Article 10 paragraph (9) of Law 7/2017 against the 1945 Constitution, the Court is of the opinion that Petitioner I has the legal standing to act as the Petitioner in the *a quo* petition.

Regarding the Petitioner's arguments which essentially petition that the Court passes down a decision in which the verdict is to declare that the norms of Article 10 paragraph (9) of Law 7/2017 stating, "The term of office for the KPU, the Provincial KPU, the Regency/Municipal KPU members is 5 (five) years, and after that, they may be re-elected only for one term of office at the same level" is contrary to the 1945 Constitution and do not have binding legal force to the extent that they do not mean "The term of office for the Provincial KPU Members, the Regency/Municipal KPU Members whose term of office ends in 2023 and 2024 is extended until after the completion of the 2024 General Election and Simultaneous Election Stages". Regarding the *a quo* Petitioner's arguments, the Court considers as follows:

Pursuant to the legal considerations of in the Decision of Constitutional Court Number 31/PUU-XVI/2018, the KPU, Provincial KPU, and Regency/Municipal KPU members are required to carry out the tasks of organizing elections professionally to realize direct, public, free, secret, honest and fair elections as required by provisions of Article 22E paragraph (1) of the 1945 Constitution. Moreover, Law 7/2017 has determined the principles that must be followed by election administrators, *in casu* the KPU, namely the principles of independence, honesty, fairness, legal certainty, order, openness, proportion, professionalism, accountability, effectiveness, and efficiency. In the Court's opinion, the holding of elections should not only pay attention to the sound elections principles mentioned above but also be carried out in a planned manner and in accordance with the election organizers' authority, *in casu* the KPU, which has been regulated in statutory regulations so that the holding of elections, especially the selection process for Provincial KPU members, Regency/Municipal KPU members do not interfere with the predetermined election stages.

The mechanism for selecting Provincial KPU and Regency/Municipal KPU members is carried out by forming selection teams to select candidates for Provincial KPU and Regency/Municipal KPU members in each province, given that the KPU is granted full authority by Law 7/2017 to regulate the procedures for forming Selection Teams. The selection teams for prospective Provincial KPU members and Regency/Municipal KPU members consist of 5 (five) people of academics, professionals, and community leaders who have integrity.

Furthermore, Law 7/2017 requires that members of the selection teams for Provincial KPU members and Regency/Municipal KPU members are prohibited from their candidacies for Provincial and Regency/Municipal KPU members. Moreover, without intending to assess the legality of legal products for implementing laws, it is necessary to emphasize that prospective members of the selection teams are not currently serving as general elections and elections organizers. Pursuant to the provisions of the norms of Article 28 paragraph (3) and Article 32 paragraph (3) of Law 7/2017, selection teams carry out ten stages of activities in the process of selecting candidates for Provincial and Regency/Municipal KPU members. After selection teams have carried out all stages, the KPU is responsible for conducting fit and proper tests on the candidates for Provincial and Regency/Municipal KPU members submitted by selection teams. After that, the KPU will determine the names of the elected prospective Provincial and Regency/Municipal KPU members in accordance with the rank.

Regarding the division of tasks between the KPU and selection teams in the selection process for Provincial KPU and Regency/Municipal KPU members, the Court considers that most of the tasks in the selection process for Provincial KPU and Regency/Municipal KPU members are carried out by selection teams whose members are not the elements of KPU, Provincial KPU, and Regency/Municipal KPU members.

In the selection stage for Provincial and Regency/Municipal KPU members, the KPU still has the task of conducting fit and proper tests on prospective Provincial KPU and Regency/Municipal KPU members. Therefore, in the Court's opinion, the KPU can still carry out its duties and authorities in the stages of holding elections even though the selection of candidates for Provincial KPU and Regency/Municipal KPU takes place at the same time because a more significant portion of the tasks in the selection process belongs to selection teams that come from outside the KPU elements. This is also confirmed in the KPU Relevant Party statements regarding selection stages and tasks division between selection teams and the KPU in the selection process. Thus, in accordance with reasonable reasoning, the stages of holding elections will not be disrupted even if the selection process for Provincial KPU and Regency/Municipal KPU members is carried out simultaneously with prospective KPU members, as the Petitioner concerns.

Regarding the Petitioner's arguments which question that the enactment of the provisions of Article 10 paragraph (9) of Law 7/2017 brings uncertainty in terms of laws and legal protection on the Petitioner's rights for the realization of honest, fair, and democratic elections, and therefore it is contrary to Article 28D paragraph (1) of the Constitution 1945. The KPU as an election organizer, is one of the democratic institutions that determine the legality and legitimacy of the election of leaders and the people's representatives at the central and regional levels under the principles of direct, public, free, confidential, honest, and fair elections. The holding of elections demands the capability, professionalism, and integrity of election administrators, *in casu* the KPU, in carrying out its duties as a permanent election organizer (the KPU, the Provincial KPU, and the Regency/Municipal KPU) and an ad hoc election administrator (the PPK, the PPS, and the KPPS). Quality elections can be carried out with, among other things, the integrity and the independence of election organizers through the stages of election holding as stipulated in Article 167 paragraph (4) of Law 7/2017.

Regarding the Petitioner's arguments about the terms of office period for Provincial KPU members and Regency/Municipal KPU members in the norms of Article 10 paragraph (9), which provide uncertainty in terms of laws and legal protection on the Petitioner's rights, in the Court's opinion, it is necessary to understand that the norms of Article 10 paragraph (9), the constitutionality of which is being reviewed by the Petitioner, are the legal basis for regulation regarding the terms of office for KPU, Provincial KPU, Regency/Municipal KPU members, not only in the 2024 Election but also in the 2019 election and the holding of elections in the future. This means that if the *a quo* Article is interpreted as petitioned by the Petitioner, then juridically, the provisions of the *a quo* Article can only be used for the holding of the 2024 election and cannot be used as a basis or guideline in the holding of elections in the future. Thus, the existence of the norms of Article 10 paragraph (9) of Law 7/2017 is a manifestation of legal certainty and protection as referred to in Article 28D paragraph (1) of the 1945 Constitution, which guarantees the recognition of equality before the law and the government. This means that election administrators, *in casu* the KPU, should continue to hold General Elections guided by the principles of the people's sovereignty, legal certainty, and protection in a transparent and accountable manner.

Regarding the Petitioner's arguments about the recruitment of election organizers, *in casu* the Provincial KPU members and Regency/Municipal KPU members, it must also have to be arranged to be carried out simultaneously, outside the General Election and Election stages, so that it does not interfere with the General

Election and Election stages. Whereas the holding of elections to elect the DPR, the DPD, and the DPRD members, as well as the President and Vice President, was designed simultaneously as a follow-up to the Decision of Constitutional Court Number 14/PUU-XI/2013 and other decisions which have confirmed that the elections are carried out simultaneously. Elections are designed to be held simultaneously in the context of strengthening the presidential government system to elect the DPR, the DPD members, the President/Vice President, DPRD members, Governors, and Regents/Mayors as a follow-up to the Decision of the Constitutional Court Number 14/PUU-XI/2013, which has confirmed that the elections are carried out simultaneously. This matter has been decided in the Decision of the Constitutional Court Number 55/PUU-XVII/2019.

Even though the Court has stated several alternative models for the simultaneous implementation of elections, as referred to in the Decision of the Constitutional Court Number 55/PUU-XVII/2019, the choice of a simultaneous election model is left to the legislators to be used as guidelines for the holding of the 2024 elections. However, the legislators have so far not revised Law 7/2017. Due to this fact, all electoral law designs still use the model stipulated in Law 7/2017 and Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents and Mayors to Become Laws, including, in this case, with respect to the simultaneous filling of positions for members of the election organizers, especially election organizers in the regions, that has not been implemented. Therefore, in the context of the *a quo* petition, the KPU should have adjusted the selection of Provincial KPU members and Regency/Municipal KPU members so that it is in accordance with the design of the simultaneous holding of elections. However, because the stages of holding the election have been running and even some members of the regional KPU have been elected in accordance with the end of their respective terms of office, it is not possible to carry out the process of filling the positions of members of the regional election organizers simultaneously.

Moreover, as stated in the Decision of the Constitutional Court Number 55/PUU-XVII/2019, legally speaking, the choice of simultaneous elections is not preventable. Simultaneous elections have started since the holding of the 2019 election. In the holding of the 2024 election, simultaneity is also applied by carrying it out with the elections of regional heads. Thus, the said simultaneity should not only be interpreted as simultaneity in voting but also in all critical elements in the stages of holding elections. One of the important elements in the stages of holding elections is the filling of election organizers. Because the simultaneous election model has been adopted, there is no choice but to fill the election organizers simultaneously. However, because the petition for review was submitted by the Petitioner when the stages of holding the elections had begun, the filling of the simultaneous regional election organizers was impossible to be carried out in the 2024 simultaneous election. With the commencement of these stages, it has become irrelevant for the Court to consider the Petitioner's petition regarding extending the term of office of election organizers in several regions.

Furthermore, where legislators make adjustments to Law 7/2017, several necessary adjustments regarding the recruitment of election organizers with the principle of holding elections simultaneity are needed, including: (1) the recruitment of election organizers must be carried out before the start of the stages of the holding of elections; (2) the recruitment should be designed in a better way, to produce election organizers who are capable of carrying out or implementing the principles of holding

elections as set out in Article 22E paragraph (1) of the 1945 Constitution. Thus, the recruitment process can produce election organizers who are competent, have integrity, and are able to maintain their independence against all election participants; (3) election organizers are prepared adequately through training, workshops, and/or technical guidance on the implementation of electoral duties carried out as organizers in simultaneous general elections.

In accordance with the description of the legal considerations above, the Court is of the opinion that the provisions of the norms of Article 10 paragraph (9) of Law 7/2017 are proven not to create uncertainty in terms of fair laws as guaranteed in the 1945 Constitution. Thus, in the Court's opinion, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision in which the verdict was as follows:

1. To declare Petitioner II's petition inadmissible;
2. To dismiss the remainder of the petition of the Petitioner.