



CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA

**SUMMARY OF DECISION  
FOR CASE NUMBER 176/PUU-XXII/2024**

**Concerning**

**Constitutionality of Reasons for Elected Legislative Candidates to Resign**

- Petitioners** : Adam Imam Hamdana, 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** : The absence of limitations on the resignation of elected legislative candidates in the provisions of Article 426 paragraph (1) letter b of Law 7/2017 violates the principle of people's sovereignty, creates injustice that is not in accordance with the principles of holding elections, does not provide fair legal protection and certainty as regulated in Article 1 paragraph (2), Article 18 paragraph (4), Article 22E paragraph (1), Article 28D paragraph (1) of 1945 Constitution
- Verdict** :
1. To grant the Petitioners' petition in part
  2. To declare that Article 426 paragraph (1) letter b of Law Number 7 of 2017 concerning General Election (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, if it is not interpreted as **"shall resign because he/she is assigned by the state to occupy a position that is not held through general election"**
  3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate
  4. To dismiss the remainder of the Petitioners' petition
- Date of Decision** : Friday, March 21, 2025
- Overview of Decision** :

The Petitioners are Indonesian citizens who are university students at the Faculty of Sharia and Law of Universitas Islam Negeri Sayyid Ali Rahmatullah who have the right to vote in the 2024 General Election.

With respect to the Court's authority, since the petition is submitted to review the constitutionality of norm of law, *in casu* Law 7/2017 against the of 1945 Constitution, the

Court has the authority to hear the petition *a quo* of the Petitioners.

With respect to the legal standing of the Petitioners, the Court is of the opinion that they have been able to specifically describe their constitutional rights guaranteed in the 1945 Constitution of the Republic of Indonesia, which they believe are actually (Petitioner I and Petitioner III) or at least potentially (Petitioner II) violated by the enactment of the norm of Article 426 paragraph (1) letter b of Law 7/2017. Therefore, it is evident that there is a logical connection and causal relationship (*causal verband*) between the assumed loss of the Petitioners' constitutional rights and the enactment of the norm of the article being petitioned for review. Therefore, if the petition of the Petitioners is granted, the assumed constitutional loss as described will not or at least will no longer occur. Therefore, regardless of whether or not the unconstitutionality of the norm of Article 426 paragraph (1) letter b of Law 7/2017 being petitioned for review is proven, the Court considers that Petitioner I, Petitioner II and Petitioner III (hereinafter referred to as the Petitioners) have the legal standing to act as Petitioners in the petition *a quo*.

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

In the subject matter of the petition, with respect to the condition of resignation as a reason for replacing the elected candidate, the Court considers that the applicable provisions do not prohibit the resignation of any elected candidate and in practice, such resignation often occurs. In addition to personal reasons, resignation often occurs due to the relationship between the elected candidate and the political party nominating the candidate. Such condition, as argued by the Petitioners, have at least occurred in the Petitioners' electoral district, in this case, the elected candidate resign and was replaced by the candidate who received the next highest number of votes. However, even though the elected candidate has the right to resign, the mandate given by the people through their votes should be the primary consideration for a people's representative before deciding to resign for any reason. Because, before finally being elected, the legislative candidates have campaigned, undertook various political promises, visions, missions, and programs, and even promoted the candidate's own personal image to attract voters. When his/her efforts and endeavors succeed in gaining many votes and becoming the elected candidate based on the most votes, then his/her election is a mandate given by the people and must be respected. In the context of general elections, the people's votes cast during voting are a manifestation of democracy, even a single vote is very important and should not be ignored.

The resignation of an elected legislative candidate nullifies the votes cast for that candidate. In fact, in legislative elections using an open proportional system, voters may vote for specific candidates, and replacing those candidates could mean that voters would have chosen someone else. In legislative elections using an open proportional system, the personal profile of a legislative candidate plays a crucial role, as voters base their choices on the individual they wish to elect. Consequently, candidates actively promote themselves by presenting a positive image and campaigning on their vision, mission, and programs, in addition to those of the political party that nominates them

The Court is of the opinion that the root of the problem is the unclear norm of Article 426 paragraph (1) letter b of Law 7/2017 which does not provide any limitations on the resignation of the elected candidates. The limitations referred to are not only regarding the conditions for resignation, but also the reasons for the resignation of the elected candidates. The absence of such limitations means that election organizers will simply process resignations submitted by elected candidates regardless of the underlying reasons. The Court is of the opinion that this will create legal uncertainty, especially for voters who have chosen the candidate, which will then give rise to injustice that is contrary to the principles of general elections. Thus, the Court is of the opinion that in order to maintain the

principle of popular sovereignty, which is realized through direct voting in general elections, the resignation of the elected candidates must have clear limitations.

To provide constitutional limitations on the resignation of elected candidates, the Court first considers two main issues related to the resignation of the elected candidates, which are questioned in the case *a quo*, the first is resignation because the elected legislative candidate intends to register as a regional head candidate, and the second is resignation due to interests related to state duties. The Court is of the opinion that these two main issues cannot be separated from the role of political parties in determining the national leadership.

In our constitutional system, political parties have an important position and role in democratic life because they are the bridge between the state/government and the citizens. In relation to elections conducted under an open proportional system as an embodiment of the principle of popular sovereignty as provided by Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the role of political parties is manifested through the submission of their list of legislative candidates. In this context, the Court is of the opinion that the relationship between political parties and the legislative candidates they nominate is mutually beneficial. However, this relationship must not be pursued at the expense of the votes of the people, merely to serve the interests of elected legislative candidates and/or political parties.

From the start of the candidate selection process, political parties should formulate strategies that respect voters' choices, taking into account not only electability but also the capacity, capability, and competence of prospective legislative candidates. Political parties must select their best cadres or figures who are deemed suitable to serve in legislative bodies or to assume executive positions at the regional level. Accordingly, those prepared as legislative candidates should be distinct from those prepared as regional head candidates. This means that cadres or figures who actually intend to run as regional head candidates but are nonetheless nominated as legislative candidates may end up using political parties or coalitions merely as vehicles to pursue their ambitions, without regard for the voters who have entrusted them with a mandate to represent them in the legislative bodies.

Whereas the Court encourages every political party to have good cadre planning from the outset by developing a blueprint for facing legislative and regional head/deputy regional head elections, which are held every 5 (five) years and such elections often take place within a close timeframe to one another. In the planning, ideally, the cadres or figures political parties plan to nominate as legislative candidates and those they plan to nominate as regional head/deputy regional head candidates should be identified in advance for the next general election. So, there would no longer be any need to replace the elected candidate. The Court is of the opinion that after a legislative candidate is elected, he or she becomes a representative of the people who cannot be replaced at will, either by the political party or through the candidate's own voluntary resignation. Any replacement made without valid and justifiable reasons would constitute a betrayal of the voters' mandate given in the legislative elections. Whereas the Court takes particular note of the phenomenon involving several elected legislative candidates who withdrew in order to run for regional head. The provision in the Law on the Election of Governors, Regents and Mayors *in casu* Article 7 paragraph (2) letter s of Law Number 10 of 2016 concerning the Second Amendment to Law Number 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents and Mayors into Law does not prohibit elected legislative candidates from resigning in order to run for regional head. This provision merely requires a letter of resignation from members of the House of Representatives, members of the Regional Representative Council and members of the Regional House of Representatives, submitted once they are designated as a candidate pair for the election. The constitutionality of this provision has been expressly stated in the consideration of the Court as contained in the Decision of the

Constitutional Court Number 12/PUU-XXII/2024. In the decision *a quo*, the Court is of the opinion that elected legislative candidates intending to run for regional head do not violate the principle of people's sovereignty, because as elected candidates who have not been inaugurated, there are no constitutional rights and obligations that could potentially be misused by the prospective members of the House of Representatives, members of the Regional Representative Council and members of the Regional House of Representatives. However, in light of the observed phenomenon in which, after being elected and realizing that they had secured a significant number of votes in the legislative election, certain candidates, whether on their own initiative or pursuant to instructions from their political parties, subsequently resigned in order to run for regional head/deputy regional head. The Court is of the opinion that this causes the votes cast for certain candidates in becoming legislative members to lose protection as a consequence of their resignation.

The Court believes that the resignations that occurred in the 2024 Legislative Elections reflect unhealthy democratic practices in several regions, practices that risk becoming transactional and undermining the principle of popular sovereignty, the core of general elections. Therefore, the Court is of the opinion that elected candidates who withdraw to run in regional head or deputy regional head elections violate the constitutional rights of voters as holders of popular sovereignty. Nevertheless, this does not mean that the resignations and subsequent replacements of elected candidates is absolutely impermissible. The resignation of an elected candidate may be justified if it is undertaken to perform other state duties, such as being appointed or designated to serve as a minister, ambassador, or other state/public official. These positions are not filled through general elections (elected officials), but through appointment and/or designation (appointed officials). Therefore, the argument of the Petitioners' petition stating that the absence of limitations for elected candidates to resign as regulated in Article 426 paragraph (1) letter b of Law 7/2017 is a justifiable argument. Thus, the Court is of the opinion that Article 426 paragraph (1) letter b of Law 7/2017 must be declared contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force if it is not interpreted "**shall resign because he/she is assigned by the state to occupy a position that is not held through general election**", as fully contained in the verdict *a quo*.

The Court is of the opinion that the provision of Article 426 paragraph (1) letter b of Law 7/2017 violates the principle of people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, causes injustice that is not in accordance with the principles of election administration as stipulated in Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and does not provide fair legal protection and certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, since the Court's interpretation is different from the one stated in the petition of the Petitioners, the Petitioners' argument is legally justifiable in part.

Accordingly, the Court passes down a decision which verdicts are as follows:

1. To grant the Petitioners' petition in part;
2. To declare that Article 426 paragraph (1) letter b of Law 7/2017 is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force if it is not interpreted as "**shall resign because he/she is assigned by the state to occupy a position that is not held through general election**";
3. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate; To dismiss the remainder of the Petitioners' petition;
4. To dismiss the remainder of the Petitioners' petition.