

**CONSTITUTIONAL COURT OF**

**THE REPUBLIC OF INDONESIA**

**SUMMARY OF LAWSUIT VERDICT**

**NUMBER 67/PUU-XVI/2018**

**REGARDING**

**THERE IS NO MINIMUM TIME LIMIT OF MEMBERSHIP FOR MEMBERS OF POLITICAL PARTIES WHO ARE NOMINATING THEMSELVES AS MEMBERS OF THE HOUSE OF REPRESENTATIVES**

**Petitioner**  : Dorel Almir

**Type of Lawsuit**  : Judicial review of Law Number 7 of 2017 concerning General Elections (Election Law) against the 1945 Constitution of the State of the Republic of Indonesia (1945 Constitution).

**Case of Lawsuit**  : Article 240 paragraph (1) letter n of the Election Law contradicts the 1945 Constitution because it does not distinguish the time limit of membership for old and new political party members in the case that the member concerned nominates himself to be a prospective candidate for legislative member.

**Injunction** : Rejecting the Petitioner's petition.

**Date of Verdict** : Monday, May 20, 2019

**Verdict Summary** :

The petitioner who filed this petition is Dorel Almir who argued as an individual citizen who became a prospective candidate for the Republic of Indonesia’s House of Representatives member from the Golkar Party.

Regarding the authority to examine, the Court has the opinion that the petition for review of the norms of Article 240 paragraph (1) letter n of the Election Law is the review of norms which become the Court's authority. The Petitioner, according to the Court, has the legal standing to file a quo petition because it is an individual citizen of the Golkar Party member who run for a candidate for the Republic of Indonesia’s House of Representatives member. In addition, in relation to the position/function of the Golkar Party as one of the political parties that formed a quo law, in which the Petitioner is a member of the political party, the Court considered the Petitioner was not prevented from filing a constitutional review of a quo Law because of the approval of political parties in the House of Representatives on a draft bill is not necessarily carried out with the approval of members of the political party.

Regarding the case of lawsuit, the Court has the opinion that in relation to sovereignty, the recruitment function of political parties, and membership, it can be understood that political parties are organs designed to be institutions that have sovereignty in the hands of members, so that they have their own freedom in determining the recruitment requirements and mechanisms in the Articles of Association/Bylaws. At the same time, political parties also have the freedom to recruit their members, as long as it is carried out according to the manner and principles of membership defined in the Political Party Law and is not discriminatory for Indonesian citizens.

As stated by the Court in previous decisions that the 1945 Constitution did not justify the existence of discriminatory legal policies. The provisions of Article 240 paragraph (1) letter n of the Election Law contain the requirement "to be a member of an Election Contesting Political Party", which is a general condition for all citizens who will nominate or be nominated as candidates for the House of Representatives and the Regional House of Representatives members. These conditions do not contain the intention of discriminating citizens on the basis of ethnicity, religion, race, class, group or political beliefs. Therefore, a quo norm cannot be declared to have treated the Petitioner in a discriminatory manner, so that it must be declared contrary to Article 28I paragraph (2) of the 1945 Constitution which declares that every person has the right to be free from discriminatory treatment on any basis.

The same treatment of all members of political parties without discriminating the term of membership cannot be considered a discriminatory policy because it does not contain any different treatment on the basis of differences in ethnicity, religion, race, class, color, and political beliefs. Besides, if it is related to the existence of political parties whose sovereignty lies in the hands of members, then when it is agreed as an internal rule that all members have the same rights without discriminating the term of membership, regarding the absence of membership deadline requirements in the Election Law cannot be considered as a discriminatory legal policy.

The Court understands the intended intention of the Petitioner regarding the need for a certain period of time to become a member of the relevant political party before a citizen is proposed as a prospective candidate for the legislative member, namely to maintain the quality of the political party regeneration process and to support the implementation of higher quality elections. With the minimum time limit to become a member of a political party, it is hoped that it will become part of legal engineering to encourage the improvement of political party recruitment and political regeneration systems. However, this is a policy of the legislators to assess and decide on it, and not related to the constitutionality of the requirements to become a member of a political party for candidates for the House of Representatives and the Regional House of Representatives members as provided for in Article 240 paragraph (1) letter n of the Election Law.

Based on such legal considerations, the Court has the opinion that the Petitioner's argument regarding the unconstitutionality of Article 240 paragraph (1) letter n of the Election Law, as long as it is not interpreted has at least been a member of the Election Contesting Political Parties for 1 (one) year filed by the Petitioner in his petition has no legal grounds.

Accordingly, the Court handed down a decision, in which the injunction rejected the Petitioner's petition.

This document is translated from Indonesian into English by me, **Drs. EMIL SUSANTO**,

the Authorized and Sworn Translator in Jakarta - Indonesia

JAKARTA, June 24, 2020