



CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA
SUMMARY OF DECISION FOR CASE NUMBER 80/PUU-XXI/2023

Concerning
Presidential Threshold

- Petitioners** : **The Labor Party** represented by Said Iqbal as the Party President and Ferri Nuzarli as the Secretary-General, **Mahardhikka Prakasha Shatya, and Wiratno Hadi**
- 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 provisions for nominating pairs of candidates for President and Vice President in Article 222 of Law 7/2017 are contrary to the principle that general elections are carried out directly, publicly, freely, secretly, honestly, and fairly, as well as the principle of fair legal certainty and equal treatment before the law which are guaranteed in Article 6 paragraph (2), Article 6A paragraph (2), Article 6A paragraph (3), Article 6A paragraph (4), Article 6A paragraph (5), Article 22E paragraph (1), Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), and Article 28D and paragraph (3) of the 1945 Constitution
- Verdict** : To declare the Petitioners' petition inadmissible
- Date of Decision** : Thursday, 14 September 2023
- Overview of Decision** :

Whereas Petitioner I is a Political Party participating in the 2024 General Election, represented by the Party President and Secretary-General. In Petitioner I's opinion, it is prejudiced by the implementation of the minimum threshold requirements for political parties or coalitions of political parties to be able to nominate pairs of candidates for President and Vice President because the Political Parties or Coalitions of Political Parties Participating in General Election that comply with Article 222 of Law 7/2017 do not reflect, fight for, or have goals that are in line with Petitioner I's struggles and ideas.

Whereas Petitioner II and Petitioner III are individual Indonesian citizens. In Petitioner II's opinion, he was appointed by the Labor Party to be a legislative prospective candidate for the House of Representatives-RI for the upcoming 2024 General Election from the electoral district of Central Kalimantan but the appointment was rejected by Petitioner II because the current general election system under the provisions of Article 222 of Law 7/2017 could not produce candidates for President and Vice President who rejected the Job Creation Law and sided with the interests of the people. In Petitioner II's opinion, he is prejudiced because he failed to become a legislative prospective candidate of the Labor Party for the 2024 General Election. Petitioner II also has the potential to be prejudiced later, if residents in the electoral district, supporters, and prospective constituents of Petitioner II ask what has caused the Labor Party to join a joint coalition of political parties that supports the Job Creation Law.

Whereas in Petitioner III's opinion, he was also appointed by the Labor Party to be a legislative prospective candidate for the House of Representatives-RI from the electoral district of South Kalimantan II. Petitioner III canceled his intention to become a legislative prospective candidate from the Labor Party for the 2024 General Election due to the provisions of Article 222 of Law 7/2017. The provisions of Article 222 of Law 7/2017 will force the Labor Party to join a joint coalition of political parties if it wants to nominate candidates for President and Vice President. Meanwhile, with the Labor Party's ideological goal of rejecting the Job Creation Law, it is impossible for the Labor Party to join a coalition with parties that can nominate candidates for President and Vice President. In Petitioner III's opinion, he is prejudiced because he failed to become a legislative prospective candidate from the Labor Party for the 2024 General Election.

Regarding the court's authority, because the petition submitted is a review of the constitutionality of 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 Petitioners' legal standing, the Court needs to relate to the Petitioners' *petitum* in their petition petitioning the Court to declare that Article 222 of Law 7/2017 must be interpreted as, "Pairs of Candidates are nominated by Political Parties or Coalitions of political parties participating in general elections which have been determined by the General Election Commission and/or Political Parties or Coalitions of Political Parties that have a vote acquisition of at least 20% (twenty percent) of the total seats in the House of Representatives or obtain 25% (twenty-five percent) of the valid votes nationally in the previous election of members of the House of Representatives," so that political parties participating in the 2024 General Election will be able to nominate their pair of candidates for President and Vice President. Regarding the Petitioners' *petitum* and the relation to the Petitioners' legal standing, the Court subsequently considers as follows:

Whereas regarding the Petitioners' legal standing in the case of reviewing the constitutionality of the norms of Article 222 of Law 7/2017, the Court in its legal considerations Sub-paragraph **[3.6.2]** of 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 for reviews of the *a quo* norms of Article 222 of Law 7/2017 are (i) political parties or coalitions of political parties participating in general elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participating 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";

Whereas in addition to Constitutional Court Decision Number 52/PUU-XX/2022, the Court has also decided regarding the constitutionality review of the norms of Article 222 of Law 7/2017 submitted by Political Party Petitioners, namely, among others, 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 that 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. Likewise, regarding 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 (IDAMAN) Party, the Court also granted legal standing even though the party had never participated in the General Election in the previous period 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 President. In this regard, Petitioner I in the *a quo* case does not raise an

issue of 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 but rather petitions the Court to allow it, as a 2024 General Election political party participant that did not take part in the General Election in the previous period, to take part in nominating a pair of candidates for President and Vice President.

Whereas in addition, the Court is of the opinion that the provisions of Article 222 of Law 7/2017 which state, "Pairs of Candidates are nominated by Political Parties or Coalitions of Political Parties Participating in General Elections that satisfy the requirement of obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty-five percent) of the valid votes nationally in the previous election of members of the House of Representatives", are intended to regulate the minimum number (minimum threshold) of votes as a requirement that applies to Political Parties or Coalitions of Political Parties Participating in General Election that have participated in the previous Election, to propose pairs of candidates for President and Vice President.

Therefore, because Petitioner I is a political party that did not participate in the previous General Election, and the norms contained in Article 222 of Law 7/2017 are applied to political parties that have participated in the previous election of members of the House of Representatives and have received certain vote support, so the Court is of the opinion that the limitations/provisions of Article 222 of Law 7/2017 cannot be applied to Petitioner I.

Whereas regarding the legal standings of Petitioner II and Petitioner III in the *a quo* case who qualify themselves as individual Indonesian citizens who, in their opinions, are prejudiced because of failing to become legislative prospective candidates from the Labor Party for the 2024 General Election. Moreover, Petitioner II and Petitioner III also state that they have long participated in democracy and are registered as voters for the 2024 General Election. Regarding the legal standing of Petitioner II and Petitioner III who are individual citizens, Constitutional Court Decision Number 66/PUU-XIX/2021 pronounced in a plenary session open to the public on 24 February 2022 has confirmed its stance regarding parties who have legal standing in the review of the norms of Article 222 of Law 7/2017.

Therefore, the Court's stance is evident that the parties that have legal standing to submit petitions for reviews of the *a quo* norms of Article 222 of Law 7/2017 are (i) political parties or coalitions of political parties participating in elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participating 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 this regard, there is no convincing evidence for the Court on whether Petitioner II and Petitioner III are individual citizens who have satisfied the requirements to be nominated as candidates for President and/or Vice President in the 2024 Presidential Election. With regard to the legal standing of individual citizens who have the right to vote, in Constitutional Court Decision Number 74/PUU-XVIII/2020 and Constitutional Court Decision Number 66/PUU-XIX/2021, 4 (four) Constitutional Justices who have dissenting opinions regarding the legal position of individual citizens who submit petitions for reviews of Article 222 of Law 7/2017, namely Constitutional Justice Suhartoyo, Constitutional Justice Manahan MP. Sitompul, Constitutional Justice Saldi Isra, and Constitutional Justice Enny Nurbaningsih, stated that the Court should grant legal standing to individual Indonesian citizens who already have the right to vote in the election contest of President and Vice President to submit a petition for review of the constitutionality of the norms of Article 222 of Law 7/2017;

Whereas pursuant to all of the descriptions above, it is evident that Petitioner I, Petitioner II, and Petitioner III (hereinafter referred to as the Petitioners) do not have the legal standing to submit the *a quo* petition. However, without intending to consider the subject matter of the petition, the Court is of the opinion that the Petitioners in their *petitum* do not petition for the change of the threshold for nominating candidates for President and Vice President (presidential threshold) which has been decided by the Court as an open legal policy, instead

they petition the Court to allow political parties that did not participate in the previous general election to still be able to nominate pairs of candidates for President and Vice President. In this regard, the Court remains in its stance that the provisions of Article 222 of Law 7/2017 which determine the requirements for nominating pairs of candidates for President and Vice President are based on the acquisition of the House of Representatives seats or valid votes nationally in the previous election of members of the House of Representatives, where such matters do not prevent the constitutional rights of the Petitioners as a political party to participate in nominating a pair of candidates for President and Vice President in the upcoming elections after the 2024 General Election because the Petitioners can still join with political parties or coalitions of other political parties that have satisfied the threshold requirement for the candidacy of President and Vice President.

Whereas even though the Court has the authority to hear the *a quo* petition, given that the Petitioners do not have the legal standing to submit the *a quo* petition, the Court does not consider the subject matter of the petition.

Whereas similar to previous decisions, regarding the constitutionality of the norms of Article 222 of Law 7/2017, 2 (two) Constitutional Justices, namely Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra, remain in their stance similar to their dissenting opinions in previous decisions.

Whereas the arguments and other matters are not considered further because they are deemed to be irrelevant.

Whereas based on these legal considerations, the Court is of the opinion that the Petitioners do not have the 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 Petitioners' petition inadmissible.

Dissenting Opinion and Concurring Opinion

Against the Court's decision, Constitutional Justice Saldi Isra has a dissenting opinion and Constitutional Justice Suhartoyo has a concurring opinion regarding Petitioner I's legal standing and has a dissenting opinion regarding the petitions of Petitioner II and Petitioner III as follows:

Whereas regarding the *a quo* Decision, I, Constitutional Justice Saldi Isra, have a dissenting opinion as follows:

Whereas in the *a quo* petition, the Petitioners, consisting of the Labor Party (Petitioner I) and two Indonesian citizens, namely Mahardhikka Prakasha Shatya (Petitioner II) and Wiratno Hadi (Petitioner III) review the constitutionality of Article 222 of Law 7/2017 which states, "Pairs of Candidates are nominated by Political Parties or Coalitions of Political Parties Participating in General Elections that satisfy the requirement of obtaining seats of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty-five percent) of the valid votes nationally in the previous election of members of the House of Representatives". Regarding the legal standing, the Petitioners explain that as a Political Party participating in the 2024 General Election, represented by Ir. H. Said Iqbal, M.E., and Ferri Nuzarli, S.E., S.H. as the President and Secretary-General, as well as the two citizens in question, deem that they are prejudiced by the enactment of the norms of Article 222 of Law 7/2017. Petitioner I, *in casu* the Labor Party, has passed political party verification and fulfilled the requirements in accordance with General Election Commission Decree Number 518 of 2022, dated 14 December 2022, and is a political party participating in the 2024 General Election [**Evidence P-7**].

Whereas, constitutionally, Article 6A paragraph (2) of the 1945 Constitution explicitly states, "Pairs of Candidates for President-Vice President are nominated by political parties or coalitions of political parties participating in a general election before the holding of the general election." Based on these provisions, all political parties that have been declared as political

party participating in general elections have the right to propose or nominate pairs of candidates for President-Vice President. Given that the Labor Party is one of the political parties participating in the 2024 General Election, it should have the constitutional right to review the constitutionality of the norms of Article 222 of Law 7/2017. This means that constitutionally and within reasonable reasoning, in its position as a constitutional norm that firmly determines the subjects who have the right to nominate candidates for President and Vice President, namely to the extent that they are political party participating in general elections, then as a political party participating in the 2024 General Election, the Labor Party has the legal standing to submit the *a quo* petition. Therefore, regardless of whether Petitioner II and Petitioner III have the legal standings or not, I will consider the substance or subject matter of the petition.

Whereas, as has been stated many times in the previous dissenting opinions of mine which states that, among other things, the Court should be able to protect the constitutional rights of political parties participating in general elections to nominate pairs of candidates for President-Vice President, among the reasons is that Article 6A paragraph (2) of the 1945 Constitution explicitly or firmly regulates political parties that can nominate pairs of candidates for President and Vice President. It has become common knowledge and understanding that, if the text of the constitution regulates explicitly or firmly (*expressis verbis*), then there is no room for interpreting differently from the text written in the constitution. When the text of the constitution states "political parties participating in general elections", then all political parties that have been declared as participating in a general election must be guaranteed the right to nominate candidates for President-Vice President. In this case, as an institution whose founding spirit is to safeguard and at the same time protect the constitutional rights of citizens, including the constitutional rights of political party participating in general elections, when legislators distort or shift the text of the constitution, it is the constitutional authority of the Court to straighten it out and at the same time return it to the text of the constitution as appropriate.

Whereas regarding their petition, the Petitioners, *in casu* the Labor Party petition that the norms of Article 222 of Law 7/2017 which state, "Pairs of candidates are nominated by political parties or coalitions of political parties participating in general elections that satisfy the requirements of vote acquisition of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty five percent) of the valid votes nationally in the previous election of members of the House of Representatives" are declared contrary to the 1945 Constitution to the extent that they are not interpreted to mean, "Pairs of candidates are nominated by political parties or coalitions of political parties participating in general elections which have been determined by the General Election Commission and/or political parties or coalitions of political parties that have a vote acquisition of at least 20% (twenty percent) of the total seats in the House of Representatives or obtain 25% (twenty five percent) of the valid votes nationally in the previous election of members of the House of Representatives". Regarding this petition, I believe it is necessary to provide several considerations. *First*, the Petitioners have a perspective that is inconsistent with the norms of Article 6A paragraph (2) of the 1945 Constitution which do not require a threshold at all in nominating pairs of candidates for President-Vice President. *Second*, the Petitioners can accept the vote acquisition threshold of at least 20% (twenty percent) of the total seats in the House of Representatives or obtaining 25% (twenty-five percent) of valid votes nationally, to the extent that they still provide opportunities for political parties or coalitions of political parties which have been determined by the General Election Commission as participating in general elections. *Third*, the Petitioners still also accept that the percentage comes from the results of the previous general election.

Whereas given these three considerations, I am of the view that the Petitioners seem to be trying to find loopholes so that they can still nominate a pair of candidates for President-Vice President in the 2024 General Election. As a petition with the substance that has been rejected dozens of times by the Court, such efforts to find loopholes are understandable. However, because some of the petitioned meanings may be in conflict with each other or are contrary to

the substance of Article 6A paragraph (2) of the 1945 Constitution, the Petitioners' petition can only be granted or is partially legally justifiable, to the extent that it is interpreted "Pairs of candidates for President and Vice President nominated by political parties or coalitions of political parties participating in a general election before the holding of the general election".

Whereas based on all legal considerations as stated in Paragraph [6.1] above, as an institution designed and established to safeguard and at the same time protect citizens' constitutional rights, including the constitutional rights of political parties participating in general elections as provided in the norms of Article 6A paragraph (2) of the 1945 Constitution, the Court should have partially granted the Petitioners' petition.

Whereas Constitutional Justice Suhartoyo's concurring opinion regarding Petitioner I's legal standing and dissenting opinion regarding the petition of Petitioner II and Petitioner III are as follows:

Whereas the Court is of the opinion that Petitioner I does not have legal standing on the basis that Petitioner I was not a General Election participating in the previous General Election for the reason that the minimum number (threshold) for the requirements for nominating candidates for President and Vice President as intended by Article 222 of Law 7/2017 cannot be determined. Despite the reason not to provide legal standing for Petitioner I in the *a quo* petition, however, I have a concurring opinion, namely that the requirements for participating in the previous election do not relate to the determination of the minimum number (threshold). Instead, this means the requirements for the party participating in the previous General Election to be able to satisfy the principles of existence, accessibility, and recognition as well as the principle of political parties' acceptability to be able to be accepted in the society as one of the instruments when nominating candidates for President and Vice President, and this can only be measured from the quality of the party institution concerned in its participation in the previous election.

Whereas based on these reasons, I am of the opinion that Petitioner I does not have legal standing, and therefore the constitutionality issue in the subject matter of the petition raised by Petitioner I is not relevant for consideration. Meanwhile, concerning Petitioner II and Petitioner III, because they argue that they are parties who have participated in democracy and are registered as voters in explaining their legal standing, I am of the opinion that Petitioner II and Petitioner III can act as the Petitioners in the *a quo* petition. Therefore, concerning the subject matter of the petition, my opinion, similar to my stance in previous decisions, the Court should have also partially granted the petition of Petitioner II and Petitioner III to the extent of the parties' right to nominate President and Vice President, without applying the minimum threshold requirements (presidential threshold) for parties that have participated in the previous election.