



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 134/PUU-XXI/2023**

Concerning

**Authority of the General Election Commission and General Election
Supervisory Body in Researching and Disclosing Track Records of
Presidential Candidates and Vice Presidential Candidates**

Petitioners	: Josua A.F. Silaen, 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 12 letter l and Article 93 letter m of Law 7/2017 are contrary to the 1945 Constitution.
Verdict	: To dismiss the Petitioners' petition in its entirety.
Date of Decision	: Thursday, 21 December 2023
Overview of Decision	:

The Petitioners consist of individual Indonesian citizens who have voting rights in the 2024 Presidential and Vice Presidential General Elections. The Petitioners believe that they are injured by the norms of Article 12 letter l and Article 93 letter m of Law 7/2017 because these Articles do not regulate the authority of the General Election Commission and the General Election Supervisory Body in researching and disclosing the results of research on the track records of Presidential and Vice Presidential candidates participating in the general election. The Petitioners believe that the norms of these Articles violate the constitutional rights in accordance with Article 22E paragraph (1) and Article 28F of the 1945 Constitution.

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 12 letter l and Article 93 letter m of Law 7/2017 against the 1945 Constitution, since it is one of the authority of the Court, therefore the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, regardless of whether the conditional unconstitutionality of the norms of Article 12 letter l and Article 93 letter m 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.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Regarding the Petitioners' argument, the norms being petitioned for review by the Petitioners, namely the norms of Article 12 letter l and Article 93 letter m of Law 7/2017, are norms contained in the regulations regarding the duties of the General Election Commission and the General Election Supervisory Body in organizing the general elections. The duties of the General Election Commission are regulated in Article 12 which is described in letter a to letter l. Meanwhile, duties of the General Election Supervisory Body are regulated in Article 93 which is described in letter a to letter m. In addition to the duties of administering the general

elections, Law 7/2017 also regulates the authority of the General Election Commission (Article 13), the obligations of the General Election Commission (Article 14), the authority of the General Election Supervisory Body (Article 93) and the obligations of the General Election Supervisory Body (Article 94). The duties, obligations and authority of the General Election Commission and the General Election Supervisory Body described in these articles must be implemented at every level of general elections as regulated by Law 7/2017. This includes the general election of the legislative members and the general election of the President and Vice President. If these legal facts are linked to the Petitioners' arguments, it is apparent that the reasons used for the Petitioners' petition are solely the requirements for presidential and vice presidential candidates in the presidential and vice presidential general election, however, these reasons are apparently not in accordance with the formulation submitted by the Petitioners in their *petitum* which is not specifically applied solely to the presidential and vice presidential candidates. Therefore, if the Petitioners' petition as formulated in the *petitum* is granted, then the *a quo* norms would not be in line with the scope of the duties of the General Election Commission in administering the general elections, both the legislative elections and the presidential and vice-presidential elections which are the *addresat* of the *a quo* norms. Therefore, the Court is of the opinion that the existence of the norms as petitioned by the Petitioners actually creates inconsistency between the scope of the duties of the General Election Commission and the research of the track records of the presidential and vice presidential candidates. Moreover, this would also create difficulties in implementing the duties of the General Election Commission in administering the general elections because these duties must be carried out by the General Election Commission and General Election Supervisory Body at every level of general elections, including the legislative candidate members, consisting of the candidates for the members of the House of Representatives and the candidates for the members of Regional Representatives Council for all general electoral districts, and thus the norms become difficult to implement or unviable.

In addition, structurally, the norms of Article 12 letter l and Article 93 letter m of Law 7/2017 are formulated as the provisions aimed at opening up the possibility of additional duties which may be regulated in accordance with the provisions of the laws and regulations. In other words, Article 12 letter l and Article 93 letter m of Law 7/2017 are intentionally formulated openly, so that the duties of the General Election Commission and the General Election Supervisory Body remain dynamic so that they are able to cater to the needs and developments. This is also consistent with the provisions governing the authority and obligations of the General Election Commission (*vide* Article 13 letter l and Article 14 letter n of Law 7/2017) and the authority and obligations of the General Election Supervisory Body (*vide* Article 95 letter k, and Article 96 letter e of Law 7/2017) . However, the additional duties of the General Election Commission and the General Election Supervisory Body should not be carried out by amending or adding norms to Article 12 letter l and Article 93 letter m of Law 7/2017 as petitioned by the Petitioners, because apart from potentially creating unclear norms, it is also potentially eliminating the legal basis for other dynamic tasks of the General Election Commission and the General Election Supervisory Body. In addition, amending the formulation of Article 12 letter l and Article 93 letter m of Law 7/2017 as petitioned by the Petitioners would actually narrow the meaning of the norms of the *a quo* Article, and may give rise to legal uncertainty. Moreover, the interpretation as petitioned by the Petitioners also creates overlapping duties between the General Election Commission and the General Election Supervisory Body, because the Petitioners expect the General Election Commission and the General Election Supervisory Body to carry out the same tasks in administering the general elections. This interpretation actually creates conflicting norms in the law, because the General Election Commission and the General Election Supervisory Body, even though they are both the administrators of general election (Article 1 number 7 of Law 7/2017), the have different duties and functions. The General Election Commission as the administrator of general election is tasked with carrying out the election, while the General Election Supervisory Body as the administrator of general election is tasked with supervising the implementation of the general election (*vide* Article 1 number 8 and Article 1 number 17 of Law 7/2017). By paying attention to the scope, objectives and structure of the norms in the *a quo* Article being petitioned for review by the Petitioners, the Court is of the opinion that there is no constitutional reason to amend or

give a new interpretation other than as stated in the norms of Article 12 letter l and Article 93 letter m of Law 7/2017, namely "carrying out other duties in accordance with the provisions of the laws and regulations". Even if the reason is to provide material for the voters in considering the Presidential and Vice Presidential Candidates in the form of valid and official data/information so that the voters may have better understandings in exercising their rights to vote, this reason is also incorrect because the real issue does not lie in the *a quo* norms, but rather on the aspects of application or implementation of the requirements that must be fulfilled by a presidential or vice presidential candidate as regulated in Article 169 of Law 7/2017, instead of the regulations related to the duties of the General Election Commission and/or the General Election Supervisory Body as per the petition of the Petitioners. Therefore, pursuant to this series of legal considerations, the Court is of the opinion that it is irrelevant to state that the formulation of Article 12 letter l and Article 93 letter m of Law 7/2017 violates the principles of general elections, namely the principles of direct, public, free, secret, honest and fair. That means, the *a quo* norms are not contrary to the principles of general elections as intended in Article 22E paragraph (1) of the 1945 Constitution.

Substantively, the issues argued by the Petitioners are related to the track records of the candidates who have been registered and verified with the General Election Commission, namely medical track records (physical, mental and psychological health), track records of criminal acts of corruption, track records of criminal acts of money laundering, track records of human rights violations, track records of kidnapping of activists, track records of forced disappearances of people, and track records of other serious crimes as well as track records of careers, works and achievements. Although the formulation in the *petitum* of the petition is unclear, what does the Petitioners mean by "pair of candidates", however based on the description in the reasons for the petition, the Court is able to understand that what the Petitioners mean is the presidential and vice presidential pair of candidates. If this is correct, then in this case the Court does not deny the importance of the presidential and vice presidential candidates who will contest in the general election, apart from having fulfilled all the requirements as regulated in the 1945 Constitution and the laws and regulations, the presidential and vice presidential candidates must not have any bad or concerning track records regarding their physical, mental, psychological health, criminal acts, human rights violations, and their careers, however, this does not mean that the task of researching and disclosing the track records can be formulated as a task for the General Election Commission and the General Election Supervisory Body in the norms of Article 12 letter l and Article 93 letter m of Law 7/2017 as petitioned by the Petitioners.

The Court is of the opinion that the requirements regulated in Article 169 of Law 7/2017 may provide a general illustration of how the presidential and vice presidential candidates are expected to be elected as the president and vice president, and vice versa what kind of presidential and vice presidential candidates are avoided or not permitted to become the President and Vice President of the Republic of Indonesia. Therefore, if the formulation in the *petitum* of the Petitioners' petition is applied or formulated explicitly, *quod non*, this matter has been summarized in Article 169 of Law 7/2017. Therefore, the non-existence of any regulation that stipulated the duties of the General Election Commission and the General Election Supervisory Body in researching and disclosing the track records of the presidential and vice presidential candidates in accordance with the norms of Article 12 letter l and Article 93 letter m of Law 7/2017, it cannot be said to have violated the constitutional rights of citizens to obtain information in developing their personal and social environment as well as the right to obtain information using all types of available channels as guaranteed by Article 28F of the 1945 Constitution. Thus, the Petitioners' arguments which states that the norms of Article 12 letter l and Article 93 letter m of Law 7/2017 should be conditionally contrary to Article 28F of the 1945 Constitution are legally unjustifiable. Therefore, the Court is of the opinion that the arguments of the the Petitioners are legally unjustifiable in its entirety.

The Court subsequently passed down a decision which verdict states to dismiss the Petitioners' petition in its entirety.