



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 102/PUU-XXI/2023**

**Concerning**

**Maximum Age Limit Requirements for Presidential Candidates  
and Vice-Presidential Candidates**

<b>Petitioners</b>	: <b>Rio Saputro, et al.</b>
<b>Type of Case</b>	: 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)
<b>Type of Case</b>	: Judicial Review of Article 169 letters d and letter q of Law 7/2017 against the 1945 Constitution
<b>Verdict</b>	: 1. To declare that the Petitioners' petition regarding the review of the norms of Article 169 letter q of Law 7/2017 is inadmissible. 2. To dismiss the remainder of the Petitioners' petition.
<b>Date of Decision</b>	: Monday, 23 October 2023.
<b>Overview of Decision</b>	:

The Petitioners are Indonesian citizens who have the right to vote as guaranteed by the 1945 Constitution in order to obtain productive, energetic, and physically and mentally healthy presidential and vice presidential candidates who are less than 70 years old. In addition, to get a president and vice president who does not have a track record of committing serious human rights violation, is not person involved in and/or part of the kidnapping of activists in 1998, is not a person involved in and/or the perpetrator of enforced disappearances of people, has never committed criminal act of genocide, never involved in and/or the perpetrator of crimes against humanity and anti-democratic acts, and other serious crimes.

Regarding the authority of the Court, since the Petitioners petition for a judicial review of the law, *in casu* Article 169 letters d and letter q of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear and decide on the *a quo* petition.

Regarding the legal standing of the Petitioners, because the Petitioners have been able to describe the presumed loss of the Petitioners' constitutional rights as guaranteed in the 1945 Constitution due to the enactment of Article 169 letters d and letter q of Law 7/2017 submitted in the *a quo* petition, Therefore, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

In connection with the constitutionality issue questioned by the Petitioners, namely the meaning of Article 169 letter d of Law 7/2017, namely the phrase "has never betrayed the state and has never committed criminal acts of corruption or other serious crimes" According to the Petitioners, the norms in such phrase do not regulate clearly and in detail regarding other serious criminal acts contained in the laws and regulations in Indonesia.

Furthermore, the phrase “has never betrayed the country and has never committed criminal acts of corruption or other serious crimes” creates a blurring of norms, thereby causing the principle of legal certainty to not be fulfilled which is contrary to Article 7A, Article 28D paragraph (1), Article 28G paragraph (1) and paragraph (2), and Article 28I paragraph (1), paragraph (4), and paragraph (5) of the 1945 Constitution;

Regarding the Petitioners' argument, the Court considered that the *a quo* argument cannot be separated from the essence contained in the norms of Article 169 letter d of Law 7/2017 as a whole, the norms of this article completely regulate the requirements that must be fulfilled by the presidential and vice presidential candidates including the prohibition of “has never betrayed the country and has never committed criminal acts of corruption or other serious crimes”. Although in the *petitum* the Petitioners wish to expand the meaning of the provisions of Article 169 letter d of Law 7/2017 by adding the phrase "does not have a track record of committing serious human rights violations in the past, is not a person who was involved in and/or was part of the activist kidnapping incident in 1998, not a person involved and/or the perpetrator of enforced disappearance of people, never committed criminal act of genocide, not a person involved in and/or the perpetrator of crimes against humanity and anti-democratic acts", then in addition to making the meaning of the norms of Article 169 letter d of Law 7/2017 becomes redundant and the repeated meanings tends to create doubt, and it can actually narrow the scope of the basic norms which are naturally contained in such Article 169 letter d of Law 7/2017. Because, the phrase "other serious crimes" in the norms of Article 169 letter d of Law 7/2017 actually includes a very broad meaning, namely all types of serious crimes, including the crimes intended by the Petitioners to be included in the expansion of the meaning of the norms of Article 169 letter d of Law 7/2017, as stated in the *petitum* of the Petitioners' petition. Therefore, the Court is of the opinion that accommodating the wishes of the Petitioners by expanding the meaning of the norms of Article 169 letter d of Law 7/2017 could actually weaken the legal certainty that already exists and is attached to such norms. Moreover, by looking further at the arguments of the Petitioners' petition, especially with regard to the desire to include or add the types of serious crimes as stated in the *petitum* of their petition, without providing confirmation of the types of such serious crime; whether it was merely assumed, presumed, alleged, or has there been any inquiry, investigation or even a legally binding court decision taken regarding such serious crime, this will add more complexity to apply the relevant legal norms. Regarding this matter, it is important for the Court to emphasize that even if the type of serious criminal crimes as petitioned by the Petitioners is included in the norms of Article 169 letter d of Law 7/2017, a court decision with permanent legal force must have been issued to prove such crime has been committed. This is important because if the Petitioners' wishes are granted, there will be a potential for a violation of the principle of presumption of innocence.

Pursuant to the description of the legal considerations above, the Court concluded that the Petitioners' argument regarding the interpretation of Article 169 letter d of Law 7/2017, which according to the Petitioners, is contrary to Article 7A, Article 28D paragraph (1), Article 28G paragraph (1) and paragraph (2), and Article 28I paragraph (1), paragraph (4), and paragraph (5) of the 1945 Constitution are conditional and do not have binding legal force, provided that they are not interpreted as the description stated in the *Petitum* of the *a quo* petition is legally unjustifiable.

Regarding the Petitioners' argument which questions the constitutionality of the norms of Article 169 letter q of Law 7/2017 which does not regulate the existence of a maximum age limit requirement to become a presidential candidate and vice presidential candidate, so that the Petitioners' constitutional rights to have a president and vice president who are productive, energetic, and healthy mentally and physically, at least potentially which according to reasonable reasoning is able to occur and shall be detrimental to their constitutional rights if the president and vice president elected in the general election are older than 70 years.

Regarding the Petitioners' arguments, before the Court further considered the *a quo* petition of the Petitioners, the Court shall first consider that since the object of the *a quo* petition is a review of the norms of Article 169 letter q of Law 7/2017, which is no different from the object of the petition in Case Number 90/PUU-XXI/2023 in which the Court has stated its stance related to Article 169 letter q of Law 7/2017, as intended in the Constitutional Court Decision Number 90/PUU-XXI/2023 dated 16 October 2023, which states:

1. To dismiss the Petitioner's petition in its entirety.
2. To declare that Article 169 letter q of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia 2017 Number 182, Supplement to 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 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." Therefore, 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 general elections including regional head elections;

3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

Whereas in the decision, there were 4 (four) Constitutional Justices who had dissenting opinions, namely Constitutional Justice Wahiduddin Adams, Constitutional Justice Saldi Isra, Constitutional Justice Arief Hidayat, and Constitutional Justice Suhartoyo, but because the substance of the norms of Article 169 letter q of Law 7/2017 had been partially granted by the Court, the formulation of the *a quo* Article which reads "at least 40 (forty) years of age"; has been declared to be in conflict with the 1945 Constitution and does not have binding legal force 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", then in fact regarding the provisions of the norms of Article 169 letter q Law 7/2017, the Constitutional Court Decision Number 90/PUU-XXI/2023 is valid and has binding legal force instead of the norms used as the object of the *a quo* petition

Therefore, regardless of the fact that there are two constitutional justices who have concurring opinion and dissenting opinion in this decision, regarding the norms of Article 169 letter q of Law 7/2017 which is the object of the *a quo* petition has been given a new meaning that has been in effect since the declaration of the Constitutional Court Decision Number 90/PUU-XXI/2023 [*vide* Article 47 of the Constitutional Court Law], and no longer as stated in the Petitioners' petition. Article 169 letter q of Law 7/2017 the *a quo* petition fulfils the requirements described in the Constitutional Court Law and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases, the argument of the Petitioners regarding the review of the unconstitutionality of the norms of Article 169 letter q of Law 7/2017, has lost its object.

Accordingly, the Court subsequently handed down a decision whose verdict states, as follows:

1. To declare that the Petitioners' petition regarding the review of the norms of Article 169 letter q of Law 7/2017 is inadmissible.
2. To dismiss the remainder of the Petitioners' petition.

### **Dissenting Opinion**

Regarding the decision of the *a quo* Constitutional Court, Constitutional Justice Suhartoyo has a dissenting opinion:

Whereas by observing the separation element between the essence of the requirements to become a Presidential candidate and a Vice Presidential candidate as intended in the norms of Article 169 of Law 7/2017 with norms including Article 6A paragraph (2) of the 1945 Constitution and the norms of Article 221 and Article 222 of Law 7/2017, then in fact such provisions have proven that the philosophy and essence intended in the norms of Article 169 of Law 7/2017 are truly only intended for private legal subjects in order to fulfil the formal requirements so that they can then be nominated as presidential and vice presidential candidates. Therefore, when someone who is not going to nominate himself as a presidential candidate and vice presidential candidate, then in fact the said legal subject may not question the constitutionality of the norms of the *a quo* Article 169 of Law 7/2017.

Whereas pursuant to the description of the aforementioned legal considerations, the petition in case Number 29/PUU-XXI/2023, which basically petition the Court to declare the unconstitutionality of the norms of Article 169 letter q of Law 7/2017 for the benefit of other parties, is a petition based on the absence of legal relations between the Petitioners in the *a quo* case with the desired legal subject in the *petitum* of the petition. In other words, there is no causal relationship between the constitutional rights owned by the Petitioners and the legal norms being petitioned for review as required in the norms of Article 4 paragraph (2) of the Constitutional Court Regulation 2/2021 and the decision of the Constitutional Court Number 006/PUU-III/ 2005 dated 31 May 2005 and Constitutional Court Decision Number 11/PUU-V/2007 dated 20 September 2007. Therefore, for the Petitioners there is no assumption of actual or potential loss and therefore it is not relevant for the Petitioners to be given the legal standing in the *a quo* petition and therefore the Court should emphasize that the *a quo* petition does not fulfil the formal requirements and declares that the Petitioners' petition is inadmissible.

Whereas pursuant to the excerpts from the legal considerations of dissenting opinions in case 29/PUU-XXI/2023 as mentioned above against the Petitioner in the *a quo* petition, I am also of the opinion that the Petitioners who petition that the norms of Article 169 letter q of Law 7/2017 be interpreted as the description stated in the *petitum* of their petition and the fact that their petition is not submitted for their own interests, it is also irrelevant to give the legal standing to the Petitioners to act as the petitioner in the *a quo* petition, therefore the legal considerations in the form of dissenting opinion in case Number 29/PUU-XXI/2023, *mutatis mutandis* shall apply as an inseparable part of legal considerations in the dissenting opinion in the *a quo* petition;

Pursuant to the description of the legal considerations above, I am of the opinion that regarding the *a quo* petition, the Constitutional Court should also not give a legal standing to the Petitioners and therefore it is irrelevant to consider the subject matter of the petition, therefore the *a quo* decision the Court states that "to declare that the Petitioner's petition is inadmissible."