



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 150/PUU-XXI/2023**

Concerning

Age Requirements to Become a Presidential Candidate and Vice-Presidential Candidate as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023

- Petitioners** : Lamria Siagian, 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** : The requirements to become a Presidential candidate and Vice Presidential candidate in Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 are contrary to the principles of the rule of law, the principle of independent judicial power, the principles of integrity and statesmanship, as well as protection of the right to fair legal certainty which is guaranteed in Article 1 paragraph (3), Article 24 paragraph (1), Article 24C paragraph (5), and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : **On Preliminary Injunction:**
To declare that the Petitioners' petition is inadmissible.
- On the Merits:**
To dismiss the Petitioners' petition in its entirety.
- Date of Decision** : Tuesday, January 16, 2024
- Overview of Decision** :

Whereas Petitioner I and Petitioner II are Indonesian citizens who work as Advocates as proven by their possession of Advocate Membership Cards which was sworn in at the High Court. In addition, Petitioner I and Petitioner II are also presenting themselves as activists who have concerns towards law enforcement and human rights. Petitioner III and Petitioner IV are Indonesian citizens who are also students at the Faculty of Law at Universitas Pamulang with a major in Constitutional Law in Indonesia. Petitioner III and Petitioner IV have high hopes for the Constitutional Court in protecting the constitution in Indonesia. Petitioner III and Petitioner IV have the same constitutional rights to elect and/or be elected as Presidential and Vice Presidential Candidates.

Regarding the Court's authority, because this is a petition for a judicial review of the constitutionality of legal norms, *in casu* Article 169 letter 1 of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 regarding the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court is of the opinion that Petitioner I, Petitioner II, Petitioner III and Petitioner IV are indeed Indonesian citizens who have the right to vote as evident in their Indonesian Identity Cards (*Kartu Tanda Penduduk*). The Petitioners have described their constitutional rights as citizens who have the right to vote in the Presidential and Vice Presidential general election. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioners 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 the Petitioners submitted a petition for preliminary injunction which substantially requested the Court to postpone the implementation of the provisions of Article 169 letter q of Law 7/2017, to order the General Election Commission not to enforce Article 169 letter q of Law 7/2017 in the 2024 Presidential and Vice Presidential Candidate Election, and to order General Election Commission to disqualify Presidential and Vice Presidential Candidates who do not fulfill the requirements as stipulated in Law 7/2017. Regarding the reason for the Petitioners' petition for preliminary injunction, since the subject matter of the *a quo* case was decided without proceeding to an examination hearing with an agenda of submitting evidence in the form of statements from the parties as intended in the provisions of Article 54 of the Constitutional Court Law, therefore the Court is of the opinion that there is no relevance in considering the Petitioners' petition for preliminary injunction. Therefore, the Petitioners' petition for preliminary injunction is inadmissible.

Whereas in the subject matter of the petition, the Petitioners requested the Court to declare Article 169 letter q of Law 7/2017 in relation with the phrase "or has/is currently occupying a position elected through general elections including regional head elections", is contrary to the 1945 Constitution and does not have binding legal force so that Article 169 letter q of Law 7/2017 reads "at least 40 (forty) years of age".

Whereas since the *a quo* petition is clear, regarding the legal considerations for the petition for preliminary injunction of the Petitioners, 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;

Whereas upon careful examination of the Petitioners' petition, the Court is of the opinion that the Petitioners' arguments have substantially been considered by the Court in the Decision of the Constitutional Court Number 141/PUU-XXI/2023 as stated in the plenary session open to the public on 29 November 2023.

Whereas regarding the Petitioners' argument in relation with the applicability of Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023, in the decision of the Honorary Council of the Constitutional Court, the Court has considered this issue in the legal consideration of the Decision of the Constitutional Court Number 141/ PUU-XXI/2023 in Sub-paragraph [3.13.1] to Sub-paragraph [3.13.3]. The Court is of the opinion that the existence of the Decision of the Honorary Council of the Constitutional Court does not cancel the applicability of the decision of the Constitutional Court Number 90/PUU-XXI/2023, thus the said decision remains applicable (valid) and has a full and binding legal force. Therefore, the Petitioners' argument regarding the applicability of Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 which is linked to the decision of the Honorary Council of the Constitutional Court is legally unjustifiable.

Whereas regarding the Petitioners' argument which states that the interpretation of the provisions of Article 17 paragraph (6) and paragraph (7) of Law 48/2009 should be applied to

the Constitutional Court, this matter has also been considered by the Court in the legal considerations of the Decision of the Constitutional Court Number 141/PUU-XXI/2023 in Sub-paragraph [3.12.3]. The Court is of the opinion that Article 17 paragraph (6) and paragraph (7) of Law 48/2009 cannot be applied to the Constitutional Court because, institutionally, the Court is of the first and final level, with the number of constitutional justices being 9 (nine) justices. Pursuant to Article 45 paragraph (4) of the Constitutional Court Law and Article 66 paragraph (3) of the Constitutional Court Regulation 2/2021, the decision making process must be carried out by deliberation to reach consensus in a plenary session of constitutional justices led by the presiding justice, which means that each case must be decided by 9 (nine) or at least 7 (seven) constitutional justices. The Petitioners' argument which states that the interpretation of the provisions of Article 17 paragraph (6) and paragraph (7) of Law 48/2009 should be applied to the Constitutional Court has been considered in the Decision of the Constitutional Court Number 141/PUU-XXI/2023. In the said legal considerations, the Court has emphasized that the Constitutional Court Law is special in nature so that it is in line with the principles of *lex specialis derogat legi generali*, namely, more specific provisions override general provisions, because the two provisions are of the same level. Nevertheless, the Court remains in its consideration that Article 17 of Law 48/2009, as long as it is relevant, *in casu* Article 17 paragraph (1) to paragraph (5) of Law 48/2009, applies generally to the holders of judicial power. Moreover, this matter has also been stated in the Decision of the Honorary Council of the Constitutional Court which, among other things, states that Article 17 paragraph (6) and paragraph (7) of Law 48/2009 may not be applied in decisions of judicial review cases against the 1945 Constitution by the Constitutional Court [*vide* Decision of the Honorary Council of the Constitutional Court Number 2/2023 p. 380]. Therefore, the *a quo* argument of the Petitioners is legally unjustifiable.

Whereas the Petitioners further argue that Article 169 letter q of Law 7/2017 must be returned to its previous content prior to the decision of the Constitutional Court Number 90/PUU-XXI/2023 because according to the Petitioners it is procedurally flawed and thus giving rise to legal uncertainty. Regarding the Petitioners' arguments, the Court again needs to quote the legal considerations of the Decision of the Constitutional Court Number 141/PUU-XXI/2023 in Sub-paragraph [3.13.3] and Sub-paragraphs [3.13.4]. The Court is of the opinion that the Decision of the Constitutional Court Number 90/PUU-XXI/2023 remains to have binding legal force as confirmed in the Decision of the Constitutional Court Number 141/PUU-XXI/2023. Even if, according to the Petitioners, there are issues regarding the constitutionality of norms after the Court provided its stance in its decision, this is within the jurisdiction of the legislators. Therefore, the *a quo* argument of the Petitioners is legally unjustifiable.

Whereas the Court in the Decision of the Constitutional Court Number 141/PUU-XXI/2023 has taken a stance regarding the constitutionality of the Decision of the Constitutional Court Number 90/PUU-XXI/2023. Meanwhile, the ethical violations argued by the Petitioners have been examined and decided by the Honorary Council of the Constitutional Court in the Decision of the Honorary Council of the Constitutional Court Number 2/2023. Therefore, the Petitioners' argument regarding the legal basis for review of Article 24C paragraph (5) of the 1945 Constitution is legally unjustifiable.

Whereas pursuant to these legal considerations, the Court is of the opinion that the Petitioners' petition is legally unjustifiable, therefore the Court passed down the following decisions:

On Preliminary Injunction:

To declare that the Petitioners' petition is inadmissible.

On the Merits:

To dismiss the Petitioners' petition in its entirety.