



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 55/PUU-XXI/2023**

Concerning

**the Constitutionality of Minimum Age Restrictions for Presidential
Candidates and Vice Presidential Candidates**

Petitioner	: Erman Safar, et al.
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	: According to the Petitioners, Article 169 letter q of Law 7/2017 is contrary to the 1945 Constitution because it limits the Petitioners' rights as state administrators to run as candidates for President or Vice President
Verdict	: To dismiss the Petitioners' petition in its entirety
Date of Decision	: Monday, 16 October 2023
Overview of Decision	:

Whereas the Petitioners are individual Indonesian citizens who currently serve as regional heads and/or deputy regional heads.

Regarding the Court's Authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 16 letter q 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 is of the opinion that the Petitioners as Indonesian citizens have also described to the Court that the Petitioners have constitutional rights as regulated in Article 28D paragraph (1) and paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution, that at least as Indonesian citizens, the Petitioners have the right to be nominated as President or Vice President. In addition, the Petitioners have active voting rights because currently the Petitioners serve as regional head or deputy regional head, the condition to be able to take part in the regional head election is the relevant person must have active voting right.

Furthermore, in relation to the status of the Petitioners as state administrators, *in casu* as regional head or deputy regional head, the Court is of the opinion that there are two different legal consequences in the context of judicial review. This is because in the electoral legal system, regional head candidates may be proposed through two routes, namely through political party/coalition of political parties, or through independent channels (non-political party). Pursuant to these legal considerations, the Court is of the opinion that the Petitioners as Indonesian citizens who are adults and under 40 (forty) years of age and have the right to vote and be elected, have the potential to have their constitutional rights being impaired due to the enactment of Article 169 letter q of Law 7/2017.

In accordance with these considerations, the Court is of the opinion that regardless of whether the unconstitutionality of the norm of Article 169 letter q of Law 7/2017 is proven or not, the Petitioners have been able to describe the presumed loss of constitutional rights which has the potential to occur and that such presumed loss has a causal relationship (*causal verband*) with the enactment of the *a quo* norms. Therefore, if the Petitioners' petition is granted, such loss of constitutional rights will not occur. Therefore, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* Petition.

Whereas the Petitioners petition for a review of the constitutionality of Article 169 letter q of Law 7/2017. According to the Petitioners, the norms of Article 169 letter q of Law 7/2017, which regulate the minimum age requirement for Presidential and Vice Presidential candidates to be 40 years, is contrary to Article 28D paragraphs (1) and (2) and Article 28I paragraph (2) of the 1945 Constitution . This minimum age requirement means that Petitioners who are not yet 40 years old are prevented from running as Presidential or Vice Presidential candidates. Meanwhile, on the other hand, the Petitioners argued that they had experience as state administrators, *in casu* regional heads, where regional heads according to the Petitioners have similarities with the President since both are state administrators in the executive area/sector.

According to the Petitioners, Article 169 letter q of Law 7/2017 regarding the phrase "at least 40 (forty) years of age" is contrary to the 1945 Constitution and conditionally does not have binding legal force provided that it is not interpreted as "at least 40 (forty) years of age or have an experience as a State Administrator".

Regarding such petition for judicial review, the Court has heard and decided on a petition for judicial review of the constitutionality of the same norm in the Constitutional Court Decision Number 29/PUU-XXI/2023 which was then quoted in the Constitutional Court Decision Number 51/PUU-XXI/2023, both of which were declared at the previous sessions, dated 16 October 2023.

The Court is of the opinion that limiting the minimum age for Presidential and Vice Presidential candidates is an open legal policy the authority of which is under the Legislators, namely the House of Representatives (Dewan Perwakilan Rakyat) together with the President. In the *a quo* case, the Court did not find any justification/argument to declare the open legal policy norms as unconstitutional or at least conditionally unconstitutional.

The Petitioners in their petition did not seem to be concerned about the minimum age requirement, because the Petitioners did not declare the unconstitutionality of the minimum age requirement of 40 years, but instead petitioned the Court to provide alternative requirement for such age requirement. According to the Petitioners, the age requirement to run as a Presidential or Vice Presidential candidate remains as per the initial construction of *a quo* Law 7/2017, namely if such person has reached the age of 40 years, but a new meaning should be added in the form of an alternative, namely if someone is a state administrator then such person may be nominated as presidential or vice presidential candidate even though he/she has not yet reached 40 years of age.

The Court is of the opinion that such petition carries contradictory reasoning. The age restriction requirement regulated in Article 169 letter q of Law 7/2017 does not appear to be directly related to the requirement that the Petitioners wished to add, namely the requirement in the form of a status as state administrator. In fact, the status of "state administrator" cannot be separated from the age requirement. This is because state administrator in principle refers to certain individual who holds a position to which the age requirement is attached.

The Court is of the opinion that this means that the understanding of the alternative requirements as petitioned by the Petitioners is substantially the same as petitioning for the elimination of the minimum age requirement of 40 years, if the relevant person is a state administrator.

On the other hand, the Petitioners did not explain the extent to which state officials are said to have experience which is considered as equivalent to the position of President/Vice President.

Likewise, the extent of the limitations referred to by "under 40 (forty) years of age" was not explained in more depth by the Petitioners. If the Petitioners' logic is followed, *quod non*, then the minimum age requirement to be nominated as Presidential and Vice Presidential candidates, for any prospective Presidential candidates and prospective Vice Presidential candidates who have the status of state administrators will vary depending on the position they are currently holding/have previously held. This is because the state administrator category includes various types of positions, each of which has a different minimum age requirement.

The Court is of the opinion that this non-uniform pattern of age restrictions, since it is based on age regulations which is inherent in the provisions regarding each category of state administrator positions, it will eliminate the substance of age restrictions as "restrictions based on certain age standards". Therefore, the Petitioners' wish for a new meaning to the norms of Article 169 letter q of Law 7/2017 will cause *contradictio in terminis* as explained above because it will **both prohibit and allow** a person under 40 years of age to be nominated as President or Vice President.

Such contradictory nature will give rise to confusion and doubt for the *addressee* the *a quo* article is aimed at, which ultimately presents nothing other than a condition of legal uncertainty that is contrary to the 1945 Constitution.

Pursuant to the legal considerations above, the Court is of the opinion that the Petitioners' petition is legally unjustifiable, and therefore the Court in its decision states "To dismiss the Petitioners' petition in its entirety."

DISSENTING OPINION

Regarding the *a quo* decision of the Constitutional Court, the Constitutional Justice Suhartoyo and Constitutional Justice M. Guntur Hamzah have dissenting opinions, respectively as follows:

Dissenting Opinion of Constitutional Justice Suhartoyo

Considering that pursuant to the entire description of the legal considerations mentioned above, the Constitutional Court should have accommodated and considered that the norms of Article 169 letter q of Law 7/2017 have a constitutionality issue and the Court should have granted the *a quo* petition of the Petitioners in part.

Whereas expanding the meaning of the norms of Article 169 letter q of Law 7/2017 by attaching replacement or optional requirements provided that the relevant person has served as a state administrator with a good reputation, then this shall reflect that such experienced administrator has a more substantial value than determining the minimum age requirement of 40 (forty) years which is only based on estimation or assumption that someone who is 40 (forty) years old is considered to have the ability or capacity to become a presidential candidate and vice presidential candidate. In other words, such legal facts may be used as evidences that they are related to the norms of Article

169 letter q of Law 7/2017, even if it is considered to be under the authority of the legislator (open legal policy), but such regulations can be considered to have violated morality, rationality or injustice intolerably.

Dissenting Opinion of Constitutional Justice M. Guntur Hamzah

Therefore, by dismissing the Petitioners' petition, it appears that the Constitutional Court is ignoring the aspect of justice which should be the main concern and core business of the judicial institutions, namely to uphold the law and justice as mandated by Article 24 paragraph (1) of the 1945 Constitution. Accordingly, once again, my sense of justice believes that the Petitioners' petition should have been granted in part therefore Article 169 letter q of Law 7/2017 should have been declared conditionally unconstitutional provided 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 regional head elections".