



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 18/PUU-XXII/2024**

Concerning

**Addition of the Phrase "or Coalitions of Political Parties"
to the Provisions of Norms of Article 228 of Law Number 7 of 2017**

Petitioner : Otniel Raja Maruli Situmorang

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 : Material Review of Article 228 of Law 7/2017 against Article 22E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution

Verdict : To dismiss the Petitioner's petition entirely

Date of Decision : Wednesday, March 20, 2024

Overview of Decision :

Whereas the Petitioner is an individual Indonesian citizen and also a voter registered in the Permanent Voter List (DPT) at Polling Station (TPS) number 28, Patam Lestari Urban Village, Sekupang District, Batam City, Riau Islands Province. The Petitioner describes that the enactment of the provisions of the norms of Article 228 of Law 7/2017, which do not contain the phrase "or coalitions of political parties" creates injustice in the application of the *a quo* Article. In fact, the *a quo* Article is closely related to the requirements for nominating the president and the vice president, which is actually proposed by political parties or coalitions of political parties. Furthermore, the provisions of the norms of Article 228 of Law 7/2017 result in the injury of the Petitioner's constitutional rights as a voter due to legal uncertainty as a result of the contradiction between norms in the same law (*contradictio interminis*), *in casu* the provisions of the norms of Article 221 of Law 7/2017 which formulate the phrase political parties or coalitions of political parties in contrast to the norms of Article 228 of Law 7/2017 which only formulate the phrase political parties. In addition, the principle of equal treatment in elections is to guarantee the principle of honest and fair elections so that there is a prohibition on political parties, but this prohibition is not for coalitions of political parties as stipulated in the norms of Article 228 of Law 7/2017. This will make it difficult to realize honest and fair elections;

Regarding the Court's authority, because the Petitioner's petition is a review of the constitutionality of the norms Article 228 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding legal standing, in the Court's opinion, the Petitioner as a voter has been able to describe his constitutional rights which, according to him, have been injured by the enactment of the norms of Article 228 of Law 7/2017 which are petitioned for review. The assumption regarding the injury of constitutional rights in question is specific and potential because the absence of the phrase "or coalitions of political parties" in the norms of Article 228 of Law 7/2017 will result in coalitions of political parties not being prohibited from receiving compensation in any form in the process of nominating the presidential and vice presidential pairs so that elections will not be carried out honestly and fairly. The description of the assumption regarding the injury of constitutional rights as described by the Petitioner has a causal relationship (*causal verband*) with the enactment of the norms of law being petitioned for review. Therefore, if the *a quo* petition is granted, the assumption regarding the constitutional injury as described by the Petitioner will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms as argued by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition;

Whereas because the *a quo* petition is evident, the 'Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Merits of the Petition

Whereas after the Court has carefully read the Petitioner's petition, examined the evidence submitted, and considered the Petitioner's arguments, the Court will then consider the merits of the Petitioner's petition as follows:

1. Whereas in holding elections for president and vice president, political parties or coalitions of political parties participating in the elections constitutionally have the right to nominate pairs of candidates for president and vice president. In this regard, political parties play important roles in realizing democratic elections. Therefore, political parties that are in accordance with democratic principles and uphold the sovereignty, aspirations, openness, justice, accountability, and non-discriminatory treatment within the Unitary State of the Republic of Indonesia are needed. Moreover, political parties have crucial roles in the election process in accordance with the principles of direct, public, free, confidential, honest, and just as stipulated in Article 22E paragraph (1) of the 1945 Constitution. In this context, political parties should carry out their roles in accordance with the goals of political parties as confirmed in Law 2/2008, both relating to general goals and specific goals;
2. Whereas in order to realize the strategic goals of political parties, it is necessary to strengthen political party systems and institutions, one of which is through financial assistance to political parties. Furthermore, regarding the financial management of political parties, there have been changes in regulations. Initially, Article 39 of Law 2/2008 stated, "Financial management of Political Parties is further regulated in the Articles of Association." However, after changes were made through Law Number 2 of 2011 concerning Amendment to Law Number 2 of 2008 concerning Political Parties (Law 2/2011), the formulation of the norms of Article 39 of Law 2/2011 becomes, "(1) Financial management of Political Parties is carried out transparently and accountably. (2) Financial management of Political Parties is audited by public accountants every 1 (one) year and announced periodically. (3) Political Parties are required to prepare financial reports for the purpose of audit of funds including: a. Political Parties' budget realization reports; b. Country reports; and c. Cash flow statements." This

means that with these changes, it is desired that any financial assistance from political party resources is carried out in accordance with a financial management mechanism that reflects the principles of transparent and accountable financial management of political parties. This is done in the context of structuring and perfecting political parties as one of the pillars of democracy in order to create a democratic political system to support an effective presidential system. Furthermore, apart from regulations regarding political party financial resources and financial management procedures in the context of structuring political parties, the legislators also formulate regulations regarding prohibitions on political parties in terms of receiving compensation.

3. Whereas regarding political party funding, Law 7/2017 also classifies the receipt of other political parties' expenses into the stages of holding elections, *in casu* campaign funds for election participants. Regulations regarding campaign funds include: campaign funds for elections for president and vice president; campaign funds for election for members of the DPR, the Provincial DPRD, and the Regency/Municipal DPRD; campaign funds for elections for members of the DPD, including the maximum limit for receiving campaign funds for each type of elections and reporting on the use of campaign funds. Furthermore, regarding campaign funds for elections for president and vice president, Law 7/2017 also regulates sanctions for violations of campaign funds;
4. Whereas the Petitioner petitions the Court that the norms of the *a quo* article be completed by adding the phrase "or coalitions of political parties" so that the norms of the *a quo* Article can reflect elections that are fair and provide guarantees of fair legal certainty for the Petitioner. Regarding the *a quo* Petitioner's argument, in the Court's opinion, it is important to comprehensively understand the existence of the norms of Article 228 of Law 7/2017 in the overall system of their placement in Law 7/2017 which are part of the provisions of Paragraph 2 regarding "Registration of Pairs of Candidates for president and vice president". In this regard, the norms of the articles providing "registration of pairs of candidates for president and vice president", namely Article 226 and Article 229 of Law 7/2017, explicitly use the phrase "political parties or coalitions of political parties", while the norms of Article 228 of Law 7/2017, which are petitioned for review, only mention the phrase "political parties". In this regard, if the entire norms in Paragraph 2 regarding "registration of pairs of candidates for president and vice president" are carefully read and understood, then the inconsistency as argued by the Petitioner happens because the norms of Article 226 and Article 229 of Law 7/2017 relate to the nomination of candidates for president and vice president as referred to in Article 6A of the 1945 Constitution. Meanwhile, the norms of Article 228 of Law 7/2017 relate to the emphasis on the prohibition of political parties from receiving compensation in any form. The Petitioner's concern that the absence of the phrase "or coalitions of political parties" in the norms of Article 228 of Law 7/2017 will prevent the holding of fair elections in accordance with the principle of legal certainty, has been accommodated in terms of regulations not only in Law 7/2017 but also in the law regarding political parties;
5. Whereas in the Court's opinion, in fact, the *subjectum litis* from *adressat* of Article 228 of Law 7/2017 is political parties participating in elections, including coalitions of political parties, in relation to the prohibition from receiving compensation in any form during the process of the presidential and vice presidential nomination. This means that if political parties form a "coalition of political parties" then the prohibition in the norms of Article 228 of Law 7/2017 still applies. Thus, the enactment of Article 228 of Law 7/2017 is actually intended for all political parties in general, even without mentioning the phrase "coalitions of political parties". Meanwhile, other articles in Paragraph 2 in question are formulated with the phrase "or coalitions of political parties" because they are part of the regulations regarding the stages of registration of pairs of candidates for president and vice president;

6. Whereas regarding the *a quo* Petitioner's argument that considers the need for criminal sanctions in the *a quo* petition, in the Court's opinion, this matter is intertwined with the Court's authority regarding criminal policy, which has been decided by the Court, among other things, in Constitutional Court Decision Number 46/PUU-XIV/2016 which was decided in a plenary session open to the public, on 14 December 2017, which in principle the Court has taken the stance not to enter the territory of criminal policy which is the domain of legislators. Moreover, Law 2/2008 and Law 2/2011 as well as Law 7/2017 have provided prohibitions and sanctions for political parties. Therefore, in line with the Petitioner's spirit of desiring the presence of political parties participating in elections, including coalitions of political parties, which are clean and free from corruption, the use of campaign funds in a transparent and accountable way in realizing elections, *in casu* democratic and fair elections for president and vice president, should be realized in accordance with the constitutional mandate.

Whereas pursuant to all the descriptions and legal considerations above, in the Court's opinion, it is evident that the norms of Article 228 of Law 7/2017 as argued by the Petitioner are not contrary to Article 22E paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Thus, the Petitioner's petition is entirely legally unjustifiable.

Subsequently, the Court passed down a decision in which the verdict was to Dismiss the Petitioner's petition entirely.