



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 69/PUU-XXII/2024**

**Concerning**

**Prohibition against Campaigning at Educational Institutions**

- Petitioners** : **Sandy Yudha Pratama Hulu and Stefanie Gloria**
- Type of Case** : Judicial Review of Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents, and Mayors into Law (Law 1/2015) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of Article 69 letter i of Law 1/2015 against Article 22E paragraph (1), Article 28C paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution
- Verdict** : To Declare:
- On the Preliminary Injunction**
- To dismiss the Petitioners' preliminary injunction entirely
- On the Merits**
1. To grant the Petitioners' petition entirely
  2. To declare the phrase "educational institutions" in the norms of Article 69 letter i of Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2015 Number 23, Supplement to the State Gazette of the Republic of Indonesia Number 5588) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as "excluding higher education institutions that have obtained permission from the person in charge of the higher education institutions or equivalents and being present without election campaign attributes"

3. To order the publication of this decision in the State Gazette of the Republic of Indonesia

**Date of Decision** : Tuesday, 20 August 2024

**Overview of Decision** :

Whereas the Petitioners are individual Indonesian citizens who are also students at the Faculty of Law, University of Indonesia and are registered as voters in the simultaneous elections for regional heads and deputy regional heads in 2024 (Pilkada 2024). As students actively involved in academic activities, the Petitioners feel prejudiced by the enactment of the norms of Article 69 letter i of Law 1/2015, which poses a potential closure of access to information about the ideas of leadership candidates in academic dialogues, thereby influencing the Petitioners' choices as first-time voters in Pilkada 2024.

Regarding the Court's authority, the Petitioners' petition is for the judicial review of the constitutionality of legal norms, *in casu* Law 1/2015 against the 1945 Constitution. Therefore, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioners' legal standing, the Court is of the opinion that the Petitioners have sufficiently explained the alleged loss of their constitutional rights by the enactment of the norms being petitioned for review, namely Article 69 letter i of Law 1/2015. Thus, regardless of whether the unconstitutionality of the norms being petitioned for review is proven or not, the Court is of the opinion that the Petitioners have legal standing to act as Petitioners in the *a quo* petition.

Whereas since the Court has the authority to hear the *a quo* petition and the Petitioners have legal standing to act as Petitioners in the *a quo* petition, the Court proceeds to consider the preliminary injunction and the subject matter of the petition.

#### 1. On the Preliminary Injunction

Whereas in the *a quo* petition, the Petitioners submit a preliminary injunction essentially petitioning the Court to prioritize the examination and adjudicate the case before the commencement of the campaign period for candidates in the 2024 regional head elections, so that candidates for regional heads/deputy regional heads could present their visions and ideas academically at higher education institutions. Regarding this preliminary injunction, because the *a quo* case is adjudicated without an examination with evidentiary agenda, including hearing the statements of the parties as referred to in Article 54 of the Constitutional Court Law, the Court finds no relevance in further considering the Petitioners' preliminary injunction. Thus, the Court is of the opinion that the Petitioners' preliminary injunction must be declared legally unjustifiable.

#### 2. On the Merits

Whereas the Petitioners argue that Article 69 letter i of Law 1/2015 is contrary to Article 22E paragraph (1), Article 28C paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. The petition argument (details of the argument have been outlined in the Case Background section), formulated by the Court, is essentially as follows:

Whereas according to the Petitioners, under the legal considerations of Constitutional Court Decision Number 85/PUU-XX/2022, Constitutional Court Decision Number 1/PHPU-PRES/XXII/2024, and Constitutional Court Decision Number 2/PHPU-PRES/XXII/2024, the Court maintains that there should no longer be extreme distinctions between general elections and regional head elections in terms of regulatory regime and paradigm.

Whereas according to the Petitioners, the norms of Article 69 letter i of Law 1/2015 are contrary to Article 22E paragraph (1) of the 1945 Constitution, particularly concerning the principle of fairness in General Elections and Regional Head Elections, which cannot be realized under the enactment of the *a quo* Article. Consistency is required to achieve coherence between the regulatory regime of general elections and that of regional head elections to prevent confusion and extreme discrepancies between the two as previously experienced.

Whereas according to the Petitioners, permission to hold campaigns in higher education institutions should also apply to regional elections since the Court, in its Decision Number 65/PUU-XXI/2023 on Article 280 paragraph (1) letter h of Law Number 7 of 2017 concerning General Elections (Law 7/2017), provided a new interpretation allowing campaigns to be conducted on campuses, *in casu* higher education institutions, to the extent that permission is obtained from the person in charge of the venue and participants are present without campaign attributes.

The Petitioners further argue that although the regulations for general and regional elections are stipulated in separate laws, the regulations should no longer diverge, including the regulation of campaigning at higher education institutions. Thus, a Constitutional Court ruling is needed to amend the prohibition stipulated in Law 1/2015.

According to the Petitioners, the provision of Article 69 letter i of Law 1/2015 carries criminal consequences if violated. These criminal consequences are regulated in Article 187 paragraph (3) of Law 1/2015. If Article 69 letter i of Law 1/2015 is not interpreted to permit campaigning on campus, the Petitioners are potentially subject to criminal sanctions. Thus, to provide fair legal certainty as mandated by Article 28D paragraph (1) of the 1945 Constitution, Article 69 letter i of Law 1/2015 must be given an interpretation consistent with the provisions of Law 7/2017. Additionally, Article 69 letter i of Law 1/2015 also has the potential to hinder the Petitioners' opportunities for self-development as guaranteed under Article 28C paragraph (1) of the 1945 Constitution.

According to the aforementioned reasons, the Petitioners request the Court to declare that Article 69 letter i of Law 1/2015, specifically the phrase "educational institutions," is in contradiction with the 1945 Constitution and has no binding legal force unless interpreted to "exclude Higher Education Institutions or similar references, provided they obtain permission from the person in charge of the respective institution and participants are present without campaign attributes."

After thoroughly reading and examining the Petitioners' application along with written evidence as described above, the Court finds that the issue raised by the Petitioners pertains to the phrase "educational institutions" in Article 69 letter i of Law 1/2015, which prohibits campaigning in houses of worship and educational institutions. The Petitioners argue that this provision contradicts Articles 22E paragraph (1), 28C paragraph (1), and 28D paragraph (1) of the 1945 Constitution. As stated in the Petitioners' *petitum*, the prohibition of campaigning at "educational institutions" is conditionally constitutional if it excludes higher education institutions or equivalents, provided that permission has been obtained from the person in charge of the higher education institutions and being present without campaign attributes. In other words, the Petitioners seek to ensure that the campaign prohibition does not apply to higher education institutions to the extent that campaign participants are present without campaign attributes.

Whereas before further considering the constitutionality of the norms being petitioned for review by the Petitioners, the Court will first address the issue of regional head elections (governors/deputy governors, regents/deputy regents, and mayors/deputy mayors) within the context of general elections as stipulated in Article 22E of the 1945 Constitution. In this regard, prior to Constitutional Court Decision Number 85/PUU-XX/2022, pronounced in a plenary session

open to the public on 29 September 2022, regional head elections were categorized under the regional government regime rather than the general election regime. This distinction was normatively emphasized in the legal considerations of Constitutional Court Decision Number 97/PUU-XI/2013, pronounced in a plenary session open to the public on 19 May 2014. Regional head elections are categorized under the regional government regime as discussed in the legal considerations in Sub-paragraph [3.12.3] of Constitutional Court Decision Number 97/PUU-XI/2013.

However, after several election cycles, the Court shifted its stance, moving from placing regional head elections under the regional government regime to putting them in the general election regime as stipulated in Article 22E of the 1945 Constitution. This shift began to emerge in the legal considerations of Constitutional Court Decision Number 55/PUU-XVII/2019, pronounced in a plenary session open to the public on 26 February 2020, where the legal considerations in Sub-paragraph [3.15.1] states that the drafters of the 1945 Constitution amendment did not differentiate between election regimes. This shift was explicitly outlined in the legal considerations in Paragraph [3.17] of Constitutional Court Decision Number 85/PUU-XX/2022, as follows:

[3.17] Considering that regarding the division of election regimes in the 1945 Constitution, the Court observes that there has been a change in interpretation due to legal practices in Indonesia. In the early period following the amendment of the 1945 Constitution, where regional head elections under the amended 1945 Constitution were newly practiced, the Court interpreted a distinction between the National General Election regime and the Regional Head Election regime (vide Paragraph [3.14] and Paragraph [3.15] above). However, after several periods of direct regional head elections were consistently conducted and relatively found their best form, the Court has implicitly altered the interpretation of Regional Head Elections.

Several legal practices that, according to the Court, serve as the basis for this change in interpretation are as follows:

National General Elections and Regional Head Elections are de jure and de facto conducted by the same institution. The only norm in the 1945 Constitution mentioning the general election organizer is Article 22E paragraph (5) of the 1945 Constitution, which states, "Elections shall be organized by a general election commission that is national, permanent, and independent";

The 1945 Constitution mandates six principles for democratic elections, namely direct, public, free, confidential, honest, and just, as stipulated in Article 22E paragraph (1) of the 1945 Constitution. Moreover, because of the regular nature of elections, Article 22E paragraph (1) of the 1945 Constitution also substantially includes the election principle of regular/periodic. This principle applies not only to national general elections (namely elections for President and Vice President, members of the DPR, DPD, and DPRD) but also to regional head elections. Furthermore, both types of elections are conducted based on universally applicable democratic principles.

Furthermore, the norms of the 1945 Constitution are further regulated in several laws concerning the administration of general elections conducted by the General Election Commission (KPU) and the Election Supervisory Agency (Bawaslu), with behavioral oversight by the Election Organizer Ethics Council (DKPP). The laws governing election management bodies do not normatively differentiate between the administration of national general elections and that of regional head elections. In practice, there is also no such distinction. If there are differences, they only lie in the fact that national elections are fully conducted by the KPU RI (or central KPU),

while regional head elections are conducted by regional KPU offices, which essentially function as extensions of the KPU RI and are thus part of a unified structure with the KPU RI. Similarly, regional Bawaslu offices, in the context of supervising the implementation of regional head elections, act as extensions of the Bawaslu RI (central Bawaslu). This similarity is further supported by the practice that subjects examined and adjudicated by the DKPP include all election management bodies at both the national and regional levels without distinguishing their absolute jurisdiction;

Participants in general elections, whether as candidates (including candidate pairs nominated by political parties or independent candidates) or voters (those with voting rights), can understand and follow the unified concept of elections that does not distinguish between National General Elections and Regional Head Elections. Moreover, according to the Court, in implementation, there is no sufficient reason to conceptually, theoretically, or sociologically distinguish between National General Elections and Regional Head Elections;

From the perspective of resources and financing, the Court also finds that the practice of unifying the two election regimes is more efficient as they can be managed by the same management bodies compared to the scenario where the State would need to establish two separate management bodies.

According to the legal considerations outlined above, constitutionally, the construction of the norm of Article 22E paragraph (2) of the 1945 Constitution should not merely be read as stating that elections are held to elect members of the house of representatives, regional representatives council, president and vice president, and regional legislative council. It should also be interpreted to include regional head elections. This interpretation requires harmonization or synchronization of electoral regulations or laws for matters that share similarities between general elections and regional head elections. In this regard, one of the stages of general elections and regional head elections that can be considered similar is the campaign stage.

In this context, the norms of Article 69 of Law 1/2015 state that campaign activities for governor, regent, and mayor elections are prohibited from: a. questioning the state ideology of Pancasila and the Preamble to the 1945 Constitution; b. insulting individuals, religions, ethnicities, races, groups, Governor Candidates, Regent Candidates, Mayor Candidates, and/or Political Parties; c. conducting Campaigns in the form of incitement, slander, or sowing discord between Political Parties, individuals, and/or community groups; d. using violence, threats of violence, or advocating the use of violence against individuals, community groups, and/or Political Parties; e. disrupting public security, peace, and order; f. threatening and advocating the use of violence to overthrow a legitimate government; g. damaging and/or removing campaign props; h. using Government and Regional Government facilities and budgets; i. using places of worship and educational institutions; j. conducting parades on foot and/or by vehicle on public roads; and/or k. engaging in campaign activities outside the schedule determined by the Provincial KPU and Regency/City KPU.

Similarly, in general elections, Article 280 paragraph (1) of Law 7/2017 states that campaign organizers, participants, and teams are prohibited from: a. questioning the state ideology of Pancasila and the Preamble to the 1945 Constitution, and the form of the Unitary State of the Republic of Indonesia; b. engaging in activities that endanger the unity of the Unitary State of the Republic of Indonesia; c. insulting individuals, religions, ethnicities, races, groups, candidates, and/or other Election Participants; d. inciting and sowing discord among individuals or communities; e. disrupting public order; f. threatening to commit violence or advocating the use of violence against individuals, community groups, and/or other Election Participants; g. damaging and/or removing Election Participants' campaign props; h. using government facilities, places of worship, and educational institutions; i. bringing or using symbols and/or attributes other than the

concerned Election Participants' symbols and/or attributes; and j. promising or giving money or other materials to Election Campaign participants.

Whereas if carefully read, the regulations regarding the prohibitions during the campaign period mentioned above, among the campaign prohibitions regulated with substantively similar content between Law 1/2015 and Law 7/2017, include the "prohibition of using educational institutions". However, regarding the "prohibition of using educational institutions" stipulated in Article 280 paragraph (1) letter h of Law 7/2017, the Court has provided an exception to the prohibition for educational institutions. As stated in the verdict of Constitutional Court Decision Number 65/PUU-XXI/2023, pronounced in a plenary session open to the public on 15 August 2023, campaigning in educational institutions may be excluded provided that permission has been obtained from the person in charge of the higher education institutions and being present without election campaign attributes. The Court's legal considerations concerning the exception to the prohibition of campaigning in higher education institutions provided it is conducted with permission from the person in charge of the higher education institutions and being present without election campaign attributes, can be read and reaffirmed in Paragraph [3.14] of Constitutional Court Decision Number 128/PUU-XXI/2023, pronounced in a plenary session open to the public on 29 November 2023, as follows:

[3.14] ...According to the Court, election campaigning in educational institutions is appropriate when directed at students in higher education institutions, namely the level of education after secondary education provided by higher education institutions. In addition to being a potential source of first-time voters, higher education institutions are also symbols of knowledge and civilization development, centers for educated and learned individuals, and hubs of energy and capacity to take anticipatory preventive measures against radical and intolerant ideologies. Due to the strategic function of higher education institutions, according to the Court, higher education institutions through their academic communities hold significant capacity to promote political education and political participation among the public through election campaigns.

Whereas election campaigning in higher education institutions can foster freedom of speech, expression, and opinion for academic communities and is a suitable venue to test the visions, missions, programs, and self-images of election participants. This allows election participants to gather new ideas and insights derived from scholarly discussions based on knowledge and research to improve and reform development. Higher education institutions also foster academic freedom that enables dialogue between election participants to discuss the feasibility of their proposed programs once they win the election. Campaigning in higher education institutions can also help higher education institutions achieve their goals of creating and disseminating knowledge while providing political education to the public. For students, as part of the academic community and first-time voters, election campaigning provides information on the track records, visions, missions, and programs of election participant candidates, enabling them to make informed and conscientious decisions when exercising their voting rights. Nonetheless, election campaigns conducted in higher education institutions must adhere to the restrictions outlined in Constitutional Court Decision Number 65/PUU-XXI/2023. Such restrictions are necessary to ensure that these campaigns do not devolve into divisive political activities that polarize the academic community, potentially leading to election violations.

According to the legal considerations outlined above, the exception to the prohibition of campaigning in higher education institutions is intended to allow academic communities to become a driving force in organizing election campaigns that explore the visions, missions, and work programs offered by candidates while ensuring equal opportunities for all candidates. In addition to being a gathering place for first-time voters and critical voters, allowing campaigns in higher education institutions opens the possibility for more constructive campaign dialogues, ultimately fostering political maturity among the public.

Having thoroughly studied the legal considerations regarding the exception to the prohibition of campaigning on campuses or higher education institutions and relying on the Court's stance that no longer differentiates between the general election regime and the regional head election regime, because the substance of the Petitioners' petition is fundamentally the same as the substance in Case Number 65/PUU-XXI/2023, the Court does not doubt applying the legal considerations of Constitutional Court Decision Number 65/PUU-XXI/2023 *mutatis mutandis* to the *a quo* petition. Furthermore, the *mutatis mutandis* application cannot be separated from the principle of *erga omnes*. In this regard, because the norms of prohibition of campaigning in campuses or higher education institutions or equivalents in Article 280 paragraph (1) letter h of Law 7/2017 have been declared conditionally unconstitutional by the Court, similar and equivalent norms in other laws should also be interpreted similarly. Within reasonable reasoning, allowing contradictory norms to exist/prevail within the same legal system concerning elections under the legal construction of Article 22E of the 1945 Constitution, would undermine the legal certainty of election administration. In other words, even though such provisions are stipulated in two different laws, on the basis that there is no difference in terms of election regime, for legal certainty and the reinforcement of the *erga omnes* principle, the prohibition of campaigning in "educational institutions" in regional head elections as contained in Article 69 letter i of Law 1/2015 must be declared contrary to the 1945 Constitution and conditionally has no binding legal force to the extent that it is not interpreted as obtaining permission from the person in charge of the higher education institutions/equivalents and being present without election campaign attributes. Accordingly, the norms of Article 69 letter i of Law 1/2015 will be fully interpreted as set out in the verdict of the *a quo* Decision.

Whereas according to the aforementioned legal considerations, it is evident that the phrase "educational institutions" in the norms of Article 69 letter i of Law 1/2015 concerning the prohibition of campaigning in educational institutions, is contrary to Article 22E paragraph (1), Article 28C paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, as argued by the Petitioners. Thus, the phrase "educational institutions" in the norms of Article 69 letter i of Law 1/2015 is contrary to the 1945 Constitution and has no binding legal force to the extent that it is not interpreted as excluding higher education institutions that have obtained permission from the person in charge of the higher education institutions or equivalent and being present without election campaign attributes. Nevertheless, while the verdict of the *a quo* Decision is not precisely formulated similarly to the Petitioners' petition, substantively, it does not differ from the Petitioners' petition and, therefore, the Petitioners' petition is legally justifiable entirely.

According to the above considerations, the Court subsequently passed down a decision in which the verdict declares:

### **On the Preliminary Injunction**

To dismiss the Petitioners' preliminary injunction entirely.

### **On the Merits**

1. To grant the Petitioners' petition entirely;

2. To declare the phrase "educational institutions" in the norms of Article 69 letter i of Law Number 1 of 2015 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2014 concerning Elections for Governors, Regents, and Mayors into Law (State Gazette of the Republic of Indonesia of 2015 Number 23, Supplement to the State Gazette of the Republic of Indonesia Number 5588) is contrary to the 1945 Constitution of the Republic of Indonesia and conditionally has no binding legal force to the extent that it is not interpreted as "excluding higher education institutions that have obtained permission from the person in charge of the higher education institutions or equivalents and being present without election campaign attributes";
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia.