



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 29/PUU-XXI/2023

Concerning

Minimum Age Requirements for Presidential Candidates and
Vice Presidential Candidates

Petitioners	: Partai Solidaritas Indonesia (PSI), et al.
Type of Case	: Judicial Review of Law Number 7 of 2017 concerning General Election (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 169 letter q of Law 7/2017 is contrary to Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution
Verdict	: To dismiss the Petitioners' petition in its entirety
Date of Decision	: Monday, 16 October 2023
Overview of Decision	:

The Petitioners consist of Petitioner I who is a legal entity in the form of a political party and Petitioner II to Petitioner V who are individual Indonesian citizens. The Petitioners argue that they have the same constitutional right to vote and be elected, such right is impaired by the enactment of the norms of Article 169 letter q of Law 7/2017 since their right to obtain as many choices as possible for Presidential and Vice-Presidential candidates is loss. This is because anyone under the age of 40 (forty) years may not be nominated, either as a Presidential candidate or Vice Presidential candidate in accordance with the requirement of being at least 40 (forty) years old.

Regarding the authority of the Court, the Petitioners petition for a judicial review *in casu* Article 169 letter q of Law 7/2017 against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, both as a legal entity in the form of political party, as represented by the General Chairperson and Secretary General and as individuals, they have been able to explain the existence of a causal relationship (*causal verband*) between the presumed potential loss of the Petitioners' constitutional rights and the enactment of the norms of Article 169 letter q of Law 7/2017. Therefore, the presumed potential loss of constitutional rights will not occur if the Petitioners' petition is granted. Accordingly, regardless of whether the unconstitutionality of the norms of Article 169 letter q of Law 7/2017 is proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Furthermore, regarding the Petitioners' petition which questions the constitutionality of the norms of Article 169 letter q of Law 7/2017 and petition for the Court to lower the minimum age requirement of 40 (forty) years to at least 35 (thirty-five) years, the Court considers the following:

- 1) whereas the majority of legislators who amended the 1945 Constitution or factions in the MPR (People's Consultative Assembly) at the time of discussing the amendments

to the 1945 Constitution were of the opinion that the minimum age for the President was 40 (forty) years. However, regarding the issue of age, in the future it is possible that there may be dynamics and there are no ideal benchmarks for it. Therefore, the issue of age should not prevent someone to be nominated as Presidential candidate, especially if the said person has fulfilled the requirements set out in the Constitution. Due to this reason, the legislators who amended the 1945 Constitution agreed to determine that issue of age shall be regulated in the law. In other words, the determination of the minimum age requirement for the Presidential and Vice-Presidential candidates is under the authority of the legislators;

- 2) whereas the giving of the position of the head of government to Sutan Sjahrir, who at that time was 36 (thirty-six) years old, should not be used as a legal ground because such practice was not done continuously. Therefore, it cannot be considered and categorized as a constitutional convention that may be accepted and recognized in the practice of state administration. Moreover, in this case the appointment of Sutan Sjahrir as a prime minister is a practice in a parliamentary government system, meanwhile the Petitioners petition for the minimum age requirement for the President and Vice President in a presidential government system;
- 3) whereas there is no correlation between the minimum age requirements for the President and Vice President with the absence of regulations on the minimum age requirements for ministers because the matter relating to ministers is under the prerogative right of the President, and constitutionally, the ministers who hold the *triumvirate* position remain as ministers, even though they jointly carry out presidential duties until the election of the President and Vice President by the MPR (People's Consultative Assembly) in the session to elect the President and Vice President [vide Article 8 paragraph (3) of the 1945 Constitution];
- 4) whereas there is no reason for the Court to exclude the norm of minimum age requirements for Presidential and Vice-Presidential candidates to be under the authority of the legislators, since it is a constitutional issue, therefore the determination of the matter should not be left to the legislators as argued by the Petitioners. Because, first, the norm of Article 169 letter q of Law 7/2017 is a legal material, it constitutes the implementation of Article 6 paragraph (2) of the 1945 Constitution. Second, the Court cannot determine the minimum age limit for Presidential and Vice-Presidential candidates because it is possible that dynamics will arise in the future. In addition, if the Court determines such matter, its flexibility will be lost and it may trigger various petitions submitted to the Constitutional Court related to the minimum age requirements for other public positions. Third, despite the differences in the minimum age requirements for the Presidential candidates and Vice Presidential candidates in several general elections for President and Vice President, the policy as determined by the institutions authorized to determine the age requirements for Presidential and Vice-Presidential candidates have never caused any issue in the presidential institution. Fourth, there are no provisions regarding the age requirements that can be equated to or compared with the age requirements for Presidential and Vice-Presidential candidates as regulated in the norms of Article 169 letter q of Law 7/2017.
- 5) whereas pursuant to the developments in the minimum age requirements for Presidential and Vice-Presidential candidates, the original intent of Article 6 paragraph (2) of the 1945 Constitution and the Court's decisions regarding the age requirements for public office, the minimum age requirement for Presidential and Vice-Presidential candidates is a policy choice for legislators that shall be open to the possibility of being adjusted to the dynamics and needs of age of the Presidential and Vice-Presidential candidates. This means that the minimum age requirement for Presidential and Vice-Presidential candidates, which shall be adjusted to the dynamics of national and state life, is entirely under the authority of the legislators to determine.

In accordance with the entire description of the legal considerations above, the norm of Article 169 letter q of Law 7/2017 to the extent that it is not interpreted as “at least 35 (thirty-five) years of age” has evidently not violated the right to equal treatment before the law and in the government, the right to fair legal recognition, guarantees, protection and certainty and equal treatment before the law and the right to obtain equal opportunities in the government as guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution. Therefore, the Petitioners’ arguments are entirely legally unjustifiable.

Accordingly, the Court handed down a decision whose verdict is to dismiss the Petitioners’ petition in its entirety.

Dissenting Opinions

Regarding this decision, there are dissenting opinions from Constitutional Justice Suhartoyo and Constitutional Justice M Guntur Hamzah. Constitutional Justice Suhartoyo had a dissenting opinion, in essence, he considered that there was no impairment of the Petitioners’ constitutional rights, therefore the Petitioners’ petition should be inadmissible. Constitutional Justice M. Guntur Hamzah was of the opinion that the Petitioners’ petition should be granted in part by declaring that the *a quo* Article is conditionally unconstitutional to the extent that it is not interpreted as “at least 40 (forty) years of age or has/is currently holding a position elected through general elections including the regional head elections”.