



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 74/PUU-XXI/2023**

Concerning

**Authority in Holding Selection of Members of Regency/Municipal
General Elections Commission**

Petitioner	: Osea Petege
Type of Case	: Judicial Review of Law Number 7 of 2017 concerning General Elections (Law 7/2017) against 1945 Constitution of the Republic of Indonesia
Subject Matter	: Article 23 paragraph (1), Article 28 paragraph (1), Article 31 paragraph (1), Article 32 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 are contrary to the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Wednesday, 30 August 2023
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who has served as Chairman of the Dogiyai Regency KPU (General Elections Commission) in 2012 and he believes that his constitutional right to be able to re-participate as a member of the Regency/Municipal KPU has been harmed because the entire mechanism of nomination, election and determination is carried out centrally by the existing Selection Team under the authority of the Indonesian KPU, giving rise to unequal access or unequal opportunities.

Regarding the authority of the Court, the Petitioner submitted a petition to review the constitutionality of statutory norms, *in casu* Article 23 paragraph (1), Article 28 paragraph (1), Article 31 paragraph (1), Article 32 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 which he believes to be contrary to the 1945 Constitution, such review is under the authority of the Constitutional Court as regulated in Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law, and Article 29 paragraph (1) letter a of Law 48/2009.

Regarding the legal standing of the Petitioner, the Petitioner in principle argues that Article 23 paragraph (1), Article 28 paragraph (1), and Article 32 paragraph (1) of Law 7/2017 are contrary to the 1945 Constitution because the implementation of the selection of KPU members focuses solely on the administrative aspect without paying attention to issues of knowledge and moral condition of the prospective KPU members. In addition, the Petitioner also argues that Article 31 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 are contrary to the 1945 Constitution because norms in the *a quo* articles do not accommodate the principle of decentralization and the principle of equality and fair opportunity in participating in the regional government positions, specifically to become a member of the Regency/Municipal KPU, the Court is of the opinion that the Petitioner has the legal standing to submit the *a quo* petition.

Furthermore, in considering the Petitioner's petition, regarding the authority of the Constitutional Court, the Court is of the opinion that since the object of the *a quo* petition is a material review of the norms of articles in Law 7/2017 against the 1945 Constitution, then the Court has the

authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioner, the Court considers that the Petitioner has fulfilled the qualifications as an individual Indonesian citizen as proven by an electronic *Kartu Tanda Penduduk* (Resident Identity Card) in the Petitioner's name. In addition, the presumed loss of constitutional rights argued by the Petitioner is specific in nature due to the Petitioner's experience in being elected as the Chairman of the Dogiyai Regency KPU in 2012 under the mechanisms and arrangements in the previous laws which, according to the Petitioner, were not centralized in nature. Therefore, the presumed loss of the Petitioner's constitutional rights has the potential to occur due to the enactment of the *a quo* articles whose constitutionality is being petitioned for review, making the current selection process for Regency/Municipal KPU members very centralized. Therefore, with the granting of the Petitioner's petition, the presumed loss of constitutional rights as argued by the Petitioner will not or will no longer occur. Therefore, regardless of whether the unconstitutionality of Article 23 paragraph (1), Article 28 paragraph (1), Article 31 paragraph (1), Article 32 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 being petitioned for review is proven or not, the Court is of the opinion that the Petitioner has the legal standing to submit the *a quo* petition.

Whereas since the subject matter or substance of the Petitioner's petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54.

Subsequently, in considering the subject matter of the Petitioner's petition, specifically the Petitioner's argument which questions the constitutionality of the norms of Article 23 paragraph (1), Article 28 paragraph (1), and Article 32 paragraph (1) of Law 7/2017 which he believes to be contrary to the 1945 Constitution because the selection of KPU members is focused solely on the administrative aspect without paying attention to the issue of knowledge and moral condition of the prospective KPU Members, the Court is of the opinion that to understand the principles of implementing the selection of Provincial KPU and Regency/Municipal KPU members, it cannot only be read and understood partially, instead it must be read and understood in a comprehensive and contextual manner. Pursuant to this understanding, the Court is of the opinion that the Petitioner's *petitum* which petitions the Court to add the phrase "fair, objective, independent and professional through a process of written test, computerized psychological test, medical test and interview that are able to be accessed and known by the public" in the Article 23 paragraph (1), Article 28 paragraph (1) and Article 32 paragraph (1) of Law 7/2017, have actually been accommodated in Law 7/2017, especially in relation to the regulations regarding the selection of members of the KPU, Provincial KPU and Regency/Municipal KPU, such law is used as a guideline at each selection stage at each level/phase of the KPU based on the principles of openness and participation.

Furthermore, in relation to the Petitioner's argument regarding Article 31 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 which he believes to be contrary to the 1945 Constitution because the norms in the *a quo* articles do not accommodate the principle of decentralization and the principle of equality and fair opportunity in participating in the regional government positions, specifically to become a member of the Regency/Municipal KPU, the Court is of the opinion that the KPU's organizational structure may not and should not be equated with the organizational structure in the regional government administration. In this case, the KPU is an election administration institution which is designed to be independent but is bound in a hierarchical line to the Indonesian KPU. Moreover, there is a national character instilled in the KPU. This is intended so that there is a unified system in administering the elections. Therefore, the authority of the KPU of the Republic of Indonesia to form a selection team for KPU members, both at the provincial and regency/municipal levels, cannot be separated from the hierarchical design as regulated in Article 9 paragraph (1) of Law 7/2017.

Pursuant to the legal considerations above, the Court is of the opinion that the norms of Article 23 paragraph (1), Article 28 paragraph (1), Article 31 paragraph (1), Article 32 paragraph (1), Article 33 paragraph (1), Article 34 paragraph (1), Article 37 paragraph (4), and Article 39 paragraph (3) of Law 7/2017 do not have constitutionality issues. Therefore, the Court is of the opinion that, the Petitioner's petition is legally unjustifiable in its entirety and subsequently the Court handed down a decision whose verdict states to dismiss the Petitioner's petition in its entirety.

Dissenting Opinion

Regarding the *a quo* decision of the Constitutional Court, Constitutional Justice M. Guntur Hamzah has a dissenting opinion which basically states that the KPU remains a national and hierarchical in nature, but specifically regarding the recruitment of Regency/Municipal KPU members,

it should apply a limited decentralized approach in determining the Regency/Municipal KPU member selection committee. The said recruitment remains under the authority of the KPU which is carried out after coordinating with the Provincial KPU in determining the members of the selection team formed by the KPU. In principle, the involvement of the Provincial KPU is carried out to provide opportunities for regional people who have more in-depth knowledge of their respective regions, including social, economic, cultural and geographical conditions, to play a bigger role in regional development while remaining to hold the principles of open, fair, objective, independent and professional in the recruitment governance. Constitutionally, the KPU's coordination with the Provincial KPU to recruit district/municipal KPU members is also in accordance with the principles of decentralization and regional autonomy as guaranteed in the provisions of Article 18 of the 1945 Constitution. Although in the process of recruiting members of the Regency/Municipal KPU there must be coordination between the KPU and the Provincial KPU, the coordination is not only limited to the implementation of recruitment but it should also occur at the level of determining the composition of the selection team which provides a larger portion of determination to the Provincial KPU. This does not degrade the position of the Central KPU which is national and hierarchical.

In addition, the existence of the election administrator *in casu* KPU which is competent and have integrity shall give a significant influence on the overall quality of the election implementation process. Therefore, it is important to pay special attention to the selection of KPU members, especially regional KPU. The selection process for KPU members in the regional level is the gateway to realizing a fair and transparent election process in the regions as the nodes of unity in the Republic of Indonesia. The principles of good governance, especially in the process of recruiting Regency/Municipal KPU members, the norms will be much more impressive if the principles desired by the petitioner, namely the principles of openness, fairness, objectivity, independence and professionalism are achieved, and there is no contradiction to the norms if those principles are inserted into the *a quo* norms, in fact, it would actually be a good governance in the governance and synergistic relationships between the Central KPU and Provincial KPU, as well as Regency/Municipal KPU.

Therefore, pursuant to the aforementioned considerations and framework, even though the *a quo* petition did not enter the stage of plenary session, I am of the opinion that the *a quo* petition should have been partially granted.