



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 65/PUU-XXI/2023**

**Concerning**

**Prohibition of Campaigning in Places of Worship**

- Petitioners** : **Handrey Mantiri, S.H. and Ong Yenny**
- 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 phrase "Government facilities, places of worship and places of education may be used if election participants attend without election campaign attributes at the invitation of the person in charge of the government facilities, places of worship and places of education" in the Elucidation of Article 280 paragraph (1) letter h of Law 7/2017 is contrary to the 1945 Constitution
- Verdict** : 1. To partially grant the Petitioner's petition.
2. To declare the Elucidation of Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) to the extent of the phrase "Government facilities, places of worship and places of education may be used if election participants attend without election campaign attributes at the invitation of the person in charge of the government facilities, places of worship and places of education" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force;
3. To declare Article 280 paragraph (1) letter h of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent that it is not interpreted as "excluding government facilities and places of education to the extent that they have permission from the person in charge of such places and attend without election campaign attributes", so that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections in full reads, "from using government facilities, places of worship and places of education, except for government facilities and places of education to the extent that they have permission from the person in charge of such places

and attend without election campaign attributes";

4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

**Date of Decision** : Tuesday, 15 August 2023

**Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who have registered as voters in the 2024 General Election (Election), and specifically Petitioner II is also a Prospective Candidate for the Member of the Special Capital Region of Jakarta Regional Legislative Council in the 2024 Election from the Indonesian Democratic Party of Struggle (PDI-P), who have the constitutional right to obtain legal certainty in the implementation and enforcement of laws regarding the prohibition of campaigning in government facilities, places of worship and places of education to hold fair elections as guaranteed in Article 22E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. In the Petitioners' opinion, the provisions of the norms of Article 280 paragraph (1) letter h of Law 7/2017 have expressly stipulated that every Election organizer, participant, and campaign team is prohibited from using government facilities, places of worship, and places of education for campaign purposes without exception. However, the Elucidation of Article 280 paragraph (1) letter h of *a quo* Law 7/2017 instead provides room for using government facilities, places of worship, and places of education for campaign purposes, although with certain conditions.

Regarding the authority of the Constitutional Court, the Court is of the opinion that because of the object of the *a quo* petition is a review of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court considers that the Petitioners have fulfilled the qualification requirements as individual Indonesian citizens and have explained the Petitioners' constitutional rights that have been impaired by the enactment of the legal norms petitioned for review, both the right to vote (Petitioner I) and the right to compete fairly in the 2024 General Election contest (Petitioner II). Furthermore, the Court is of the opinion that the deemed impairment of constitutional rights in question is specific (special) in relation to Petitioner I's right to vote. Meanwhile, in relation to the impairment of Petitioner II's constitutional rights, even though the person concerned is part of a political party that has a seat in the House of Representatives of the Republic of Indonesia as one of the law-forming organs, in the Court's opinion, in the *a quo* case, the impairment of Petitioner II's constitutional rights (Ong Yenny) specifically concerns the fulfilment and protection of rights as voters to compete fairly in the election process (fair elections) which is Petitioner II's exclusive right. Therefore, the deemed impairment of the Petitioners' constitutional rights has the potential to occur because the Elucidation of Article 280 paragraph (1) letter h of Law 7/2017, in the Petitioners' opinion, creates legal uncertainty and violates the principles of holding fair elections. Accordingly, regardless of whether or not the arguments about the unconstitutionality of the norms petitioned for review are proven, the Petitioners have the legal standing to submit the *a quo* petition.

Whereas because the subject matter or substance of the petitioners' petition is evident, in the Court's opinion, there is no urgency and need to hear statements from the parties as stated in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the Petitioners' petition, the Court is of the opinion that in order to be able to determine whether or not there is a conflict with the norms in the body and the elucidation, it is necessary to first understand the substance of the norms contained in Article 280 paragraph (1) letter h of Law 7/2017 as the main norms and then compare them with the elucidation of Article 280 paragraph (1) letter h of Law 7/2017. This comparison can be carried out both in terms of material or substance and in terms of techniques for formulating an elucidation based on the provisions of statutory regulations. Historically, the same normative material is also regulated in the Elucidation of Article 84 paragraph (1) letter h of Law 10/2008.

It turns out that the prohibition norm in question has also been regulated in Article 74 letter g of Law 12/2003 of which the elucidation is that only places of education are excluded if they take the initiative/obtain permission from the head of the educational institution and equal opportunities are provided to election participants and do not interfere with the teaching and learning process. If explored further, Law 3/1999 also contains similar campaign prohibition norms, but only limited to the prohibition of using government facilities and places of worship [vide Article 47 paragraph (1) letter g of Law 3/1999] which is also emphasized in the Elucidation that the existence of this prohibition is intended so that the campaign can run freely, smoothly, safely, in an orderly manner, and will not endanger national unity and integrity [vide Elucidation of Article 47 paragraph (1) of Law 3/1999].

Furthermore, with regard to the existence of exceptions in the Elucidation of a law outside of the main norms that have been determined, the Court in its consideration refers to the technical provisions for the formation of statutory regulations as contained in point 176 of Appendix II to Law 12/2011 which provides guidance or guidelines in formulating elucidations, meanings, and at the same time the function of elucidations which constitute the legislators' official interpretation of certain norms in the body. Therefore, elucidation only contains descriptions of words, phrases, sentences, or equivalents of foreign words/terms in the norms which can be accompanied by examples. Elucidation is a means of clarifying norms in the body which must not result in the lack of clarity of the norms in question. Not only that but point 178 of Attachment II to Law 12/2011 also stipulates that "elucidation does not use formula whose contents contain hidden changes against the provisions of statutory regulations". In this regard, the elucidation of Article 280 paragraph (1) letter h of Law 7/2017 to the extent of the phrase "Government facilities, places of worship and places of education may be used if election participants attend without election campaign attributes at the invitation of the person in charge of the government facilities, places of worship and places of education" has created conditions of conflict with the material content or basic norms of Article 280 paragraph (1) letter h of Law 7/2017. For example, if studied carefully, the phrase "may be used if" in the Elucidation of Article 280 paragraph (1) letter h of Law 7/2017 lexically contains the meaning of permission for authority or the right to do something in a limited way, although the limit or condition has been determined as a prohibition. Therefore, if it is placed in the understanding of the main material which provides prohibitions or restrictions on carrying out campaigns using government facilities, places of worship, and places of education, then the *a quo* Elucidation material to the extent of the phrase petitioned by the Petitioners means exception rather than elucidation which is an official interpretation of the meaning, scope and implications of the main norm material it explains.

In the context of the content material of statutory regulation, norms of prohibitions and exceptions actually contain the intention of overriding the main norm because there is a clause or statement that links the implementation of a norm to the occurrence of a certain event or condition at a certain time or time limit outside the main event or condition desired in the prohibition norms. These two conditions are actually balanced and each should stand alone as a material content of the main norm, and not the essence of the elucidation of a norm. Therefore, if the norms containing exceptions to the norms of Article 280 paragraph (1) letter h of *a quo* Law 7/2017 are or remain necessary, they should be included in the body of Law 7/2017 as separate norms that exclude prohibited things during the campaign and should not be placed in Elucidation section.

Moreover, the Court is aware that, in the context of an election campaign, it is still possible to use government facilities or educational places. However, because these two places are prohibited, the Court needs to include some of the exceptions as stated in the Elucidation of Article 280 paragraph (1) letter h of the Law 7/2017 into the basic norms of Article 280 paragraph (1) letter h of Law 7/2017 so that election organizers, participants, and campaign teams may use government facilities and places of education to the extent that they have permission from the person in charge of such places and attend without campaign

attributes. Due to the norms of Article 280 paragraph (1) letter h of Law 7/2017, although the unconstitutionality of the norms of *a quo* Article is not petitioned by the Petitioners, because the *a quo* norms are closely related to the elucidation that will be stated in the verdict as unconstitutional, then for the purposes of the election campaign, the norm of Article 280 paragraph (1) letter h of Law 7/2017 which states, "from using government facilities, places of worship and places of education" is contrary to the 1945 Constitution if it does not exclude government facilities and places of education to the extent that they have permission from the person in charge of such places and attend without election campaign attributes. Therefore, the full norms of Article 280 paragraph (1) letter h of Law 7/2017 will be interpreted as in the verdict of the *a quo* Decision.

Based on the legal considerations above, the Court is of the opinion that, even though the Court states that the phrase "Government facilities, places of worship and places of education may be used if election participants attend without election campaign attributes at the invitation of the person in charge of government facilities, places of worship and places of education" in the elucidation of Article 280 paragraph (1) letter h of Law 7/2017 has apparently created legal uncertainty and therefore in contrary to Article 28D paragraph (1) of the 1945 Constitution, because there are some Elucidation materials included in the norms of Article 280 paragraph (1) letter h of Law 7/2017, it is important for the Court to provide exceptions to the norms of the *a quo* article as will be included in the *a quo* decision. Therefore, in the Court's opinion, the subject matter of the Petitioners' petition is partially legally justifiable.

Subsequently, the Court passed down a decision in which the verdict is as follows:

1. To partially grant the Petitioner's petition.
2. To declare the Elucidation of Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) to the extent of the phrase "Government facilities, places of worship and places of education may be used if election participants attend without election campaign attributes at the invitation of the person in charge of the government facilities, places of worship and places of education" is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force;
3. To declare Article 280 paragraph (1) letter h of the Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force to the extent that it is not interpreted as "excluding government facilities and places of education to the extent that they have permission from the person in charge of such places and attend without election campaign attributes", so that Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections in full reads, "from using government facilities, places of worship and places of education, except for government facilities and places of education to the extent that they have permission from the person in charge of such places and attend without election campaign attributes";
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.