



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 154/PUU-XXI/2023**

**Concerning**

**Formal Review of Decision of Constitutional Court**

<b>Petitioners</b>	: <b>Russel Butarbutar and Utami Yustihassana Utomo</b>
<b>Type of Case</b>	: Formal Review of Law Number 7 of 2017 concerning General Elections (hereinafter Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
<b>Subject Matter</b>	: Formal Review of Article 169 letter q of Law 7/2017 as interpreted in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 against the 1945 Constitution
<b>Verdict</b>	: To dismiss the Petitioners' petition in its entirety.
<b>Date of Decision</b>	: Wednesday, January 31, 2024
<b>Overview of Decision</b>	:

The Petitioners are individual Indonesian citizens who work as lecturers at the Faculty of Law, Universitas Bung Karno who believe that they are injured by the pronouncement of Decision Number 90/PUU-XXI/2023, they are disappointed with the Constitutional Court as The Guardian of the Constitution which according to the Petitioners the Court suddenly faded and fell apart. The Petitioners substantially argue that from the examination process to the issuance of Decision Number 90/PUU-XXI/2023, they were formally flawed due to the following reasons: (1) the Legal Standing of the Petitioner in the *a quo* case is unclear; (2) The object of the *a quo* petition should have been declared as unclear or obscure; (3) There is no authority for the Constitutional Court to examine the *a quo* case; (4) The defective procedures in the examination in accordance to the Constitutional Court Regulation 2/2021; (5) There is a violation of the Code of Ethics in accordance with the Decision of the Honorary Council of the Constitutional Court; and (6) There are implications of the decision of the Honorary Council of the Constitutional Court regarding the violation of the Code of Ethics for the decision in the *a quo* case.

Whereas regarding the deadline for submitting a petition for formal review, the Court is of the opinion that, because substantially the Petitioners' petition is not actually a formal review in the sense of formally reviewing the procedures for establishing a law, therefore, the Court is of the opinion that it is irrelevant to use the deadline for submitting a formal review as considered in Sub-paragraph **[3.3.5]** in the Decision of the Constitutional Court Number 47/PUU-XX/2022 which was declared in a plenary session open to the public on May 31, 2022 which confirmed that the deadline for submitting a petition for formal review against the 1945 Constitution is within a period of 45 (forty-five) days starting from the date of promulgation in the State Gazette of the Republic of Indonesia and Supplement to the State Gazette of the Republic of Indonesia (State Gazette and Supplement to the State Gazette).

Regarding the Court's authority, since the subject matter of the *a quo* petition is a Formal Review of Article 169 letter q of Law 7/2017 against 1945 Constitution, therefore the Court has the authority to hear the *a quo* petition.

Regarding legal standing of the Petitioners, regardless of whether or not the Petitioners' argument regarding the unconstitutionality of the procedures for establishing Article 169 letter q of Law 7/2017 is proven or not, pursuant to the Decision of the Constitutional Court Number 90/PUU-XXI/2023, using a formal review method that cannot be separated from the material review as described above, the Court considers that the Petitioners have fulfilled the qualifications as individual Indonesian citizens who have the right to vote and be elected in general elections. In addition, the Petitioners have also describe specifically and potentially the causal relationship (*causal verband*) between the presumed injury of their constitutional rights and the process of establishing Article 169 letter q of Law 7/2017 pursuant to the Decision of the Constitutional Court Number 90/PUU-XXI/2023, which according to the Petitioners is not in accordance with the 1945 Constitution and Law 48/2009.

Furthermore, before considering the subject matter of the Petitioners' petition, the Court has decided on a case regarding the constitutionality of the formal review of Article 169 letter q of Law 7/2017 as interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023, namely the Decision of the Constitutional Court Number 145/PUU-XXI /2023, which was declared in a plenary session open to the public on 16 January 2024 whose verdict states that the Court dismisses the Petitioners' petition in its entirety. Therefore, the Court will first consider whether the Petitioners' petition could be re-submitted. Regarding this matter, after the Court carefully examined the Petitioners' petition, it becomes clear that the basis for review used in the *a quo* petition are Article 20, Article 24 paragraph (1), Article 24C, Article 28D paragraph (1) of the 1945 Constitution and Article 17 paragraph (5), paragraph (6), and paragraph (7) of Law 48/2009, Article 2 of the Constitutional Court Law, Article 10 paragraph (1) letter d of Law 13/2022 and Article 2 paragraph (3) of the Constitutional Court Regulation 2/2021. Meanwhile, Petition Number 145/PUU-XXI/2023 uses Article 1 paragraph (1), Article 1 paragraph (2), Article 1 paragraph (3), Article 24 paragraph (1), Article 28D paragraph (1) of the 1945 Constitution and Article 17 paragraph (5) and paragraph (6) of Law 48/2009 as the basis for review. Therefore, the *a quo* petition uses a different basis for review compared to the basis for review in Petition Number 145/PUU-XXI/2023. Thus, regardless of whether the argument is proven or not regarding the unconstitutionality of Article 169 letter q of Law 7/2017 as interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023, the Court is of the opinion that there are different basis for review, so that the *a quo* petition may be re-submitted.

Furthermore, in considering the subject matter of the petition, the Court considers the constitutionality review of norms that have been decided by quoting the Court's stance as considered by the Court in the Decision of the Constitutional Court Number 141/PUU-XXI/2023 which was declared in a plenary session open to the public on 29 November 2023 and the Decision of the Constitutional Court Number 131/PUU-XXI/2023 which was declared in in a plenary session open to the public on 21 December 2023 as have also been considered in the Decision of the Constitutional Court Number 145/PUU-XXI/2023 which was declared in a plenary session open to the public on 16 January 2024. Pursuant to the aforementioned legal considerations, it is clear that the Court's stance regarding the position and the nature of the Court's decision which is at the first and final level and which is final and binding, therefore the legal remedy that can be taken to address the unconstitutionality

issue of norms that have been decided by the Court is through resubmission of petition for constitutionality review of the said norms to the Court to the extent that it meets the provisions of Article 60 of the Constitutional Court Law *juncto* Article 78 of the Constitutional Court Regulation 2/2021. In addition, another effort that can be taken is by proposing amendment to the said norms to the legislators (legislative review) to the extent that it does not conflict with the decision. The effort in the form of resubmission of petition for constitutionality review of the norms that have been decided by the Court is a material review relating to the content contained in the paragraphs, articles and/or parts of laws or Government Regulation in Lieu of Law which are deemed to be contrary to the 1945 Constitution. This means that the Court wishes to emphasize that the efforts to dispute the Court's decision are still within the constitutional framework and boundaries under the norms in the 1945 Constitution. The Court also considers that there were similarities, both in terms of the description of the petition's arguments and the subject matters, between the *a quo* petition of the Petitioners and the petition in Case Number 145/PUU-XXI/2023 because such a form of formal review is placing the Decision of the Constitutional Court Number 90/PUU-XXI/2023 diametrically with the 1945 Constitution, the Constitutional Court Law, Law 48/2009 and the Constitutional Court Regulation 2/2021 concerning with the trial process and the establishment of a decision by the Court. Regarding such issue, the Court is of the opinion that it remains to refrain from actively taking progressive legal steps or taking judicial activism by opening the room for corrections to the Decision of the Constitutional Court Number 90/PUU-XXI/2023. Regarding the opinion of the Court, there were two Constitutional Justices who gave concurring opinion, namely Constitutional Justice Arief Hidayat and Constitutional Justice Enny Nurbaningsih. Therefore, the Court's legal considerations in the Decision of the Constitutional Court Number 145/PUU-XXI/2023 to the extent that it concerns resubmission of petition for formal review of constitutionality, as desired by the Petitioners, the Decision of the Constitutional Court Number 90/PUU-XXI/2023 *mutatis mutandis* applies to the arguments of the *a quo* petition of the Petitioners. Therefore, the argument of the Petitioners is legally unjustifiable.

Furthermore, regarding the Petitioners' argument which again disputes the constitutionality of the norms of Article 169 letter q of Law 7/2017 which has been interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023, the Court needs to quote again the Court's legal considerations in the Decision of the Constitutional Court Number 141/ PUU-XXI/2023 which was also quoted again in the Decision of the Constitutional Court Number 145/PUU-XXI/2023. Pursuant to the description of the Court's legal considerations above, the Decision of the Constitutional Court Number 90/PUU-XXI/2023 is final and binding and the Court transfers the authority to the legislators to further determine the norms for the minimum age requirements for presidential and vice presidential candidates if they wish to amend the norms of Article 169 letter q of Law 7/2017 including if the legislators wish to apply the same minimum age of 40 years to other state officials or public officials, including to match or provide alternative elected official. Therefore, regardless of the arguments of the Petitioners which actually lean towards providing their opinion on the Decision of the Constitutional Court Number 90/PUU-XXI/2023, starting from the Court not having the authority to adjudicate, the Petitioner has no legal standing, the Petitioner's petition is unclear or obscure, to the existence of error in the procedure for withdrawing/revoking the petition, the Court is of the opinion that the purpose of the Petitioners' petition is to seek for a re-interpretation of the norms of Article 169 letter q of Law 7/2017 which has been interpreted by the Decision of the Constitutional Court Number

90/PUU-XXI/2023, such re-interpretation has actually been accommodated in the Decision of the Constitutional Court Number 141/PUU-XXI/2023.

Furthermore regarding the Petitioners' argument that the Decision of the Constitutional Court Number 90/PUU-XXI/2023 is formally flawed because there is a violation of the code of ethics as stated in the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 to Number 5/MKMK/L/ 11/2023 and it does not comply with the provisions of Article 17 of Law 48/2009. Regarding the Petitioners' arguments, the Court, again, quotes the legal considerations in the Decision of the Constitutional Court Number 141/PUU-XXI/2023 and the legal consideration was also quoted in the Decision of the Constitutional Court Number 145/PUU-XXI/2023. Pursuant to the legal considerations in this decision, even though there has been the Decision of the Honorary Council of the Constitutional Court Number 2/MKMK/L/11/2023 to Number 5/MKMK/L/11/2023, specifically relating to Article 17 paragraph (1) to paragraph (5) of Law 48/2009, it cannot necessarily be used as a basis for reviewing the validity or invalidity of the Decision of the Constitutional Court Number 90/PUU-XXI/2023. This means that the Court wishes to emphasize that every Court decision is valid since it was declared in a plenary session open to the public, even though factually, one of the Constitutional Justices who participated in deciding the case was proven to have violated the code of ethics. Therefore, it is clear that there is no reason for the Court to postpone the implementation of the Decision of the Constitutional Court Number 90/PUU-XXI/2023 as petitioned by the Petitioners. In this regard, the legal considerations in the Decision of the Constitutional Court Number 141/PUU-XXI/2023, which are also quoted in the *a quo* Decision of the Constitutional Court Number 145/PUU-XXI/2023, *mutatis mutandis* apply to review the *a quo* petition.

Pursuant to all the legal considerations above, the Court is of the opinion that the decision-making process in the Decision of the Constitutional Court Number 90/PUU-XXI/2023 cannot be conflicted with Law 48/2009, the Constitutional Court Law, or even with the Constitutional Court Regulation 2/2021. Therefore, regarding Article 169 letter q of Law 7/2017 as interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023, it does not contain any formal defect and therefore are not contrary to the 1945 Constitution. Therefore, Article 169 letter q of Law 7/2017 as interpreted by the Decision of the Constitutional Court Number 90/PUU-XXI/2023 remains to have binding legal force and therefore the Petitioners' petition is legally unjustifiable in its entirety.

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