



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 21/PUU-XXII/2024**

Concerning

The KPU's Obligation to Disseminate Information on Parties and Legislative Candidates Participating in Elections Directly, Simplifying the Format of Legislative Election Ballot Papers, Parliamentary Thresholds, Calculation and Determination of Votes for Legislative Member Election Seats

- Petitioners** : **Fathul Hadie Utsman and AD. Afkar Rara**
- 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** : Judicial Review of Article 14 letter c, Article 342 paragraph (2), Article 414 paragraph (1), Article 415 paragraph (1) and paragraph (2), Article 419, Article 420 letter b, letter c, and letter d of Law 7/2017 against Article 1 paragraph (2), Article 19 paragraph (1), Article 28C (2), Article 28D paragraph (1) and paragraph (2), Article 28F, Article 28H paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution
- Verdict** : 1. To declare that the Petitioners' arguments regarding the review of Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) are inadmissible
2. To dismiss the remainder of the Petitioner's petition
- Date of Decision** : Thursday, March 21, 2024
- Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who are voters in the 2024 General Election. In the Petitioners' opinion, Article 14 letter c, Article 342 paragraph (2), Article 414 paragraph (1), Article 415 paragraph (1) and paragraph (2), Article 419, Article 420 letter b, letter c, and letter d of Law 7/2017 have prejudiced the Petitioners because of obstructing their constitutional rights as guaranteed in Article 1 paragraph (2), Article 19 paragraph (1), Article 28C

(2), Article 28D paragraph (1) and paragraph (2), Article 28F, Article 28H paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution;

Regarding the Court's authority, because the Petitioners' petition is a review of Article 14 letter c, Article 342 paragraph (2), Article 414 paragraph (1), Article 415 paragraph (1) and paragraph (2), Article 419, Article 420 letter b, letter c, and letter d of Law 7/2017 against the 1945 Constitution, which is one of the Court's authorities, under Article 24C paragraph (1) of the 1945 Constitution, Article 10 paragraph (1) letter a of the Constitutional Court Law and Article 29 paragraph (1) of the Judicial Powers Law, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing, the Petitioners are individual Indonesian citizens who are voters in the 2024 General Election who are prejudiced by the enactment of the *a quo* norms for the following reasons:

- a) Whereas in reality, until the day of the 2024 Legislative General Election, the organizer did not directly disseminate information to the public so that prospective voters who were illiterate or unable to see writing might be hampered in choosing candidates for legislative members;
- b) Whereas the Petitioners think that the ballot papers for electing candidates for members of the DPR, the Provincial DPRD, and the Regency/Municipal DPRD were too wide so that it was difficult and inconvenient for prospective voters to elect legislative candidates and it could prejudice candidates for legislative members if prospective voters were reluctant to vote or made the wrong vote because of the width of the ballots, given that many prospective voters were still illiterate and had impaired vision.
- c) Whereas with the threshold of 4% (four percent) as provided by the *a quo* norms, the candidate for legislative members elected by the Petitioners did not have the opportunity to become the DPR members because the votes did not meet the threshold requirements.
- d) Whereas the distribution of seats in accordance with the *sainte lague* system with a distribution formula using odd numbers 1, 3, 5, 7, and so on, where the party that obtained the highest number value got the first seat, and so on, where the seats were divided evenly at electoral districts, might prejudice voters and candidates for legislative members because voters' votes and candidates for legislative members' votes might shift to other parties without taking into account the majority of votes obtained in one seat. In the Petitioners' opinion, the remaining votes should be accumulated at a higher level, for example at the regency, provincial, or national level.

Pursuant to the description above, in the Court's opinion, such assumptions regarding the constitutional injury are specific and actual. The Petitioner has also been able to describe the assumptions regarding the injury of constitutional rights that have a causal relationship (*causal verband*) with the enactment of the norms petitioned for judicial review. Therefore, if the *a quo* petition is granted, the assumption regarding constitutional injury as has been described will not or will no longer occur. 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 norms of Article 342 paragraph (2), Article 414 paragraph (1), Article 419 and Article 420 letters b, letter c and letter d of Law 7/2017 have been submitted for review and have been decided by the Court, therefore before considering further the arguments in the Petitioners' petition, the Court will first consider the Petitioners' petition regarding the provisions of Article 60 of the Constitutional Court Law and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review of Laws (PMK 2/2021), so that the norms being petitioned for review can be assessed in terms of the fulfillment of the requirements for being

petitioned for re-review. The norms of Article 342 paragraph (2), Article 414 paragraph (1), Article 419 and Article 420 letters b, letter c and letter d of Law 7/2017 have been reviewed in Case Number 114/PUU-XX/2022, Case Number 20/PUU-XVI/2018, Case Number 48/PUU-XVIII/2020, Case Number 116/PUU-XXI/2023, Case Number 124/PUU-XXI/2023, and Case Number 47/PUU-XVII/2019, and if the *a quo* Petitioners' petition is studied carefully, it turns out that the bases for the review are different from the previous petitions. Meanwhile, regarding Article 14 letter c and Article 415 paragraph (1) and paragraph (2) of Law 7/2017, it is not relevant to relate them to the provisions of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021 because of the *a quo* norms have never been reviewed at the Court. Therefore, regardless of whether the Petitioners' petition is substantially legally justifiable or not, the *a quo* petition has satisfied the provisions of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021, so that the petition may be re-submitted.

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.

Whereas regarding the subject matter of the Petitioners' petition, the Court considers as follows:

- 1) Regarding the Petitioners' argument that Article 14 letter c of Law 7/2017 is contrary to the 1945 Constitution, because the Petitioners argue that the organizer of the 2024 Legislative General Election did not disseminate information to the public regarding the serial numbers of candidates for legislative members from the political parties participating in the 2024 General Election, making it difficult for voters to vote, especially those who were illiterate or unable to see writing and exercise their right to vote on voting day. So in the Petitioners' opinion, Article 14 letter c of Law 7/2017 should be interpreted as: "The KPU is obliged to: c "convey all information on the implementation of elections to the public and publish the vision and mission of all the parties participating in elections, symbols and serial numbers of the parties participating in elections, curriculum vitae, profiles, photos and serial numbers of candidates participating in elections in mass media or social media, and inform and deliver the pictures and serial numbers of political parties participating in elections, photos, names and serial numbers of candidates for legislative members from each political party participating in elections as well as samples of ballot papers directly to the houses of citizens who have the right to vote". In the Court's opinion, the interpretation petitioned by the Petitioners has the potential to narrow the KPU's obligations in holding general elections. This means that if the norms of Article 14 letter c of Law 7/2017 are interpreted according to the Petitioners' wishes as stated in the *petitum* of their petition, the KPU's obligations in conveying information to the public will be actually limited/narrowed. The character of the interpretation of the norms petitioned by the Petitioners limits the KPU's obligations from matters outside what has been determined in a restrictive manner according to the interpretation. This means that if the Court follows the Petitioners' wishes, this will be contrary to the right of voters or citizens to obtain information regarding the holding of general elections. Therefore, the Petitioners' argument regarding the interpretation of Article 14 letter c of Law 7/2017 is legally unjustifiable.
- 2) Regarding the Petitioners' argument that the phrase "and names" in Article 342 paragraph (2) of Law 7/2017 is contrary to the 1945 Constitution because the ballot papers to elect candidates for members of the DPR, the Provincial DPRD, the Regency/Municipal DPRD in the 2024 Legislative General Election were too wide so that it was difficult for the Petitioners to elect candidates for legislative members participating in the 2024 Legislative General Election, in the Court's opinion, removing the phrase "and names" in Article 342 paragraph (2) of Law 7/2017 as argued by the Petitioners will be contrary to Constitutional Court

Decision Number 114/PUU-XX/2022. As an open legal policy of the legislators that has been declared constitutional by the Court, removing candidates' names on ballot papers is inconsistent with the choice of an open proportional election system. Therefore, in the Court's opinion, the Petitioners' argument that the phrase "and names" in Article 342 paragraph (2) of Law 7/2017 is contrary to the 1945 Constitution is legally unjustifiable.

- 3) Regarding the Petitioners' argument stating that Article 414 paragraph (1) of Law 7/2017 is contrary to the 1945 Constitution, it is important to explain that the review of the constitutionality of the norms of Article 414 paragraph (1) of Law 7/2017 has already been submitted to the Court and has been considered in Constitutional Court Decision Number 116/PUU-XXI/2023. By referring to the verdict of Constitutional Court Decision Number 116/PUU-XXI/2023, the norms of Article 414 paragraph (1) of Law 7/2017 have substantially had a new interpretation which has been in effect since Constitutional Court Decision Number 116/PUU-XXI/2023 was pronounced in a plenary session open to the public. So, even though the wording is still the same, the interpretation of the norms of Article 414 paragraph (1) of Law 7/2017 is no longer the same as stated in the Petitioners' petition. Even though for reasons of legal certainty the norms of Article 414 paragraph (1) of Law 7/2017 still apply to the 2024 DPR General Election, in substance the interpretation of the *a quo* norms has changed under Constitutional Court Decision Number 116/PUU-XXI/2023. Thus, in the Court's opinion, the Petitioners' argument regarding conditional review of the unconstitutionality of the norms of Article 414 paragraph (1) of Law 7/2017 has lost its object.
- 4) Regarding the Petitioners' argument that the norms of Article 415 paragraph (1) and paragraph (2), Article 419 and Article 420 of Law 7/2017 are norms that cannot be separated and constitute an elaboration of Article 414 paragraph (1) of Law 7/2017, systematically, because they are norms that further explain Article 414 paragraph (1) of Law 7/2017 and the norms of Article 414 paragraph (1) of Law 7/2017 have been given a new interpretation as the Court's consideration above, the legal consideration of Constitutional Court Decision Number 116/PUU-XXII/2023 applies *mutatis mutandis* as a legal consideration in considering the constitutionality of the norms of Article 415 paragraph (1) and paragraph (2), Article 419, and Article 420 of Law 7/2017. Therefore, the *a quo* Petitioners' argument is legally unjustifiable.

Whereas pursuant to all the legal considerations above, in the Court's opinion, regarding Article 414 paragraph (1) of Law 7/2017 the object is lost. Meanwhile, regarding the norms of Article 14 letter c, Article 415 paragraph (1) and paragraph (2), Article 419, Article 420 letters b, letter c, and letter d, as well as the phrase "and names" in Article 342 paragraph (2) of Law 7/2017, they are in accordance with the principle of people's sovereignty, do not hinder the right to self-advancement in the struggle of rights collectively in order to develop the society, the nation, and the country, guarantee legal certainty and fair treatment, do not hinder obtaining information, provide ease, and are not discriminating, not as argued by the Petitioners. Thus, the Petitioners' arguments regarding Article 14 letter c, Article 415 paragraph (1) and paragraph (2), Article 419, Article 420 letter b, letter c, and letter d, as well as the phrase "and names" in Article 342 paragraph (2) of Law 7/2017 are entirely legally unjustifiable. And other matters and the remainder are not considered further because they are deemed to be irrelevant.

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

1. To declare that the Petitioners' arguments regarding the review of Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) are inadmissible.

2. To dismiss the remainder of the Petitioner's petition.