



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 91/PUU-XXIII/2025

Concerning

The Ambiguity of the Prohibition on Election Monitoring Institutions Engaging in
Other Activities

- Petitioner** : Central Leadership Council (*Dewan Pimpinan Daerah*) of Lembaga Pengawasan Reformasi Indonesia (DPD-LPRI) of Kalimantan Selatan, represented by Syarifah Hayana as Chairperson of the DPD-LPRI of Kalimantan Selatan
- Type of Case** : Judicial Review of 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 as last amended by Law Number 6 of 2020 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third 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 (Law 1/2015) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : The absence of limitations on the prohibition preventing election monitoring institutions from engaging in other activities as regulated in Article 128 letter k of Law 1/2015 violates the right to fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia
- Verdict** : **On Preliminary Injunction**
To dismiss the Petitioner's petition for preliminary injunction
- On the Merits**
1. To grant the entire Petitioner's petition
 2. To declare that Article 128 letter k of Law Number 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Elections of 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 5656) as last amended by Law Number 6 of 2020 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third 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 (State Gazette of the Republic of Indonesia of 2020 Number 128, Supplement to the State Gazette of the Republic of Indonesia Number 6512) is contrary to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) and has no binding legal force

3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate

Date of Decision : Thursday, July 3, 2025

Overview of Decision

The Petitioner is a legal entity engaged in the field of election monitoring, specifically the 2025 Banjarbaru Mayoral and Deputy Mayoral Election at the Re-Voting Stage, named Central Leadership Council (*Dewan Perwakilan Daerah*) of Lembaga Pengawasan Reformasi Indonesia of Kalimantan Selatan Province (DPD-LPRI Kalsel), the Petitioner believes that its constitutional rights have been violated due to the norm being petitioned for review.

Regarding the Court's authority, since the petition is submitted to review the constitutionality of norms of law, *in casu* Law 1/2015 against the of 1945 Constitution, the Court has the authority to hear the petition *a quo* of the Petitioner.

With respect to the Petitioner's legal standing, the Court is of the opinion that the Petitioner has proven its qualifications as a legal entity registered with the Ministry of Law. Article 30 number 2 of the LPRI Articles of Association and Bylaws states that "Any of the General Chairperson of the Central Leadership Council, the Chairperson of the Regional Leadership Council or the Chairperson of the Branch Leadership Council, in the highest leadership at each level, is a professional who may explain and implement the decisions of deliberations/meetings, and is responsible both internally and externally for the organization's operation...." Thus, the Chairperson of the DPD-LPRI Kalsel is responsible both inside and outside the organization. Furthermore, pursuant to Decree Number 013/SKEP/DPP-LPRI/I/2022 concerning the Composition of the Management of the DPD-LPRI of Kalimantan Selatan Province, the Chairperson of the DPD LPRI of Kalimantan Selatan Province is Syarifah Hayana, so that Syarifah Hayana has the right to represent the DPD-LPRI of Kalimantan Selatan to submit a petition for judicial review to the Constitutional Court. In its qualification as a public legal entity, the Petitioner has been able to describe specifically and actually the assumed loss of its constitutional right to fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia due to the enactment of the norm of Article 128 letter k of Law 1/2015 which is being petitioned for review. The Court is of the opinion that because the material contained in Article 128 letter k of Law 1/2015 regulates the limitations imposed on the election monitoring institutions, the provision *a quo* has a direct relationship with the Petitioner as an election monitoring institution. Pursuant to the above description, it is evident that there is a logical connection and causal relationship (*causal verband*) between the assumed loss of the Petitioner's constitutional rights and the enactment of the norm of Article 128 letter k of Law 1/2015. Therefore, if the petition *a quo* is granted, the assumed loss of constitutional right as described will not or will no longer occur. Thus, regardless of whether or not the unconstitutionality of the norm of Article 128 letter k of Law 1/2015 being petitioned for review is proven, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

With respect to the Petitioners' petition for preliminary injunction, the Court considers that since the petition *a quo* will be decided without first holding a Plenary Session of Evidence Examination with the agenda of hearing the statements from the House of Representatives and the President and other parties deemed necessary, the petition *a quo* will immediately obtain legal certainty. Therefore, there is no reason for the Court to further consider the petition *a quo* for preliminary injunction. Thus, the Petitioner's petition for

preliminary injunction must be declared legally unjustifiable.

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.

With respect to the subject matter of the Petitioner's petition, the Court first considers that play an important role in the electoral process, especially in elections with only one pair of candidates. If no accredited monitoring institutions are present in regions holding elections with only one pair of candidates, the election process risks becoming less than ideal and less democratic. This is because voters who choose the blank box have no legal avenue to challenge the election results in court (indisputable election), as no party can represent them (the blank box voters) to dispute the results, even when fraud or manipulation by the organizers is suspected.

With respect to the argument of the petition stating that the formulation of the norm of Article 128 letter k of Law 1/2015 is too general and lacks clear limitations, creating room for multiple interpretations in its application, this also raises the risk of misinterpretation by law enforcement officers, particularly because it involves criminal sanctions, the Court therefore considers that norms containing criminal penalties must meet certain principles: they must be written (*lex scripta*), specific and not open to multiple interpretations (*lex certa*), not expanded by analogy (*lex stricta*), and not applied retroactively (*lex praevia*). The fulfillment of these principles is a necessity in a state of law to prevent arbitrary use of the law, maintain legal predictability, and guarantee the protection of citizens' rights. The Court considers that the phrase "other activities" in the norm of Article 128 letter k of Law 1/2015 is an open-ended clause which does not explicitly define what is included or excluded as activities that are "not" part of election monitoring. As a result, this phrase gives law enforcement officers the freedom to interpret any forms of monitoring institution activities as "other activities" that are prohibited, without any legal boundaries that can be used as limitations. This is because open-ended norms that allow multiple interpretations tend to become "catch-all" provisions, often described as "trash can," "stretchable," or "rubbery" articles, which carry problematic legal implications. In fact, in both criminal law and administrative law, where sanctions may be imposed, the formulation of prohibition norms is limited by the principles as stated above to create fair legal certainty.

The potential for legal uncertainty is heightened by the lack of explanation of the norm of Article 128 letter k of Law 1/2015, particularly the meaning of the phrase "other activities". Such a formulation, particularly in prohibition norms that carry criminal sanctions, creates uncertainty in ensuring fair law guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In fact, an explanation is needed to clarify the norms contained in the main provision, so as not to render those norms unclear. With such a formulation, the lawmakers effectively leave the interpretation of the scope of the norms entirely to the law enforcement officials. This situation not only opens the door to potential abuse of authority, but also contradicts the principles of a democratic state governed by the rule of law. Moreover, the criminal sanctions for violations of Article 128 of Law 1/2015 were not formulated at the same time as the primary norm, but only after the law was amended, *in casu* it is amended by Law 10/2016. Meanwhile, when viewed in relation to the corresponding provision in Law 7/2017, it appears that the prohibition on election monitoring institutions is not accompanied by secondary norms imposing criminal sanctions, such as imprisonment and fines, unlike Article 187D of Law 10/2016. Thus, there is an inconsistency in how the prohibition on election monitoring institutions is regulated in Law 1/2015 and its amendments compared to Law 7/2017.

The Court further emphasizes that monitoring institutions should be able to be the driving force of healthy democracy in the election process, especially in elections with only one candidate pair. This is because monitoring institutions are established to perform a supervisory function that prioritizes honesty and fairness in carrying out their duties. Accordingly, election monitoring must be conducted neutrally, without engaging in campaigns to support or oppose the single candidate pair. If the monitoring results indicate that the election has proceeded properly, the monitoring institutions may have no need to

act as the representatives of the empty-box voters in submitting a petition to the Court. However, if the monitoring reveals counting errors, fraud, or manipulation that affects the electability of the single candidate pair, then the monitoring institutions must fulfill their role in safeguarding the constitutional rights of the blank box voters. This is because although the monitoring institutions become parties in election results dispute before the Court, in essence, they stand for the principles of democracy, not for either side in the contest between the single candidate pair and the empty box.

The Court also emphasizes that one of the requirements for monitoring institutions to be independent is that they must be neutral when carrying out monitoring activities in the election process. This is in line with the provisions of Article 127 letter f of Law 1/2015 which requires monitoring institutions to carry out their role impartially and objectively. In addition, the independence of monitoring institutions also means being free from pressure of any kind, whether political or from the organizers authorized by law to grant or revoke their accreditation.

Therefore, the Petitioner's argument, which essentially states that the norm of Article 128 letter k of Law 1/2015 violates its constitutional right to obtain fair legal certainty guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is legally justifiable.

Pursuant to the considerations above, it is evident that the norm of Article 128 letter k of Law 1/2015 gives rise to legal uncertainty and is contrary to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, as argued by the Petitioner. Therefore, the Petitioner's argument is entirely legally justifiable.

Accordingly, the Court subsequently passes down a decision which verdict states, as follows:

On Preliminary Injunction:

To dismiss the Petitioner's petition for preliminary injunction.

On the Merits

1. To grant the entire Petitioner's petition;
2. To declare that Article 128 letter k of Law Number 1 of 2015 concerning the Enactment of Government Regulation in Lieu of Law Number 1 of 2014 concerning the Elections of Governors, Regents, and Mayors Into Law as last amended by Law Number 6 of 2020 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2020 concerning the Third 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 is contrary to the 1945 Constitution of the Republic of Indonesia (1945 Constitution) and has no binding legal force;
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.

Dissenting Opinion

With respect to the decision *a quo* of the Court, there is a dissenting opinion from Constitutional Justice Yusmic P. Foekh, substantially stating that the Petitioner's petition should have been declared as inadmissible (*niet ontvankelijke verklaard*).