



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 59/PUU-XXII/2024**

Concerning

Legal Subjects/Perpetrators of Money Politics Crimes in General Elections

- Petitioners** : **Ahmad Sadzali, et al.**
- 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** : Article 523 paragraph (1) and paragraph (2) of Law 7/2017 are contrary to Article 1 paragraph (3), Article 22E paragraph (1), Article 27 paragraph (1), Article 28D paragraph (1), Article 28J paragraph (1), and Article 29 paragraph (1) of the 1945 Constitution
- Verdict** : To dismiss the Petitioners' petition entirely
- Date of Decision** : Wednesday, 16 October 2024
- Overview of Decision** :

The Petitioners are individual Indonesian citizens who are lecturers at the Faculty of Law, Islamic University of Indonesia (UII), students of the Faculty of Law at UII, and political observers. According to the Petitioners, the norms of Article 523 paragraph (1) and paragraph (2) of the 1945 Constitution may threaten the General Elections principles of *luberjurdil* (direct, public, free, confidential, honest, and fair), as the provisions of the *a quo* article limit the legal subjects/perpetrator of money politics crimes. The Petitioners argue that the provisions of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 carry a narrow interpretation, protecting candidates' volunteers and/or supporters who commit money politics crimes but are not registered with the General Election Commission (KPU) because such individuals are not classified as legal subjects/perpetrators under the phrase "any campaign organizer, participant, and/or team" as stipulated in the norms of the *a quo* article. The ambiguity in regulating the legal subjects/perpetrators of money politics crimes in General Elections will perpetuate the practice of money politics, as there are no restrictions or prohibitions imposed on every person. Regarding the Petitioners' arguments, the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 are contrary to Article 1 paragraph (3), Article 22E paragraph (1), Article 27 paragraph (1),

Article 28D paragraph (1), Article 28J paragraph (1), and Article 29 paragraph (1) of the 1945 Constitution.

Regarding the Court's authority, because what is petitioned by the Petitioners is a judicial review of the constitutionality of legal norms, *in casu* Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding legal standing, regardless of whether the Petitioners' arguments concerning the unconstitutionality of the norms of Article 523 paragraph (2) and paragraph (3) of Law 7/2017 being petitioned for review are proven or not, in their respective qualifications as individual Indonesian citizens, who are also lecturers and students as evidenced by copies of ID Cards [vide Evidence P-3 through Evidence P-8; Evidence P-30], and who are also have the right to vote in the 2024 General Election and intend to exercise this right in the 2024 Regional Head Election, the Petitioners have specifically explained the alleged potential and/or factual constitutional loss and the causal relationship (*causal verband*) with the enactment of the legal norms being petitioned for review. Thus, if the petition is granted, such constitutional loss would no longer occur. Accordingly, the Petitioners have legal standing to act as Petitioners in the *a quo* petition;

Regarding the judicial review of the constitutionality of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 as argued by the Petitioners, the Court is of the opinion that the Petitioners' petition is evident, and there is no necessity or urgency to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas under Article 60 paragraph (2) 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), regarding whether the *a quo* norms can be petitioned for judicial review again, the Court, after reading and comparing the substance of the Petitioners' petition with Case Number 29/PUU-XVII/2019, which reviewed the constitutionality of Article 523 of Law 7/2017, finds that the basis for review in the previous case is different from the basis for review in the *a quo* case. Furthermore, in Case Number 29/PUU-XVII/2019, the Court passed down a verdict declaring that the petition of Petitioner I was dismissed, and the petition of Petitioner II was inadmissible, meaning that the subject matter of the previous case was not considered by the Court. Thus, since in the last petition, the Court did not examine the constitutionality of Article 523 paragraph (2) and paragraph (3) of Law 7/2017, and since the basis for review in the *a quo* petition is different from that of the previous petition, the Court is of the opinion that the *a quo* petition is not barred by the provisions contained in Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021. Therefore, the norms of the *a quo* provisions may be petitioned for judicial review again.

Whereas after carefully examining the arguments in the Petitioners' petition and the evidence presented, the main issue raised by the Petitioners concerns the need to expand the interpretation of the legal subjects/perpetrators of money politics crimes in the phrase "any campaign organizer, participant, and/or team" as stipulated in Article 523 paragraph (1) and paragraph (2) of Law 7/2017 to become the phrase "any person", so that the norms of the *a quo* Article may be imposed on everyone, including candidates' volunteers and supporters who engage in money politics crimes in General Elections.

Whereas the Court is of the opinion that, constitutionally, the holding of General Elections must adhere to principles binding all parties, including General Election organizers, election participants, voters, and the government, in accordance with the mandate of Article 22E paragraph (1) of the 1945 Constitution. General Elections serve as a means of constitutional democracy and the fulfilling of citizens' voting rights. In this context, the legislation that provides the legal foundation is a means to realize the people's sovereignty in accordance with the

principles of the holding of elections, aiming to ensure the proper implementation of democratic elections.

A tangible threat to the fulfillment of the principles of General Elections, as outlined in Article 22E of the 1945 Constitution, is the existence of fraudulent acts that could undermine the integrity of election organizers, which, under reasonable reasoning, if left unaddressed, could potentially result in elections being far from democratic elections. Law 7/2017 regulates criminal provisions broadly and comprehensively when compared to administrative sanctions. Criminal sanctions, referred to as electoral crimes, are regulated in Article 488 to Article 554 of Law 7/2017. Doctrinally, when read comprehensively, all offenses within Article 488 to Article 554 of Law 7/2017 encompass distinctions between types of offenses, namely formal and material offenses, commission and omission offenses, and intent (*dolus*) and negligence (*culpa*) offenses. Regarding these offenses, there are those aimed at specific addresses, meaning the subject of an offense is explicitly targeted in the formulation of the offense. In such cases, these types of offenses are not directed at all subjects of the offenses but only at specific subjects or persons.

Whereas concerning the categorization of offenses mentioned above, the Petitioners primarily question the constitutionality of the provisions in Article 523 paragraph (1) and paragraph (2) of Law 7/2017, which limit the legal subjects/perpetrators of money politics crimes. Therefore, according to the Petitioners, the norms of the *a quo* article create legal uncertainty and injustice by limiting the legal subjects/perpetrators who may be subject to criminal sanctions for money politics crimes solely to “any campaign organizer, participant, and/or team”, as stipulated in Article 523 paragraph (1) and paragraph (2) of Law 7/2017, when these should apply to “any person”. Regarding the Petitioners’ *a quo* arguments, the Court considers the following:

1. The substance of the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 that is petitioned by the Petitioners is the legal subjects/perpetrators of money politics crimes in General Elections.
2. Money politics crimes in elections can be categorized as crimes with distinct characteristics, thus constituting special offenses that require a more comprehensive regulation and should not merely contain the formulation of offenses but also include specificity in terms of actions, behavior, and criminal sanctions.
3. The regulation of money politics crimes in elections, under Law 7/2017, is set out in Article 278 paragraph (2), Article 280, Article 515, and Article 523 of Law 7/2017.
4. Whereas Article 278 paragraph (2) and Article 280 of Law 7/2017 represent primary norms, meaning they consist of rules that serve as standards for how a legal subject should behave within society (*das sollen*). Meanwhile, Article 515 and Article 523 of Law 7/2017 represent secondary norms, containing procedures for addressing or rectifying instances where primary norms are not fulfilled, including sanctions for any person who fails to adhere to the provisions of the primary norms. Consequently, by examining these provisions, the substance of the norms petitioned by the Petitioners for constitutional review is essentially part of or cannot be separated from the substance contained in the provisions of Article 280 of Law 7/2017.
5. Expanding the legal subjects/perpetrators initially not encompassing “any person,” which means anyone, but rather limited to campaign organizers, participants, and/or teams, would result in an expansion of the addressees of the legal subjects targeted by the provisions in Article 523 paragraph (1) and paragraph (2) of Law 7/2017. This, in turn, would impact the expansion of the norms of Article 280 paragraph (1) and Article 278 paragraph (2) of Law 7/2017.

6. Whereas including legal subjects that were not previously considered perpetrators engaging in actions alleged to violate electoral offenses related to campaign activities as part of the legal subjects/perpetrators of electoral offenses related to campaigns, that may be subject to criminal sanctions under the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017, falls under the category of criminal policy.
7. The Court, in several of its decisions, has consistently maintained its stance that criminal policy falls under the authority of legislators as outlined in the considerations of Constitutional Court Decision Number 46/PUU-XIV/2016, Paragraph [3.12], pages 441–443, reiterating that the Court must not intervene in criminal policy concerning punitive norms. This stance has been upheld in subsequent decisions.
8. Whereas the doctrine of judicial restraint as a form of implementation of the principle of separation of powers restricts the court from creating new legal norms when adjudicating judicial review cases, except where the Court finds that a legal norm explicitly violates the principles set out in the 1945 Constitution. Moreover, expanding the legal subjects/perpetrators of money politics crimes in General Elections to apply to “any person” would be inappropriate, as the absence of such limitation could criminalize everyone and lead to arbitrary actions.
9. Whereas imposing limitations may be needed. However, when the creation of new legal norms closely relates to limiting individual rights and freedoms, under Article 28J paragraph (2) of the 1945 Constitution such limitations fall within the authority of legislators. Moreover, the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017, which is petitioned by the Petitioners, are part of the regulations on campaign activities, including campaign prohibitions.
10. Whereas further, the regulation concerning the prohibitions of money politics crimes in elections, directed at, among others, “campaign organizers”, has covered the legal subjects of campaign organizers as follows:
 - 1) Campaign organizers for the elections of President and Vice President consist of executives of political parties or coalitions of political parties, individuals, and event organizers appointed by the participants in the elections of president and vice president [vide Article 269 paragraph (1) of Law 7/2017];
 - 2) Campaign organizers for the elections of the DPR/DPRD members consist of executives of political party participants in the DPR/DPRD elections, candidates for the DPR/DPRD members, election campaigners, individuals, and organizations appointed by the participants in the elections of the DPR/DPRD members [vide Article 270 paragraph (1), paragraph (2), and paragraph (3) of Law 7/2017].
 - 3) Campaign organizers for the elections of the DPD members consist of candidates for the DPD members, individuals, and organizations appointed by the participants in the elections of the DPD members [vide Article 271 of Law 7/2017].
11. Whereas the phrase “any person”, proposed by the Petitioners to be inserted in the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 to replace the meaning and expand the phrase “any campaign organizer, participant, and/or team”, is already contained in Article 269 paragraph (1), Article 270 paragraph (1), paragraph (2), and paragraph (3), and Article 271 of Law 7/2017, given these provisions regulate the phrase “any person” under the term “individual”, which is part of the elements of campaign organizers.

12. Whereas, essentially, the substantive issues raised by the Petitioners have already been absorbed in Article 269 paragraph (1), Article 270 paragraph (1), paragraph (2), paragraph (3), and Article 271 of Law 7/2017. Therefore, the specific issues in the concrete case argued by the Petitioners [vide pp. 79, 80, and 83 of the Petitioners' petition], if true, are issues of implementation of norms and the Court has no authority to examine them.
13. Whereas the norms of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 do not conflict with the 1945 Constitution. Nevertheless, criminal policy requires approval from representative institutions as they reflect the people's will and operate on the principle that legal (criminal) policies must actively seek what should be regulated, not merely adhere passively to existing regulations. In this regard, if the society believes that Law 7/2017 remains deficient, especially in terms of legal subjects/perpetrators of money politics crimes in general elections, then legislators can create new legal norms to replace the existing ones, namely by formulating the provisions of legal subjects/perpetrators of money politics crimes in future amendments to the General Elections Law to ensure high-quality and integrity-focused elections free of money politics practices, to achieve honest and fair elections as set out in Article 22E paragraph (1) of the 1945 Constitution.

Whereas according to all the above considerations, in the Court's opinion, the Petitioners' arguments regarding the unconstitutionality of Article 523 paragraph (1) and paragraph (2) of Law 7/2017 are legally unjustifiable.

Thus, the Court subsequently passed down a decision in which the verdict was to dismiss the Petitioners' petition entirely.