



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 28/PUU-XXII/2024**

Concerning

Citizens' Voting Rights in General Elections

- Petitioners** : **The Labor Party represented by H. Said Iqbal as President of the Labor Party and Ferri Nuzarli as Secretary General of the Labor Party and Cecep Khaerul Anwar**
- Type of Case** : Material Judicial Review of Law Number 7 of 2017 concerning General Elections (General Elections Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Article 348 paragraph (4) of the General Elections Law is contrary to Article 1 paragraph (2), Article 1 paragraph (3), Article 2 paragraph (1), Article 18 paragraph (6), Article 20 paragraph (1), Article 22E paragraph (1), Article 22E paragraph (2), Article 22E paragraph (3), Article 28D paragraph (1), Article 28I paragraph (5), and Article 28J paragraph (2) of the 1945 Constitution
- Verdict** : **On the Preliminary Injunction:**
To dismiss the Petitioners' petition for preliminary injunction entirely;
On the Merits:
To dismiss the Petitioners' petition entirely.
- Date of Decision** : Thursday, February 29, 2024
- Overview of Decision** :

Petitioner I is a political party organization that has been declared as one of the participants in the 2024 General Election, while Petitioner II is an individual Indonesian citizen who transferred his polling place in the 2024 General Election.

Regarding the Court's authority, because the Petitioners' petition is a judicial review of the constitutionality of norms of law, *in casu* the General Elections Law against the 1945 Constitution, the Court has the authority to hear the Petitioners' petition.

Regarding legal standing, Petitioner I is a political party organization that was formed for the public interest and has been declared as one of the participants in the 2024 General Election by the General Election Commission. In submitting the *a quo* petition, Petitioner I was represented by the Labor Party Executive Committee, namely Ir. H. Said Iqbal, M.E. as President of the Labor Party and Ferri Nuzarli, S.E., S.H. as Secretary General of the Labor Party who were legally elected at the Congress IV of the Labor Party, so that Petitioner I has the authority to represent and act on behalf of the Labor Party to submit a petition for Judicial Review of the General Elections Law against the 1945 Constitution to the Constitutional Court. Petitioner I argues that it has been and has had the reasonably foreseeable potential to be prejudiced due to the enactment of the norms being petitioned for judicial review on the basis that Petitioner I as a party participant in the general election would lose its rights and opportunities to be elected by voters who transfer their polling places outside their original electoral districts on election day. Meanwhile, Petitioner II is an individual Indonesian citizen and an employee at PT Indonesia Epson Industry whose address is Jalan Cisokan Raya Sukaresmi, South Cikarang, Bekasi Regency, West Java 17550. Petitioner II was a voter currently registered at Polling Station (TPS) 25 Kadudampit Village, RT. 001/RW 009, Rancagoong, Cilaku District, Cianjur Regency, West Java Province. Due to economic, cost, and distance issues, Petitioner II was unable to vote on election day at the polling station where he was originally registered according to his ID Card, and therefore he applied to transfer his polling place and afterward became a voter of Additional Voter List (DPTb) at TPS 27 Jayasampurna Village, Serang Baru District, Bekasi Regency. Due to his polling place transfer, Petitioner II argues that his rights have been injured because he would only be able to elect President and Vice President. Petitioner II could not elect Candidates for the DPR RI Members, Candidates for the West Java DPRD Members, and Candidates for the Regency/Municipal DPRD Members. Thus, regardless of whether the Petitioners' arguments regarding the unconstitutionality of the norms of Article 348 paragraph (4) of the General Elections Law are proven or not, the Court is of the opinion that Petitioner I and Petitioner II have the legal standing to act as Petitioners in the *a quo* petition.

Furthermore, the Petitioners submitted a provisional petition that basically requested the Court to prioritize the *a quo* Petitioners' petition by carrying out a speedy trial examination because the Petitioners' petition was closely related to the stages of the 2024 General Election holding and had implications that affected the exercise of voting rights in the voting which would be held on 14 February 2024. Regarding the Petitioners' provisional petition, in the Court's opinion, the Petitioners' provisional petition is irrelevant for consideration because, although Petitioner I has been declared as a participant in the 2024 General Election by the KPU since 2022, Petitioner I and Petitioner II only submitted the *a quo* petition on 26 January 2024. In other words, the *a quo* Petitioners' petition was only submitted 19 (nineteen) calendar days before the General Election voting on 14 February 2024. If the *a quo* Petitioners' provisional petition is granted, this will actually hamper the process of the General Election holding that has been designed by the KPU. Moreover, the *a quo* case petition is decided by the Court after the 2024 election holding, and therefore the urgent nature of the *a quo* petition that it should be decided before the stages of the 2024 General Election holding is no longer relevant. Therefore, pursuant to these legal considerations, the Petitioners' provisional petition is legally unjustifiable.

Whereas, because the Court sees that the constitutional issue being questioned by the Petitioners is clear, it is no longer urgent nor relevant to ask for information from the parties as stipulated in Article 54 of the Constitutional Court Law.

Regarding the subject matter of the petition, it turns out that the Court has already decided the case of reviewing the constitutionality of the norms of Article 348 paragraph (4) of the General Elections Law, namely Constitutional Court Decision Number 19/PUU-XVII/2019 which was pronounced in a plenary session open to the public on 28 March 2019 and Constitutional Court Decision Number 20/PUU-XVII/2019 which was pronounced in a plenary session open to the public on 28 March 2019. After examining closely, it turned out that the Petitioners used the review basis of Article 1 paragraph (2) and paragraph (3), Article 2 paragraph (1), Article 18 paragraph (6), Article 20 paragraph (1), Article 22E paragraph (1), paragraph (2) and paragraph (3), Article 28C paragraph (1), Article 28D paragraph (1) and paragraph (3), Article 28I paragraph (4) and paragraph (5), and Article 28J paragraph (2) of the 1945 Constitution, arguing that the norms of Article 348 paragraph (4) of the General Elections Law had caused voters who voted outside their electoral districts could not elect the DPR RI Members, the DPD RI Members, the Provincial DPRD Members and the Regency/Municipal DPRD Members. This had given rise to differences in treatment in terms of ballot papers given to voters who transferred their electoral districts. It was also argued that the norms of this article had eliminated the rights of citizens who were participants in General Elections to be elected as the DPR RI members, the DPD RI members, the Provincial DPRD members, and the Regency/Municipal DPRD members. Therefore, the *a quo* Petitioners' petition has a different review basis and reasoning than the previous petitions, as described above. Thus, formally speaking, the *a quo* Petitioners' petition, regardless of whether it can be substantially proven or not, may be re-submitted, without being restricted by the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021.

Furthermore, it is necessary for the Court to quote again Constitutional Court Decision Number 19/PUU-XVII/2019 and Constitutional Court Decision Number 20/PUU-XVII/2019. These Decisions basically state that any regulation imposing restrictions on the right to vote general election participants on a certain level pursuant to electoral districts is a legal policy that is very logical and not excessive. The fact that there were no such restrictions in the general elections regulations that were previously in effect cannot be used as a benchmark for reviewing changes and/or developments in regulations. To the extent that they are still within the boundaries intended to maintain the fairness and proportionality of general election procedures, changes in regulations cannot be considered as restrictions that are contrary to the 1945 Constitution, especially in terms of constitutional rights related to voting rights. Therefore, it is evident that the norms of Article 348 paragraph (4) of the General Elections Law do not violate the principles of the country of law and people's sovereignty, as well as the rights to recognition, guarantees, protection, fair legal certainty, equal opportunities in government, and the fulfillment of human rights as guaranteed in the 1945 Constitution, not as argued by the Petitioners. Therefore, the Petitioners' arguments are entirely legally unjustifiable.

Pursuant to the excerpt from the legal considerations mentioned above, after the Court examined the Petitioners' petition arguments in Case Number 28/PUU-XXII/2024, even though in the *a quo* case the Petitioners' reasons are different from the petition arguments in Case Number 19/PUU-XVII/2019 and Case Number 20/PUU-XVII/2019, all of which basically raise concerns about the loss of voting rights for voters who, due to certain circumstances, have to transfer their polling places during the voting for the elections for the President and Vice President, DPR, DPD and DPRD. Thus, regarding this issue, because the Court up to now has not had a fundamental reason to shift from its previous stance, the legal considerations of Constitutional Court Decision Number 19/PUU-XVII/2019 to the extent that they are related to the constitutionality of the *a quo* norms also apply *mutatis mutandis* as legal considerations in reviewing the constitutionality of the norms of Article 348 paragraph (4) of the General Elections Law petitioned for review by the Petitioners in Case Number 28/PUU-XXII/2024. In addition, the Court has also considered

maintaining the principle that it must not result in violations of another principle that must be safeguarded and protected by the state, namely the principle of safeguarding and protecting the voting rights of eligible citizens, as argued by the Petitioners. Thus, the Court concludes that there is no unconstitutionality issue concerning the norms of Article 348 paragraph (4) of the General Elections Law, so it must be declared that the norms of this article are not contrary to the 1945 Constitution.

Whereas even though there is no unconstitutionality issue concerning the norms of Article 348 paragraph (4) of the General Elections Law, it is important for the Court to emphasize the logical impact of determining electoral districts on legislative election participants. Considering that electoral districts set the boundaries for the exercise of voting rights, namely voters' rights to vote and General Election participants' rights to be elected, the norms of Article 348 paragraph (4) of the General Elections Law are still justifiable, especially concerning the context of implementing an open proportional General Election system, in which voters may directly elect legislative candidates who represent the aspirations of their electoral districts, reflecting the direct relationship between voters and legislative candidates as General Election participants. The open list proportional General Election system is closer to the General Election system desired by the 1945 Constitution because the system is capable of placing the people as voters who elect candidates for the DPR/DPRD members directly [vide Constitutional Court Decision Number 114/PUU-XX/2022, p. 711-712]. Thus, the Petitioners' argument stating that the norms of Article 348 paragraph (4) of the General Elections Law eliminate the rights of citizens as General Election participants to be elected as legislative candidates is legally unjustifiable.

Whereas regarding the Petitioners' argument about the construction of comparison between voters who transfer their electoral districts within the territory of the Republic of Indonesia and voters who transfer abroad, the Court needs to emphasize its stance that the voting rights of voters who have left their electoral districts, even though they are still within the territory of the Republic of Indonesia, are no longer valid to be exercised to elect candidates for legislative members because the basis of representation of the people's representatives whom they may choose do not cover electoral districts of their origins. Giving such voters the right to vote for legislative candidates outside their electoral districts will actually tarnish the purity of the electoral district-based electoral system so that the system of accountability for the elected people's representatives to voters outside their electoral districts becomes unjustifiable. This construction is different from that for voters abroad. Even though voters who live abroad are outside the administrative territory of the Republic of Indonesia, as Indonesian citizens they still have the right to exercise their rights to vote and the state has an obligation to provide facilities and infrastructure that support the exercise of such rights to vote [vide Constitutional Court Decision Number 2/PUU-XI/2013, p. 43]. Overseas voters are registered in Electoral District (Dapil) II DKI Jakarta, not in electoral districts of each voter's origins in Indonesian or separate electoral districts abroad. The government and election organizers register overseas voters in the Jakarta II electoral district on the basis that overseas voters are under the authority of the Ministry of Foreign Affairs of the Republic of Indonesia, which is domiciled in Jakarta, so that overseas voters are directed to elect candidates for legislative members from the Jakarta II electoral district. Such a concept is an open legal policy that is not contrary to the 1945 Constitution [vide Constitutional Court Decision Number 2/PUU-XI/2013, p. 44]. Thus, the Petitioners' argument that Article 348 paragraph (4) of the General Elections Law should be declared conditionally contrary to the 1945 Constitution (conditionally unconstitutional) and does not have binding legal force to the extent that it is not interpreted that "Voters, as referred to in paragraph (3), may exercise their rights to elect candidates for the DPR members and Candidate Pairs" is legally unjustifiable.

Whereas pursuant to the entire description of the legal considerations above, it has been found that the norms of Article 348 paragraph (4) of the General Elections Law do not violate the principles of the country of law and people's sovereignty, as well as the rights to recognition, guarantees, protection, fair legal certainty, equal opportunities in government, and the fulfillment of human rights as guaranteed in the 1945 Constitution, not as argued by the Petitioners. Therefore, the Petitioners' arguments are entirely legally unjustifiable.

Accordingly, the Court passed down a decision in which the verdict was as follows:

On the Preliminary Injunction:

To dismiss the Petitioners' petition for preliminary injunction entirely;

On the Merits:

To dismiss the Petitioners' petition entirely.

Dissenting Opinion

Against the *a quo* Court's decision, a Constitutional Justice has a dissenting opinion, namely Constitutional Justice Arsul Sani.

In principle, he is of the opinion that the norms of Article 348 paragraph (4) of the General Elections Law provide different voting rights between "normal conditions" voters and "certain conditions" voters. The *a quo* Article has "reduced" the constitutional rights of citizens who have voting rights to elect candidates for members of the regency/municipal DPRD, the Provincial DPRD, and/or the DPR RI pursuant to their migration situations. Pursuant to their respective "certain conditions", "certain conditions" voters are not given some of their voting rights to elect candidates for members of the regency/municipal DPRD, the provincial DPRD, and/or candidates for members of the DPR RI. Therefore, the Court needs to consider and relate the issue of citizens' "reduced" constitutional rights to elect candidates for the people's representatives with the design and system of representative institutions, at least regarding the aspects relating to the scope of duties, functions, and authority of representative institutions members resulting from general elections as the people's representatives.

By not giving "certain conditions" voters who have transferred their polling places (TPS) to different DPR electoral districts, the right to elect the DPR members also means that it has indirectly eliminated the constitutional rights of citizens having the rights to vote to participate or take part in filling the MPR RI membership. Referring to Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representatives Council, and the Regional Legislative Council as amended by Law Number 2 of 2018 (MD3 Law), as well as the provisions in Law Number 23 of 2014 concerning Local Government as lastly amended by Law Number 9 of 2015 (Local Government Law), the implementation of the popular sovereignty and political rights principles must be guaranteed as good as possible, while the rationality principle ought to be developed. Article 348 paragraph (4) of the General Elections Law has reduced citizens' constitutional rights to exercise their voting rights in general elections. Therefore, the provisions of the *a quo* article need to be reformulated in order to fulfill citizens' voting rights by taking into account the technical terms and conditions for holding general elections which are further regulated by the election organizers, especially the DPTb, ballot papers availability and other provisions for holding elections.

In conclusion, Constitutional Justice Arsul Sani is of the opinion that: (i) a constitutionality review of the norms of Article 348 paragraph (4) of the General Elections Law should not only consider aspects of the electoral system and design that use the basis of electoral districts, but ideally also consider aspects of the design and system applied in representative institutions, especially those related to the duties, functions and authority of the DPR, the provincial DPRD and the regency/municipal DPRD; and (ii) by not completely giving "certain conditions" voters the rights to elect the members of the regency/municipal DPRD, the provincial DPRD, and/or the DPR RI due to design and electoral system reasons as well as "technical" reasons for election holding, means a reduction of citizens' constitutional rights.

Thus, the Court should grant the Petitioners' petition and the formulation of Article 348 paragraph (4) of the General Elections Law should be changed to read as follows:

"Voters as referred to in paragraph (3) may exercise their rights to elect:

- a. Candidates for the DPR members if they transfer their polling places to other provinces or transfer their polling places to other countries;***
- b. Candidates for the DPD members if they transfer their polling places to other regencies/municipalities under the same provinces;*
- c. Candidate Pairs if they transfer their polling places to other provinces or transfer their polling places to other countries;*
- d. Candidates for the Provincial DPRD members if they transfer their polling places to other regencies/municipalities under the same provinces; and***
- e. Candidates for the Regency/Municipal DPRD members if they transfer their polling places to other districts under the same regencies/municipalities."***