CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 48/PUU-XXII/2024

Concerning

Number of Members of the Regional Representative Council

Petitioners	**:**	**H. Ahmad Kanedi, et al.**
Type of Case	**:**	Judicial Review of Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional Legislative Council (Law 17/2014) and 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 252 paragraph (1) of Law 17/2014 and Article 196 of Law 7/ 2017 against Article 22C paragraph (2) and Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution
Verdict	**:**	To dismiss the Petitioners' petition in its entirety
Date of Decision	**:**	Tuesday, 20 August 2024

Overview of Decision :

Whereas the Petitioners are Indonesian citizens, taxpayers, and each of them has been determined as a candidate in the DPD (Regional Representative Council) election according to the KPU (General Election Commission) Decree Number 1563 of 2023 concerning the List of Permanent Candidates for Members of the Regional Representative Council in the 2024 General Election, dated 3 November 2023, namely Petitioner I for the Bengkulu Province Electoral District, Petitioner II for the Gorontalo Province Electoral District, Petitioner III for the Aceh Province Electoral District, Petitioner IV for the Sulawesi Barat Province Electoral District, Petitioner V for the Kalimantan Timur Province Electoral District, Petitioner VI for the Special Capital Region of Jakarta Province Electoral District, Petitioner VII for the Sulawesi Utara Province Electoral District, and Petitioner VIII for the Riau Province Electoral District and each of them ranked fifth in the number of votes for DPD candidate members pursuant to the Form Model D. Provincial Results-DPD.

Whereas regarding the Court's authority, because the Petitioners petition for a material review of the norms of Article 252 paragraph (1) of Law 17/2014 and norms of Article 196 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing of the Petitioners, the Petitioners have been able to describe specifically and actually the relations between their constitutional loss and the enactment of the norm being petitioned for review, namely regarding the limitation on the number of DPD member seats for each province to 4 (four) seats as regulated in Article 252 paragraph (1) of Law 17/2014 and Article 196 of Law 7/2017, such limitation has given rise to legal uncertainty and does not provide equal opportunities in government. Therefore, the Petitioners have been able to describe the existence of a causal relationship (*causal verband*) between the alleged constitutional loss and the enactment of the norms of Article 252 paragraph (1) of Law 17/2014 and Article 196 of Law 7/2017 which are being petitioned for judicial review. The said constitutional loss will no longer occur if the Petitioners' petition is granted. Regardless of whether or not the Petitioners' arguments regarding the unconstitutionality of the norm being petitioned for review against the 1945 Constitution of the Republic of Indonesia are proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the judicial review of the norms of Article 252 paragraph (1) of Law 17/2014 and Article 196 of Law 7/2017.

Whereas since the *a quo* petition is clear, the Court is of the opinion that there is no urgency and need to hear the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas the provisions of Article 22C paragraph (2) of the 1945 Constitution regulate 3 (three) main matters.

First, the number of DPD members from each province is the same. The DPD representation model is based on region or space, not on the total number of residents or voters, so that each region or space is represented by the same number. Regarding the same number for each province, Paragraph **[3.17]** Number 6 of the Constitutional Court Decision Number 92/PUU-X/2012 considers that the same number of representatives from each province means that every province in Indonesia is treated equally according to the 1945 Constitution of the Republic of Indonesia, no matter how small the provincial area is because these areas are part of the territory of Indonesia which unites Indonesia. In addition, historically, if we refer to the history of Indonesian state administration, with a representative institution model similar to the DPD, the same number of representatives in each province was once regulated and became the practice to house the members of the upper house (Senate) when the Constitution of the Republic of the United States of Indonesia was in effect in 1949 (1949 RIS Constitution). In this case, Article 80 paragraph (2) of the 1949 RIS Constitution states that each region has two members in the Senate. In contrast to Article 22C paragraph (2) of the 1945 Constitution, Article 80 paragraph (2) of the 1949 RIS Constitution explicitly states the same number, namely 2 (two) people. Meanwhile, the provision of Article 22C paragraph (2) of the 1945 Constitution does not specifically determine the same number, instead it leaves the regulation of which to the law.

Second, the total number of all DPD members is no more than one third of the total number of DPR (House of Representatives) members, as stated in Paragraph **[3.17]** Number 6 of the Constitutional Court Decision Number 92/PUU-X/2012, it is intended to ensure that there is a balance in the membership of the MPR (People's Consultative Assembly) which consists of members of the DPR and members of the DPD. In addition, if we trace the background of the establishment of the DPD, this institution is a "replication" of regional representatives when the MPR still held the position of holder of people's sovereignty and the embodiment of all the people who in the state structure are the highest state institution. As for the regional representatives, the number of seats for the DPD members is indeed lower compared to the number of seats for the DPR members. Because the idea of establishment of DPD was as a "replacement" for regional representatives, within the limits of reasonable reasoning, it is possible that the maximum number of DPD members would not exceed 1/3 (one third) of the number of DPR

members, similar with the number of regional representatives in the MPR at that time.

Third, the existence of the DPD is not based on the number (quantity) of members but on the authority of the DPD and the optimization of the said authority in an effort to follow up on regional aspirations in the decision-making process at the national level. This means that, under its position as a representative of regional interests in the decision-making process at the national level, the existence of DPD is not determined by the number of members *an sich* but by the ability to use its authority optimally. Increasing the number of members may be one way to strengthen the existence of an institution, but increasing the number of members is not the most dominant determining factor.

Whereas the provisions of Article 252 paragraph (1) of Law 17/2014 must be returned to the provisions of Article 22C paragraph (2) of the 1945 Constitution. In this case, as long as the number of DPD members does not exceed one third of the total number of DPR members, this number must be declared constitutional and is not contrary to the 1945 Constitution. This means that, within the limits of reasonable reasoning, any numbers determined by the legislators as long as and to the extent that it does not exceed 1/3 (one third) of the number of DPR members is not contrary to the constitution (constitutional). In this context, the number of 4 (four) people regulated in Article 252 paragraph (1) of Law 17/2014 must be declared not to be contrary to Article 22C paragraph (2) of the 1945 Constitution. In that context, the Petitioners' *petitum* which desires the number of DPD members from each province to be 5 (five) people is still within the threshold of not exceeding 1/3 (one third) of the number of DPR members, it indeed is correctly calculated. However, if the Court declares that the number of DPD members must be 5 (five) people from each province as desired by the Petitioners, the Court must first declare that the number of 4 (four) people as regulated in Article 252 paragraph (1) of Law 17/2014 is contrary to the norm of Article 22C paragraph (2) of the 1945 Constitution. As has been emphasized above, because the number of 4 (four) people regulated in Article 252 paragraph (1) of Law 17/2014 is still within the threshold regulated in Article 22C paragraph (2) of the 1945 Constitution, therefore, the Court cannot possibly declare the number of 4 (four) members of DPD unconstitutional. Therefore, substantially there is no constitutional problem related to the provisions of Article 252 paragraph (1) of Law 17/2014 to the extent that the number of DPD members does not exceed one third of the number of DPR members as stipulated in Article 22C paragraph (2) of the 1945 Constitution.

Whereas the legislators hold the authority to determine that the number of DPD members is 4 (four) people from each province, including if in the future this number is changed by the legislators as long as it does not exceed 1/3 (one third) of the number of DPR members, this determination is not contrary to Article 22C paragraph (2) of the 1945 Constitution. In that context, as one of the institutions authorized to form laws, institutionally the DPD should try to change this number by amending Law 17/2014. Regarding the Petitioners' description that the DPD is always lose in the decision-making process in the MPR due to the limited number of DPD members, as a country based on Pancasila, the making of state political decisions in the MPR should try to first use a deliberation and consensus mechanism in line with the Fourth Principle of Pancasila. This mechanism is expected to create a family atmosphere and a spirit of mutual cooperation to ensure that the decisions taken are fair and acceptable to all parties as an effort to unite all elements of the nation's strength. Even if the deliberation and consensus mechanism does not reach a meeting point and a voting mechanism must be carried out, it does not necessarily mean that the DPD members, whose numbers are no more than one third of the DPR members, will always lose.

Whereas regarding the norm of Article 196 of Law 7/2017, the *a quo* norm must be read as a follow-up to the number of DPD members determined in Article 252 paragraph (1) of Law 17/2014. Because the norm of Article 252 paragraph (1) of Law 17/2014 is constitutional and it is not contrary to Article 22C paragraph (2) of the 1945 Constitution,

the norm of Article 196 of Law 7/2017 must be declared not contrary to the 1945 Constitution.

Pursuant to the entire description of the legal considerations above, it has been proven that the norm of Article 252 paragraph (1) of Law 17/2014 and the norm of Article 196 of Law 7/2017, which each regulate the number of DPD members as many as 4 people per province, are in accordance with Article 22C paragraph (2) of the 1945 Constitution, namely no more than one third of DPR members, therefore it provides fair legal certainty as stated in Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioners. Therefore, the Petitioners' petition is entirely legally unjustifiable.

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