



THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF THE DECISION
OF CASE NUMBER 16/PUU-XIX/2021

Concerning

Simultaneous General Election Model

- Petitioner** : Akhid Kurniawan, et al
- Type of Case** : Review of Law Number 7 of 2017 concerning General Elections (UU 7/2017) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Subject Matter** : Article 167 paragraph (3) along the phrase "voting shall be carried out simultaneously" and Article 347 paragraph (1) of Law 7/2017 is in contrary to Article 1 paragraph (2), Article 22E paragraph (1), Article 27 paragraph (2), and Article 28C paragraph (2) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioners' preliminary injunction and To dismiss the Petitioners' petition in its entirety.
- Date of Decision** : Wednesday, November 24, 2021.
- Overview of Decision** :

The Petitioners qualify themselves as individual Indonesian citizens who at the time of the 2019 general election served as *ad hoc* general election organizers, whether as KPPS, PPK, and PPS. The Petitioners feel that their constitutional rights have been impaired because the articles petitioned for review have established the holding of a five-box general election simultaneously thus making the workload of the *ad hoc* general election organizers become very heavy, irrational, and inhumane. The losses suffered by the Petitioners are also of a potential nature, because the Petitioners have the potential to participate as *ad hoc* general election organizers in the upcoming general election.

In relation to the authority of the Constitutional Court, because the Petitioners are requesting the Judicial Review *in casu* Article 167 paragraph (3) along the phrase "voting shall be carried out simultaneously" and Article 347 paragraph (1) of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing of the Petitioners, according to the Court, the Petitioners have explained their constitutional rights which according to the Petitioners have been impaired by the application of the norms of the law being petitioned for review, namely Article 167 paragraph (3) along the phrase "voting shall be carried out simultaneously" and Article 347 paragraph (1) Law 7/2017. The assumption that the intended constitutional impairment is specific and actual because it has been experienced by the Petitioners while on duty as officers to organize the *ad hoc* general elections in 2019 or at least has the potential to occur because the Petitioners also have the potential to actively participate as general election organizers in the upcoming general election. Therefore, regardless of whether or not there is a question of the constitutionality of the norms argued by the Petitioners, according to the Court, the Petitioner has the legal standing to act as the

Petitioner in the *a quo* petition.

Then regarding the petition for Preliminary Injunction submitted by the Petitioners, according to the Court, although the *a quo* petition closely related to the general election implementation system, especially with the general election schedule which will have a broad impact on the implementation of the 2024 General Election, but the remaining time towards the 2024 General Election is still sufficient to prepare everything for the 2024 General Election. Therefore, it is irrelevant to link the petition for preliminary injunction of the Petitioners with the schedule for the 2024 General Election. Therefore, the Petitioners' petition for preliminary injunction is without legal grounds.

Then before the Court considers the subject matter of the Petitioner's petition, the Court first considers whether the Petitioner's petition is *ne bis in idem*. Because Article 167 paragraph (3) and Article 347 paragraph (1) of Law 7/2017 have been proposed and decided by the Court, namely in the Constitutional Court Decision Number 37/PUU-XVII/2019 and the Constitutional Court Decision Number 55/PUU-XVII/ 2019, dated February 26, 2020, each of which stated in their injunction that they had dismissed the Petitioners' petition in its entirety. However, after the Court carefully examined the petition of the Petitioners, it turned out that the basis for review used in the *a quo* petition, namely Article 27 paragraph (2) and Article 28C paragraph (2) of the 1945 Constitution have never been used as a basis for review in any petition that has been decided by the Court as mentioned above. In addition, there are differences in the reasons for the petition of the Petitioners with the previous petitions because in the *a quo* petition, The Petitioners focus more on the heavy workload that will be experienced by the *ad hoc* general election organizers if the five-box election method is used simultaneously in the upcoming 2024 simultaneous general election. Therefore, according to the Court, there are differences in the basis for review or the reasons used in the *a quo* petition with an petitions that have been previously decided by the Court as stipulated in Article 60 paragraph (2) of the Constitutional Court Law *junto* Article 78 paragraph (2) PMK 2/2021, so that the *a quo* petition can be resubmitted.

Furthermore, regarding the subject matter of the petition, the Court considers whether the option to combine the national elections (President and Vice President, members of the DPR (House of Representatives) and DPD (Regional Representative Council)) with local elections (members of the Provincial DPRD and Regency/Municipal DPRD) in holding the simultaneous general elections as stipulated in Article 167 paragraph (3) and Article 347 paragraph (1) of Law 7/2017 is in contrary to the 1945 Constitution. Regarding the issue of constitutionality, the Court first reaffirmed its stance regarding a number of options for the simultaneous general election model which can still be considered as constitutional based on the 1945 Constitution, as stated in the legal considerations of the Constitutional Court Decision Number 55/PUU-XVII/2019 in Paragraph **[3.16]**. The choice of the Simultaneous General Election model in the Court's decision is the result of backtracking the original intent of the amendment to the 1945 Constitution related to legal politics to strengthen the presidential government system and the search for the meaning of simultaneous general elections in the Constitutional Court Decision Number 14/PUU-XI/2013, dated January 23, 2014. Some of these choices are guidelines for legislators in formulating designs for holding general elections simultaneously and as has been confirmed in Constitutional Court Decision Number 55/PUU-XVII/2019, all choices of simultaneous models/designs are not in contrary to the 1945 Constitution (constitutional). With such legal positions and opinions, the Court leaves it to the legislators to determine which selection model to use. In addition, the Court has also emphasized that there are at least 5 (five) things that must be considered by legislators in deciding the choice of models for the simultaneous implementation of general elections. Those considerations are designed to provide a space for legislators in choosing a model of simultaneous general election which must still be within constitutional boundary that have been regulated and stipulated such as legal politics in the formation of general election laws and the protection of human rights, whether it is for the contestants, voters and organizers, supervisors, and security as well as any other parties involved in holding the

simultaneous general elections.

Furthermore, with regard to the new desires or designs simultaneously and at the same time as the time design as argued by the Petitioners, according to the Court, the Petitioners' wish to separate the general elections for members of the Provincial DPRD and Regency/Municipal DPRD has been accommodated in the options for the simultaneous model selection in the Constitutional Court Decision Number 55/ PUU-XVII/2019 as mentioned above. When viewed from the choice of model in the *a quo* decision, the fourth and fifth models have in fact been in line with the wishes of the Petitioners. At the very least, the options offered (desired) by the Petitioners have been accommodated in the sixth option, namely "other options as long as the general election is simultaneous in nature to elect members of DPR, DPD, and President/Vice President". In this context, the desire of the Petitioners to focus more on one of these models is no longer within the authority of the Court, but has been handed over to the authority of the legislators. With such a stance, if the Court determines one of the models from the choice of models offered in the Constitutional Court Decision Number 55/PUU-XVII/2019, implicitly, the Court will be trapped in declaring the other model that was not chosen as in contrary to the 1945 Constitution (unconstitutional). As the sole interpreter of the constitution, although it is not the only interpretation used to determine the choice of model or design for the simultaneous general election, the Court cannot completely dissociate itself from the interpretation of the original intent as a method for understanding the constitution.

Then regarding the argument of the Petitioners which states that the five-box general election causes the workload of the *ad hoc* general election organizers very heavy, irrational and inhumane. According to the Court, the heavy, irrational and inhumane workload as argued by the Petitioners is closely related to the general election management which is part of the implementation of norms. The Court considered this to be related to technical and management or general election governance which became important factors for the success of holding simultaneous general elections. Therefore, whatever the choice of the simultaneous model is chosen by the legislators, it really depends on how the general election management is designed by the general election organizers, of course with the full support of the legislators and their relevant stakeholders.

Based on all of the above legal considerations, the Court subsequently rendered the following verdict:

On Preliminary Injunction:

To dismiss the Petitioners' petition for preliminary injunction

On the Merits:

To dismiss the Petitioners' petition in its entirety