



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 156/PUU-XXI/2023**

Concerning

**Minimum Age Requirements for Presidential Candidates
and Vice-Presidential Candidates**

Petitioners	: Jovi Andrea Bachtiar and Alfin Julian Nanda
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	: Article 169 letter q of Law 7/2017 is contrary to Article 1 paragraph (3), Article 24C paragraph (5), and Article 28I paragraph (4) 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	: Wednesday, January 31, 2024
Overview of Decision	:

The Petitioners describe that they are individual Indonesian citizens who have the constitutional right to vote in general elections, including the Presidential and Vice Presidential general election.

Regarding the Court's authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 169 letter q of Law 2/2017 against the 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition of the Petitioners.

Regarding legal standing, Petitioner I works as a Prosecutor who claims to be a statesman, law enforcement activist and observer of constitutional law, an alumni of the Faculty of Law of Universitas Gadjah Mada, who has the right and obligation to participate proactively in ensuring that the general election process is carried out without violating the law and constitution. With the Decision of the Constitutional Court Number 90/PUU-XXI/2023, there is a strong juridical reason to state that Petitioner I has the legal standing to submit the *a quo* petition as a form of effort to defend the country because it understands the law (especially the constitutional law) and the constitution holistically. Furthermore, Petitioner II works as a legal consultant who claims to be a statesman, law enforcement activist and observer of constitutional law, an alumni of the Faculty of Law of Universitas Riau, who has a moral responsibility both in terms of science and legal practice to ensure that the law and constitution are carried out properly. According to the Petitioners, the youth must be given the space or opportunities to become national leaders supported by requirements proving that they have the competence to be nominated as President and Vice President by a political party or a coalition

of political parties. Whether or not a person is competent to be considered or to be nominated as President or Vice President is proven by the public's assessment of his or her performance during the full leadership of 1 (one) period as a state official elected based on the general election, including the regional head election. Because, the public, including the Petitioners as constituents or voters, must not only be presented with the opportunity to elect people who have only been in office for a few years, for example, only 1-2 years or even 1 day in office as state officials who are elected based on general elections and are immediately nominated as President or Vice President.

Pursuant to the description of the Petitioners in explaining their legal standing, the Court is of the opinion that the Petitioners have been able to prove themselves to be Indonesian citizens as evidenced in the form of the Petitioners' Indonesian Identity Cards and that they have the right to vote, including voting in the presidential and vice presidential general election. In addition, the Petitioners have also been able to specifically describe the existence of a causal relationship (*causal verband*) between the presumed injury of their constitutional rights and the enactment of the norms of the article being petitioned for review, namely that the Petitioners consider the requirements for becoming a presidential candidate and vice presidential candidate as regulated in Article 169 letter q of Law 7/2017 which has been interpreted in the Decision of the Constitutional Court Number 90 /PUU-XXI/2023 are injuring the constitutional rights of the Petitioners as voters in the presidential and vice presidential general election. Furthermore, according to the Petitioners, the said decision has created legal uncertainty because in the process of making the decision there was a conflict of interest and opened up space for intervention by outside parties which in the future can be exploited by the parties who are ambitious to gain power by using any means possible to become president and/or vice president. The presumed injury of the constitutional rights is specific and if the *a quo* petition is granted by the Court, the presumption of injury of the constitutional rights as referred to by the Petitioners will not occur or will no longer occur. Therefore, the Petitioners have fulfilled the provisions of Article 51 paragraph (1) of the Constitutional Court Law along with its Elucidation and the requirements of constitutional injury as stated in the Decision of the Constitutional Court Number 006/PUU-III/2005 and the Decision of the Constitutional Court Number 011/PUU-V/2007. Therefore, regardless of whether or not the unconstitutionality of the norms as argued by the Petitioners is proven, 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 submit a petition for preliminary injunction which substantially petition the Court to prohibit Constitutional Justice Anwar Usman from participating in the examination, adjudication and decision making process of the *a quo* petition, to order the General Election Commission to postpone the general election for president and vice president until a final decision is issued on the *a quo* petition, and to order the General Election Commission to repeat the process from the beginning of administering the presidential and vice presidential general election. Regarding the petition for preliminary injunction, it is important for the Court to emphasize that judicial review is not adversarial in nature and it is not a matter of *interpartes* or a dispute over the interests of the parties, but rather the review on the applicability of a generally applicable law *erga omnes* for all citizens. Therefore, upon careful examination of the reasons for the petition for preliminary injunction, the Court had substantially considered it in the Decision Number 141/PUU-XXI/2023 and the Decision Number 145/PUU-XXI/2023, then regarding this *a quo* petition for preliminary injunction, the said legal consideration *mutatis mutandis* also applies as a legal consideration in assessing the petition for preliminary injunction submitted by the Petitioners. Moreover, the Court has also adjudicate the *a quo* case pursuant to the provisions of Article 54 of the Constitutional Court Law, namely without going through a trial examination agenda to hear statements from the House of Representatives, the President and also the Related Parties. Meanwhile, regarding the right of refusal for Constitutional Justice Anwar Usman, the Court has also taken into consideration, especially after the Decision of the Honorary Council of the Constitutional Court 2/2023, in examination and decision making on petitions submitted against the Decision of the Constitutional Court Number 90/PUU-XXI/2023, the Court no longer includes Constitutional Justice Anwar Usman. Therefore, pursuant to the description of the legal considerations, the Petitioners' petition for preliminary injunction is legally unjustifiable.

Whereas the Petitioners argue that the decision of the Constitutional Court which has granted a part of the Petitioner's petition in Case Number 90/PUU-XXI/2023 is actually not right because the Constitutional Court has indirectly taken over the authority of the legislators (*in casu* the House of Representatives and the President). The Constitutional Court has indirectly conducted judicial creativity in the form of formulating new norms through interpretation of Article 169 letter q of Law 7/2017. In the Decision of the Constitutional Court Number 90/PUU-XXI/2023, it is stated that Article 169 letter q of Law 7/2017 is contrary to the 1945 Constitution and does not have binding legal force if it is not interpreted as "at least 40 (forty) years of age or has/is currently occupying positions elected through general elections, including regional head elections." This is contrary to the concept of separation of powers and distribution of power and is contrary to Article 1 paragraph (3) of the 1945 Constitution. In addition, the Petitioners also dispute the Decision of the Constitutional Court Number 90/PUU-XXI/2023 which was issued in violation of legal principles as regulated in Article 17 paragraph (4) and paragraph (5) of Law 48/2009 because the Chief Justice of the Constitutional Court, Anwar Usman has a conflict of interest, both directly and indirectly, by participating in the examination, adjudication and decision making process of the *a quo* case but he did not withdraw from the trial or did not refuse to participate in the examination, adjudication and decision making process of the *a quo* petition. Therefore, even though Article 24C paragraph (1) of the 1945 Constitution states that the decision of the Constitutional Court is final and binding, but since there is a violation of the principles of judicial power, for the sake of legal certainty to ensure that there is no violation of the principles of the rule of law as regulated in Article 1 paragraph (3) of the 1945 Constitution, the Constitutional Court should declare the formulation of Article 169 letter q of Law 7/2017 which has been amended after the Decision of the Constitutional Court Number 90/PUU-XXI/2023 is unconstitutional to the extent that it is not reinterpreted as the initial formulation of Article 169 letter q Law 7/2017, as decided in the decision of the Honorary Council of the Constitutional Court Number 5/MKMK/L/10/2023 [*Sic!*].

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 that the Decision of the Constitutional Court Number 90/PUU-XXI/2023 is not the right decision because the Court has indirectly taken over the authority to establish the laws, therefore the Petitioners petition the Court to return Article 169 letter q of Law 7/ 2017 to its original norm. Regarding the Petitioners' argument, the Court substantially has affirmed its stance, among others in the Decision of the Constitutional Court Number 141/PUU-XXI/2023 and the Decision of the Constitutional Court Number 148/PUU-XXI/2023. Pursuant to the affirmation in the said legal considerations, the Court is of the opinion that the determination of the minimum age requirement is within the jurisdiction of the legislators, to the extent that it does not conflict with morality, rationality, and does not cause intolerable injustice. Therefore, regarding the issue in the *a quo* petition, the Court considers it appropriate to leave this matter in the hands of the legislators to revise or adjust its formulation as considered in the Decision of the Constitutional Court Number 141/PUU-XXI/2023. Therefore, the authority of the legislators would not be taken over by the Court in relation to the meaning of the norms of Article 169 letter q of Law 7/2017. Because the Court remains to completely leave the revisions or adjustments to the norms of Article 169 letter q of Law 7/2017 in the hands of the legislators, including if the legislators wish to determine the requirements as petitioned by the Petitioners in their *Petitum* number 3. Therefore, 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 and the subsequent decisions.

Regarding the Petitioners' arguments which states that the applicability of the norms of Article 169 letter q of Law 7/2017 as interpreted by the Court in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 violates the principle of judicial power as regulated in Article 17 paragraph (4) and paragraph (5) of Law 48/2009, because the Constitutional Justice Anwar Usman has a conflict of interest both directly and indirectly by participating in the examination, adjudication and decision of the *a quo* case. Regarding the *a quo* argument, the Court has also considered this matter in the legal considerations of the

Decision of the Constitutional Court Number 141/PUU-XXI/2023 in Sub-paragraph [3.12.3] and Sub-paragraphs [3.13.1] to Sub-paragraph [3.13.3]. Pursuant to the said legal considerations, because the substance being petitioned is substantially the same as Petition Number 141/PUU-XXI/2023, the legal considerations in the said decision apply *mutatis mutandis* as a legal consideration in the *a quo* decision.

Furthermore, regarding the Petitioners' argument which states that the interpretation of the norms of Article 169 letter q of Law 7/2017 in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 is unconstitutional as decided in the decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023, thus it gives rise to legal uncertainty because according to the Petitioners there was a violation in the form of conflict of interest which was ignored as something normal. Because the justices collectively allowed such violation of the Code of Ethics and Code of Conduct of Constitutional Justices. 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]. In addition, to confirm the validity of the Decision of the Constitutional Court Number 90/PUUXXI/2023, the Court in the Decision of the Constitutional Court Number 145/PUU-XXI/2023 has confirmed that the Decision of the Constitutional Court Number 90/PUUXXI/2023 is final and has binding legal force, the Court leaves it in the hands of the legislators to further determine the norms of minimum age requirement for presidential and/or vice presidential candidates, for which an alternative is provided in the form that someone who has/is currently occupying position elected through general elections including regional elections (elected officials) may be nominated as a candidate. Therefore, the Petitioners' argument which states that the applicability of Article 169 letter q of Law 7/2017 as interpreted by the Court in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 does not violate the principle of judicial power in Article 17 paragraph (4) and paragraph (5) of Law 48/2009.

Pursuant to the description of all the legal considerations above, the Court is of the opinion that the provisions of Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 do not conflict with the principles of the rule of law, the principle of independent judicial power, the principle of integrity, fairness and statesmanship, as well as the principles of protection, promotion, enforcement and fulfillment of human rights as stipulated in Article 1 paragraph (3), Article 24C paragraph (5), and Article 28I paragraph (4) of the 1945 Constitution, instead of as argued by the Petitioners. Therefore, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states, as follows:

On Preliminary Injunction:

To declare that the Petitioners' petition is inadmissible.

On the Merits:

To dismiss the Petitioners' petition in its entirety.