CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION FOR CASE NUMBER 90/PUU-XXI/2023

Concerning

Minimum Age Limit Requirement for Candidates for President and Vice President

Petitioner	:	**Almas Tsaqibbirru Re A**
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	:	Material review of Article 169 letter q of Law 7/2017 against the 1945 Constitution
Verdict	:	1. To partially grant the Petitioner's petition; 2. To declare Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years of age" 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 "at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections". So Article 169 letter q of Law Number 7 of 2017 concerning General Elections in full reads "at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections"; 3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.
Date of Decision	:	Monday, 16 October 2023
Overview of Decision	:	

The Petitioner is an individual Indonesian citizen proven by the possession of an Indonesian Identity Card (KTP) who qualifies as a Student at the Faculty of Law, the University of Surakarta (UNSA), and aspires to become the President and Vice President and has the same constitutional rights to vote and/or be selected as a candidate for President and as a candidate for Vice President. The Petitioner explains that the enactment of the norm provisions of Article 169 letter q of Law 7/2017 has resulted in discrimination against the Petitioner, and has impaired and violated the Petitioner's constitutional rights as provided in the provisions of Article 28I paragraph (2) of the 1945 Constitution because it violates the Petitioner's constitutional rights to be elected and to elect candidates for President and Vice Presidential of the Republic of Indonesia who are under 40 (forty) years of age in the 2024 general election. In addition, the enactment of the norm provisions of Article 169 letter q of Law 7/2017 has impaired the Petitioner's constitutional rights in order to obtain equal opportunities in government as provided in the provisions of Article 28D paragraph (3) of the 1945 Constitution;

Regarding the authority of the Court, because the Petitioner's petition is a petition to review the constitutionality of the norms of Article 169 letter q of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Court is of the opinion that the Petitioner has explained his constitutional rights deemed to have been impaired by the enactment of the norms of the law petitioned for review, namely Article 169 letter q of Law 7/2017. The Court is of the opinion that such deemed impairment of the Petitioner's constitutional rights, especially as a voter in the 2024 General Election, is at least potential to occur. Therefore, the deemed impairment of the constitutional rights explained by the Petitioner has a causal relationship (*causal verband*) with the enactment of the norms of the law petitioned for review. If the *a quo* petition is granted, the impairment of the constitutional rights as described will not occur. Therefore, regardless of whether or not the unconstitutionality of the norms being argued is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* Petition;

Whereas because the *a quo* petition is evident, under Article 54 of the Constitutional Court Law, the Court is of the opinion that there is no urgency and need to hear statements from the parties as stated in Article 54 of the Constitutional Court Law;

Subject Matter

Whereas after the Court has carefully read the Petitioner's petition, examined the evidence submitted, and considered the Petitioner's arguments, the Court will then consider the subject matter of the Petitioner's petition as follows:

1. Whereas after the Court carefully examines the Petitioner's petition, as fully contained in the section of case facts, the constitutional issue that the Court must answer is whether an addition of alternative requirement “or has experience as a regional head either of a Province or a Regency/Municipality" to the norms of Article 169 letter q of Law 7/2017, as stated in the *petitum* of the *a quo* petition, is contrary to the 1945 Constitution. As argued by the Petitioner, regional heads who are elected in general elections based on popular sovereignty have the same opportunity to participate in democratic general elections of the President and Vice President;
2. Whereas the *a quo* constitutionality issue of the norms of Article 169 letter q of Law 7/2017 has been considered and decided in the decisions as previously pronounced. However, before considering further the constitutionality issue of the *a quo* norm provisions of Article 169 letter q of Law 7/2017, by looking closely at the constitutionality issues raised by the Petitioners in such cases, it is evident that there are very basic and fundamental differences in the substance or constitutionality issues raised by each Petitioner, as reflected in each petitum of their petitions. Regarding these legal facts, after further examination, it is evident that the three petitions that have been previously decided, namely Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI, were not directly related with the petition for interpreting the norm provisions of Article 169 letter q of Law 7/2017 to be correlated with types of positions that can be categorized in the job family of those being elected in general elections, as expressly petitioned for in the *a quo* petition petitum. In the petition petitum of case Number 51/PUU-XXI/2023 and Case Number 55/PUU-XXI/2023, the Petitioners in essence petition for, among other things, the norm provisions of Article 169 letter q of Law 7/2017 being declared conditionally unconstitutional to the extent that they are not interpreted as "at least 40 years of age or has experience as a State official". However, it can be said that the petition petitum of such cases contains an "ambiguous" meaning because state official positions may be obtained through appointment/being chosen or elected in general elections, which is different from what is expressly petitioned for in the *a quo* petition petitum, in which the Petitioner petitions for the norm provisions of Article 169 letter q of Law 7/2017 being interpreted as "at least 40 years of age or has

experience as a regional head either of a province or a regency/municipality". Furthermore, based on the description of the legal considerations, and because the type of position of the regional head either of a province or a regency/municipality categorized in the job family of those being elected in general elections is a type of position that provides flexibility in assessing the capabilities of a person who will be elected and provides absolute options for voters to decide, and considering the Petitioner's petitum in the *a quo* petition that is very relevant and strictly related to positions elected in general elections similar to the positions of President and Vice President, then based on these legal considerations, regarding the *a quo* case, the Court's stance is to provide more elaborative legal considerations in assessing the constitutionality issue of the norm provisions of Article 169 letter q of Law 7/2017 as petitioned for by the Petitioner in the *a quo* case. In addition to the legal considerations mentioned above, after looking closely, it turns out that the *a quo* petition also has different petition reasons, namely, regarding the issue of similarities in the characteristics of positions elected in general elections, this issue is not solely related to state official position itself (*an sich*), but also related to the alternative requirement of having been regional heads. So, the Court is of the opinion that there is no *contradictio in terminis* in understanding that general elections in which positions are elected include regional head elections. This means that it is not a matter of differences in scope and different responsibilities, because these positions are different from each other, but the focus of the issue to be assessed is the minimum age requirement to become candidates for the President and Vice President which is more about substantial weight than being based on *a quo* norms only. Therefore, the Court will then consider the Petitioner's arguments;

3. Whereas regarding the open legal policy of Article 169 letter q of Law 7/2017, the Court is of the opinion that basically the Court may change its stance in assessing the constitutionality issue of a case that is examined and heard, to the extent that there are fundamental reasons for it. The same applies in the *a quo* case. If the Court has a different stance regarding the age requirements for voters and candidates, *in casu* the minimum age of candidates for the President and Vice President if there are fundamental reasons in constitutional developments. In addition, regarding legal policies (legal policy or open legal policy) on age limits, the Court in several decisions relating to legal policy often holds the opinion that legal policy may be set aside if it violates the principles of morality, rationality, and intolerable injustice. Likewise, to the extent that a policy choice does not exceed the authority of the legislators, does not constitute an abuse of authority, and is not contrary to the 1945 Constitution, then such policy choice may be declared unconstitutional or conditionally unconstitutional by the Court. In addition, norms relating to legal policy are something not explicitly regulated in the Constitution because if they are explicitly regulated in the constitution, then the law may not regulate norms that are different from constitutional norms. In several recent decisions, the Court reinterprets and sets aside open legal policy such as in cases related to the retirement age limit and the minimum age limit for state officials because the Court considers that the norms petitioned for review violate one of the principles so that the open legal policy may be set aside or ignored, such as violations of the principles of morality, rationality, and intolerable injustice, not exceeding authority, not constituting an abuse of authority, and/or not contrary to the 1945 Constitution as contained in Constitutional Court Decision Number 112/PUU-XX/2022 reviewing the minimum age limit for the Corruption Eradication Commission leaders, and also in essence in Constitutional Court Decision Number 70/PUU-XX/2022 concerning the review of the retirement age limit for prosecutors, and also Court Decision Constitution Number 121/PUU-XX/2022 concerning review of the retirement age limit for Registrars at the Constitutional Court. Moreover, both the House of Representatives and the President acting as information providers in the hearing of Case Number 29/PUU-XXI/2023, Case Number 51/PUU-XXI/2023, and Case Number 55/PUU-XXI/2023 (without intending to judge the cases in each case

number), in essence, have completely allowed the Court, as showed in the legal facts in the trial, to decide on the *a quo* article (Article 169 letter q of Law 7/2017) [vide Hearing Minutes of Case Number 29/PUU-XXI/2023; Case Number 51/PUU-XXI/2023; Case Number 55/PUU-XXI/2023, dated 1 August 2023, page 8 and page 13], so whether the Court wants it or not, likes it or not, it must assess and adjudicate the norms questioned by the petitioner based on law, the constitution and justice, including based on the Pancasila, the 1945 Constitution, the principles of justice and human rights;

4. Basically, the opinion of several legal scholars who consider that the Constitutional Court is a negative legislator institution, instead of a law-forming institution, is not wrong. This view mentioning the Constitutional Court as a negative legislator is not completely wrong. However, the Court may step up from its position of negative legislator to giving a judicial order, new meanings, and even changing norms as petitioned for review by citizens whose constitutional rights are impaired by the enactment of norms in the law. The Constitutional Court will step up and take judicial steps if, the Court is of the opinion that norms in the law violate the constitution and/or justice, *in casu* the Pancasila, constitution, principles of justice, and human rights. However, this does not mean that the Court will immediately or easily annul norms that are already in effect, clear and certain. The Court is always careful and professional in examining, adjudicating, and deciding a case. Treating each case means understanding the characteristics of each case which are the same or not the same. The Court will react and decide on any constitutional issue if there are norms, phrases, articles, paragraphs, or parts of the law that violate the Pancasila, constitution, principles of justice, and/or human rights to confirm the Court as the final interpreter of the constitution;

5. Whereas in the context of the age of the head of government in countries with a parliamentary system, there were also Prime Ministers under 40 (forty) years of age when they were appointed/took office, namely Leo Varadkar the Prime Minister of Ireland who was appointed at the age of 38, Dritan Abazovic the Prime Minister of Montenegro was appointed at the age of 37, Sanna Marin the Prime Minister of Finland was appointed at the age of 34, Jacinda Ardern the Prime Minister of New Zealand was appointed at the age of 37, and even Sebastian Kurz was appointed Chancellor of Austria at the age of 31, as well as countries with a monarchical system like Saudi Arabia, led by Prince Mohammed bin Salman who was appointed at the age of 37. This means that, comparatively with other countries, quite a few Presidents or Vice Presidents and Prime Ministers were under 40 (forty) years of age when they were appointed/took office. All the data/information above shows that the global leadership trend is increasingly skewed towards younger ages. Therefore, within reasonable reasoning, rationally, people under 40 (forty) years of age may, *incertus tamen*, hold the office of either President or Vice President to the extent that they meet certain equal/equivalent qualifications;

6. Whereas regarding whether someone elected in regional elections (governors, regents, and mayors) falls into the category "to the extent of having experience as a state official elected in general elections", the Court is of the opinion that it is important to look back at the history of the entry of regional elections into the general election regime. Initially, disputes regarding the results of regional elections were the authority of the Supreme Court which was then transferred to the Constitutional Court as stated in Constitutional Court Decision Number 072-073/PUU-II/2004. Furthermore, in 2013 through Court Decision Constitution Number 97/PUU-XI/2013, the Court stated that the Court had no authority to decide disputes regarding the results of regional elections. This was because the Court considered that the regimes of general elections and regional elections are two different things. However, to avoid doubt, and uncertainty, and to avoid a vacuum in the institutions having the authority to resolve disputes regarding the results of regional elections, and no law regulating this matter, the resolution of disputes regarding the

results of Regional Elections remained the authority of the Constitutional Court. In its development, regarding the differences between the two election regimes above, through Constitutional Court Decision Number 55/PUU-XVII/2019 which was pronounced in a plenary session open to the public on 26 February 2020, as contained in Sub-paragraph **[3.15.1]**. Furthermore, concerning "the authority to resolve disputes regarding the results of Regional Elections", through Constitutional Court Decision Number 85/PUU-XX/2022 which was pronounced in a plenary session open to the public on 29 September 2022, as stated in Paragraph **[3.20]** and Paragraph **[3.21]**;

7. Whereas based on the legal considerations mentioned above, it is evident that the authority to adjudicate disputes regarding the results of regional elections is the Constitutional Court's permanent authority. Meanwhile, a special judicial body that was originally planned to resolve disputes regarding the results of regional elections is no longer relevant to be established. Therefore, there has been a shift in the regime for handling the resolution of disputes regarding the elections of governors, regents, and mayors, which was initially the regional election regime to become the general election regime. Even if there are thoughts among people in society who still think that general elections are separate from regional elections, *-quod non-*, then both general elections and regional elections are part of the scope of the definition of elections. Therefore, regional elections have become an inseparable part of the general election regime. Therefore, in the *a quo* case, the nomenclature used for general elections includes regional elections. Therefore, the general elections as intended in Article 22 E paragraph (2) of the 1945 Constitution and Constitutional Court Decision Number 55/PUU-XVII/2019 and Constitutional Court Decision Number 85/PUU-XX/2022, consist of: (1) elections of the House of Representatives members; (2) elections of the Regional Representatives Council members; (3) elections of the president and vice president; (4) elections of the Regional Legislative Council members; (5) elections of the governors and deputy governors; (6) elections of the regents and deputy regents; and (7) elections of the mayors and deputy mayors. In the *a quo* case, the Court needs to emphasize that the elections of regional heads (Governor, Regent, and Mayor) are parts of general elections;

8. Whereas given that this age limit is not explicitly regulated in the 1945 Constitution, and considering the practices in various countries, it is possible for the president and vice president or the head of state/government to be entrusted to characters/figures under 40 years of age. So, to provide as wide an opportunity as possible for the younger generation or millennial generation to be able to take part in election contests to be nominated for the positions of president or vice president, according to reasonable reasoning, meaning may be given to the age limit so that it is not only a singular condition but also accommodating other conditions equivalent to age that indicate persons' suitability and capacity to be able to participate in the contest as candidates for the President and Vice President to improve the quality of democracy by opening up opportunities for the nation's best sons and daughters to contest early as nominations, *in casu* as the President and Vice President. Moreover, if the requirements for President and Vice President are not attached to age requirements but are placed on experience requirements of having/being currently holding a position elected in a general election (elected officials), then it can be said that these characters/figures have met the minimum degree of maturity and experience requirements because it has been proven that they have received the trust of society, the public or the trust of the state. The importance of the younger generation participating in national and state activities, including getting the opportunity to hold public offices, *in casu* the President and/or Vice President, is not only in line with the needs of today's society but is also a logical consequence of the demographic bonus that the Indonesian nation has. At the very least, the resources existence of the younger generation is not hampered by the system applied in general election contests as a democratic means of obtaining national leaders. It is appropriate that figures of the younger generation having experience in positions of elected officials

obtain equal opportunities in government regardless of the minimum age limit. Even if positions of elected officials are expressly stated in the *a quo* Constitutional Court Decision, it can be said that the norms of positions of elected officials not only are unconstitutional but also prejudice the candidacy for candidates for the President and Vice President aged 40 years and over itself (*an sich*). In fact, the limitation on the minimum age for candidates for the President and Vice President itself alone (*an sich*), the Court is of the opinion that is the manifestation of disproportionate treatment resulting in intolerable injustice. Not only does the intolerable injustice resulting from such limitation impair, but also eliminates opportunities for the characters/figures of the younger generation who have been proven to be elected in elections, meaning they are proven to have gained the public's trust in previous elections, such as in regional head elections. This, of course, prevents officials having been elected in general elections (elected officials) from taking part in the contest as candidates for the President or Vice President which is under the same category as other positions of elected officials. Age restrictions that are only placed at a certain age without providing equivalent alternative conditions are a form of intolerable injustice in the election contest for the President and Vice President. Therefore, regional heads (Governor, Regent, and Mayor) and positions of elected officials in legislative elections (members of the House of Representatives, members of the Regional Representatives Council, and members of the Regional Legislative Council) who have served/are currently serving should be deemed to have the appropriateness and capacity as candidates for national leadership. Based on the description of the legal considerations above, the Court is of the opinion that in principle the age requirements for presidential and vice presidential candidacy must give opportunity and abolish restrictions rationally, fairly, and accountably;

9. Whereas within reasonable reasoning, every citizen has the right to vote, and should also have the right to be a candidate, including the right to be elected in the Presidential and Vice Presidential elections. This view is not wrong, in accordance with legal logic, is not contrary to the constitution, and is even in line with the opinions of some groups in society. If this logic is used then of course every citizen who has the right to vote may take the opportunity to be nominated as a candidate for the President and Vice President at a relatively young age and then leave it to the preferences of a political party or combination of political parties to nominate. The Court is of the opinion that allowing the Presidential and Vice Presidential candidates only based on having the right to vote is considered risky because, although it is not wrong from a constitutional point of view, it is unfair from the perspective of public trust because these figures have not proven themselves to have been involved in an election contest. This means that it is unfair if the nominated candidates have never received the people's trust to occupy the positions elected in general elections. Therefore, the Court considers that, in terms of age, being nominated as a candidate for President and Vice President should not be based on age restriction in the sense of numerical/quantitative units itself (*an sich*), but should also be given alternative space for qualitative age in the form of experience of having held/being currently holding positions elected in general elections. The fulfilment of such alternative conditions shows that figures who have been elected by the people based on the will of the people are deemed to have fulfilled the principle of the minimum degree of maturity and experience, and is in line with the principle of giving opportunity and abolishing restriction fairly, rationally and accountably;

10. Whereas the experience possessed by state officials in the executive, legislative, and judicial environments may not simply be ignored in the general election process. Filling public office *in casu* the President and Vice President needs to involve the participation of qualified and experienced candidates. Regarding the implementation and supervision of national policies, there are public positions that require candidates to be minimum 40 years of age (President and Vice President) and under 40 (forty) years of age that are elected in general elections such as the positions of Governors (30 years), Regents, and

Mayors (25 years), as well as members of the House of Representatives, members of the Regional Representatives Council, and members of the Regional Legislative Council (21 years). However, regarding the positions of President and Vice President, even though they are also elected in general elections because the age of candidates for President and Vice President is part of what is petitioned for review in terms of its constitutionality, the candidates for President and Vice President, according to reasonable reasoning, are less relevant to be related only to age requirements. This means that the President and Vice President who have been elected through a general election should automatically meet the age requirements for the positions of President and Vice President. To realize the participation of qualified and experienced candidates, the Court considers that experienced state officials as members of the House of Representatives, members of the Regional Representatives Council, members of the Regional Legislative Council, Governors, Regents, and Mayors are worthy to participate in the national leadership contest *in casu* as candidates for President and Vice President in general elections even though they are under 40 years of age. This means that these positions are public and are positions resulting from elections which are of course based on the will of the people because it was elected democratically. The limitation on the minimum age limit of 40 (forty) years itself (*an sich*) not only hampers or impedes the development and progress of the younger generation in the national leadership contest, but also has the potential to degrade the opportunities of the millennial generation characters/figures who are the dreams of the younger generation, all the nation's millennial generation. This means that people under 40 years of age, to the extent of having or being currently holding a position elected in general elections (elected officials) should be able to participate in the contest as candidates for President and Vice President. Such positions are of elected officials' nature, so that within reasonable reasoning the officials having or being currently holding positions of elected officials, in fact, have been tested and recognized and proven to have gained the people's trust and legitimacy so that the figures/persons are expected to be able to carry out their duties as public officials. *in casu* the president or vice president. Holding a position elected by general election (elected officials) means that it is not measured by the length of time in office, but rather that the figure in question has held or is currently holding an official position of elected officials which can be proven by a decision letter of appointment or inauguration in the position in question which is based on the general election results. Furthermore, if viewed from the perspective of rationality, the Court is of the opinion that determining a minimum age limit of 40 years for candidates for President and Vice President does not mean that it is irrational, but does not fulfil elegant rationality because whatever age is stated it will always be debatable according to the development standards and needs of each era, so that in determining the age limit for Presidential and Vice Presidential candidates, apart from being determined at the age limit (40 years), it is important for the Court to provide a meaning that is not only quantitative but also qualitative so that it is necessary to provide alternative norms that include requirements for experience or electability through a democratic process, namely having or being currently holding a position elected through a general election (elected officials), excluding appointed officials such as acting or on duty officials in the positions elected in such general elections, because such positions of appointed officials are not based on positions elected through general elections. Meanwhile, certain figures or public officials who can become candidates for President and Vice President, but have never held positions elected in general elections, meet the age requirement if they are 40 years of age. So, matching the age of 40 years or having experience as state officials elected in general elections such as the President and Vice President, members of the House of Representatives, members of the Regional Representatives Council, members of the Regional Legislative Council, Governors, Regents, and Mayors fulfils the element of just rationality. Therefore, in the context of eligibility and suitability to become candidates for President and Vice President, such

officials can be said to have fulfilled the minimum degree of maturity and experience requirements to hold higher positions that are elected in general elections, in addition to the requirement of being 40 (forty) years of age;

11. Whereas even if someone is not yet 40 years of age but already has experience as a state official elected in a general election (a member of the House of Representatives, member of the Regional Representatives Council, member of the Regional Legislative Council, Governor, Regent, and Mayor), that person does not automatically become the President and/or Vice President. Because, there are still two constitutional requirements that must be met, namely the requirement to be nominated by a political party or a coalition of political parties [vide Article 6A paragraph (2) of the 1945 Constitution], and the requirement to be directly elected by the people [vide Article 6A paragraph (1) the 1945 Constitution]. So, even if someone has experience as a state official but is not nominated or proposed by a political party or a coalition of political parties participating in the general election, that person certainly cannot become a candidate for President and/or Vice President. Furthermore, if someone is nominated or proposed by a political party or a coalition of political parties participating in the general election, then that person must of course pass the next constitutional requirement, namely Article 6A paragraph (1) of the 1945 Constitution which provides that the President and Vice President are elected as a pair directly by the people. Therefore, candidates for President and Vice President who are at least 40 (forty) years of age can still be nominated as candidates for President and Vice President. Meanwhile, prospective candidates under 40 years of age can still be nominated as candidates for President and Vice President to the extent that they have experience of having held or are currently holding positions as officials elected in general elections *in casu* the members of the House of Representatives, members of the Regional Representatives Council, members of the Regional Legislative Council, Governors, Regents or Mayors, but not including appointed officials, such as acting or on duty officials and the like. Appointed officials can only be nominated as candidates for President and Vice President through the entry point of being 40 years of age. The Court is of the opinion that although there is an alternative requirement in the form of experience of having held or are currently holding a position as an official elected in a general election (elected officials) for candidates for President and Vice President who are under 40 years of age, this requirement will not harm candidates for President and Vice President who are aged 40 years and over. Because, the age requirements for candidates for president and vice president must be based on the principle of giving opportunity and abolishing restrictions rationally, fairly, and accountably. In this regard, the Court needs to ensure that the contest of general election of President and Vice President is carried out directly, publicly, freely, confidentially, honestly, and fairly without being hindered by the mere age requirement of 40 (forty) years. Therefore, there are two "entry points" in terms of age requirements in the norms of Article 169 letter q of Law 7/2017, namely being 40 years of age or having/being currently holding a position elected in a general election. Fulfilment of one of these two conditions is valid and constitutional. Moreover, "*idu geni*", the term that is often attached to the Court's decisions has been written down as stated in the verdict and considerations of this decision. That is, through the *a quo* decision, the Court intends to state that in the *a quo* case namely, concerning the Presidential and Vice Presidential elections, the principle of giving opportunities and abolishing restrictions must be applied by opening up a wider, fair, rational and accountable contest space for the nation's best sons and daughters, including millennial generation, as well as giving weight to fair legal certainty within the framework of a living constitution. Therefore, if one of these two conditions is satisfied, then an Indonesian citizen should be deemed to meet the age requirement to be nominated as a candidate for President and Vice President;

12. Whereas concerning the Petitioner's petitum which essentially petitions the Court to give meaning to the norms of Article 169 letter q of Law 7/2017 "… or has experience as a

regional head either of a Province or a Regency/Municipality”. Regarding this matter, the Court considers that although the series of legal considerations of the Court above are appropriate and can answer the issues raised by the Petitioner, the correct interpretation to realize the main legal considerations cannot be fully carried out by following the formulation of meaning as desired by the Petitioner. Therefore, taking into account the Petitioner's petitum in the alternative/replacement petitum, namely "ex aequo et bono" as stated in the petitum of the Petitioner's petition, and to fulfil fair legal certainty, then in the Court’s opinion the correct meaning for the formulation of *a quo* norms must be at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections. Therefore, because the current paradigm of the positions of the regional head, either of a province or a regency/municipality, is positions elected in general elections, the *a quo* norms in full reads "at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections". Furthermore, the provisions of Article 169 letter q of Law 7/2017 as referred to in the *a quo* decision will be effective from the 2024 Presidential and Vice Presidential General Election onwards. The Court needs to emphasize it so that doubts do not arise regarding the application of *a quo* Article in determining the minimum age requirement for President and Vice President candidates as formulated in the *a quo* decision. Therefore, regarding the meaning of the norms of Article 169 letter q of Law 7/2017, the Court needs to emphasize that in the case of two decisions involving the same constitutionality issue but because the petitum is not the same in several previous decisions with the *a quo* case so that the impact of the decision is not the same, then the most recent decision applies. That is, the *a quo* verdict automatically sets aside previous decisions. This understanding is in line with the principles *lex posterior derogat legi priori*. Therefore, the constitutional interpretation in the *a quo* decision sets aside previously read decisions on the same constitutional issue, and the *a quo* decision subsequently becomes a new constitutional basis for the norms of Article 169 letter q of Law 7/2017 which have been in effect since this decision is pronounced in a session open to the public (vide Article 47 of the Constitutional Court Law).

Whereas based on all the legal considerations mentioned above, it is evident that the norms of Article 169 letter q of Law 7/2017 have created intolerable injustice. Therefore, the Court is of the opinion that the norms of Article 169 letter q of Law 7/2017 must be declared conditionally unconstitutional to the extent that they do not fulfil the meaning that will be written down in the *a quo* verdict. Therefore, the Court's interpretation does not fully grant the Petitioner's petition entirely, so the Petitioner's petition is partially legally justifiable.

Furthermore, the Court passed down a decision in which the verdict was as follows:

1. To partially grant the Petitioner's petition;
2. To declare Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) which states, "at least 40 (forty) years of age" 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 "at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections". So Article 169 letter q of Law Number 7 of 2017 concerning General Elections in full reads "at least 40 (forty) years of age or has/is currently holding a position elected through a general election including regional head elections";
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

Concurring Opinions and Dissenting Opinions

Whereas against the Court's *a quo* decision, there are concurring opinions from 2 (two) Constitutional Justices, namely Constitutional Justice Enny Nurbaningsih and Constitutional Justice Daniel Yusmic P. Foekh, and there are also dissenting opinions of 4 (four) Constitutional Justices, namely Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo, stating as follows:

A concurring opinion by Constitutional Justice Enny Nurbaningsih

Therefore, I have different reasons for granting part of the Petitioner's petitum, namely "**at least 40 (forty) years of age or has experience as a governor, the requirements of which are determined by the legislators.**"

A concurring opinion by Constitutional Justice Daniel Yusmic P. Foekh

Whereas based on the entire description of the legal considerations above, I am of the opinion that Article 169 letter q of Law 7/2017 is contrary to the 1945 Constitution and does not have conditional binding legal force to the extent that it is not interpreted as "**at least 40 (forty years of age) or has experience as a regional head of a province**".

DISSENTING OPINION

Dissenting opinion by Constitutional Justice Wahiduddin Adams

Whereas based on several explanations of the arguments above, I am of the opinion that the Court should reject the Petitioner's Petition.

Dissenting opinion by Constitutional Justice Saldi Isra

Concerning the above matter, the Court often provides considerations of open legal policy regarding issues that are not explicitly regulated in the constitution, so it should be completely left to the legislators to determine them, and should not be decided by the Court itself. Therefore, the Court should stick to this approach and should not tend to seem to choose which issues may be treated as open legal policy and then decide them without arguments and legal reasoning that are clear and changing. This may cause the determination of open legal policy by the Court a cherry-pick jurisprudence, as can be seen from the inconsistency in the opinions of some Justices that suddenly change in answering the main issues in several similar petitions as described above. In the *a quo* petition, the Court should also implement a judicial restraint by refraining from entering into the authority of legislators in determining the minimum age requirement for candidates for president and vice president. This is very needed to maintain balance and respect for legislators in the context of the separation of state powers.

Furthermore, the legislators explicitly conveyed and had wishes similar to the Petitioner’s, so that changes or additions to the requirements for candidates for president and vice president should be carried out through a mechanism of legislative review by revising the Law requested by the Petitioners, instead of throwing this controversial issue at the Court. Unfortunately, something that is simply visible nature of open legal policy is taken over and used as a "political burden" for the Court to decide. If such an approach in deciding cases continues, I am very, very worried and afraid that the Court is actually trapping itself in a political vortex in deciding various political questions which will ultimately undermine public trust and legitimacy to the Court. **Quo Vadis the Constitutional Court?**

Dissenting opinion from Constitutional Justice Arief Hidayat

Therefore, the Court should issue a Decree granting the withdrawal of the *a quo* petition on the basis that the Petitioner was not serious and professional in submitting the petition and could be suspected of even playing with the authority and dignity of the Court. Therefore, it is the obligation of constitutional justices to provide education to people of justice seekers to be careful, meticulous, and serious and not to perceive this matter as trivial, so that similar things will not happen again in the future. Therefore, as a legal consequence of the withdrawal of the case, the Petitioner cannot cancel the revocation of the *a quo* case and the case that has been revoked or withdrawn cannot be re-submitted.

Dissenting opinion from Constitutional Justice Suhartoyo

Based on the description of the legal considerations above, I am of the opinion regarding the *a quo* petition, that the Constitutional Court should also not provide legal standing to the Petitioner and therefore it is irrelevant to consider the subject matter of the petition, so that in the verdict of the *a quo* decision "declares the Petitioner's petition inadmissible".