



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 51/PUU-XXI/2023**

Concerning

**State Administrators Excluded from the Minimum Age Requirements
for Presidential Candidates and Vice Presidential Candidates**

- Petitioner** : Partai Garda Perubahan Indonesia (GARUDA Party) in this case is represented by Ahmad Ridha Sabana as General Chairperson of the GARUDA Party Central Leadership Council and Yohanna Murtika as Secretary General of the GARUDA Party Central Leadership Council
- 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 169 letter q of Law 7/2017 is contrary to Article 6, Article 6A paragraph (2), Article 28D paragraph (1) and paragraph (3) and Article 28I paragraph (2) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Monday, 16 October 2023.
- Overview of Decision** :

The Petitioner is a public legal entity in the form of a political party, in submitting the *a quo* petition, it is represented by Ahmad Ridha Sabana and Yohanna Murtika as General Chairperson and Secretary General of the Garuda Party DPP (Central Leadership Council) for the Period of 2020-2025. According to the Petitioner, his constitutional right is potentially harmed because he may not nominate any Presidential and Vice Presidential candidate who is under 40 (forty) years of age. This is because Article 169 letter q of Law 7/2017 required that the Presidential and Vice Presidential candidates must be at least 40 (forty) years of age.

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

The legal standing of the Petitioner is as a legal entity in the form of a political party represented by its General Chairperson and Secretary General; therefore, it has the authority to represent the Petitioner in submitting the *a quo* petition. The Court is of the opinion that the Petitioner has been able to explain the existence of a causal relationship (*causal verband*) between the potential loss of the Petitioner's constitutional rights as a political party participating in the 2024 Election and the enactment of the norms of Article 169 letter q of Law 7/2017. Within the limits of reasonable reasoning, at the minimum, the Petitioner has explained the presumed potential loss of constitutional rights experienced due to the enactment of the norm of Article 169 letter q of Law 7/2017 which is being petitioned for review. So, the potential loss will not occur if the Petitioner's petition is granted. Therefore, 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 Petitioner has the legal standing to act as the Petitioner in the *a quo* petition.

Furthermore, regarding the Petitioner's argument that the requirement for Presidential and Vice Presidential candidates to be under 40 (forty) years of age is contrary to the 1945 Constitution, the Court cited the legal considerations of Constitutional Court Decision Number 29/PUU-XXI/2023 as declared previously, dated 16 October 2023 which in essence considered that the minimum age requirement for Presidential and Vice Presidential candidates is a policy choice for the legislators. Since the substance questioned by the Petitioner is essentially the same, the legal considerations in the Constitutional Court Decision Number 29/PUU-XXI/2023 *mutatis mutandis* shall apply in the legal consideration of the *a quo* petition. Therefore, the Petitioner's argument regarding the minimum age requirements for Presidential and Vice Presidential candidates is legally unjustifiable.

Next, regarding the Petitioner's argument that "having the experience as state administrator" should become an exception to the minimum age requirement for Presidential and Vice Presidential candidates, the Court is of the opinion that this would actually lead to discrimination and injustice. Because, the types of state administrators are very diverse, and as the top/highest positions of executive power, the positions of President and Vice President have different characteristics and even greater responsibilities compared to other state administrators. The Court is of opinion that not treating the same thing differently is not a form of discrimination. Moreover, the Petitioner's petition does not differentiate between elected and appointed positions, instead it only refers to state administrators without any exception, so that if they are all equated it would actually lead to injustice. Accordingly, the Court itself must implement the boundaries in determining which state administrator positions may subject to the conversion to be excluded from the minimum age requirement to become the presidential or vice presidential candidates. Moreover, the said conversion can be seen as an effort to get around the relevant minimum age requirements, which has long been considered an open legal policy for legislators. Due to this reason, the conversion efforts as petitioned for by the Petitioner must also be submitted to the legislators, therefore the Court is consistent with its previous decisions, including the Constitutional Court Decision Number 29/PUU-XXI/20023 which was declared previously.

In accordance with the entire description of the legal considerations above, the phrase "at least 40 (forty) years of age" in Article 169 letter q of Law 7/2017 to the extent that it is not interpreted as "at least 40 (forty) years of age or has the experience as a State Administrator" has evidently not violated the right to fair legal recognition, guarantees, protection and certainty as well as equal treatment before the law, the right to equal opportunities in the government, and freedom from discriminatory treatment on any basis as guaranteed in Article 28D paragraph (1) and paragraph (3) as well as Article 28I paragraph (2) of the 1945 Constitution. Accordingly, the Petitioner's arguments are entirely legally unjustifiable.

Subsequently, the Court handed down a decision whose verdict is to dismiss the Petitioner's petition in its entirety.

Dissenting Opinion

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 is of the opinion that the Petitioner's 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".