



**The Constitutional Court  
of the Republic of Indonesia**

**SUMMARY OF THE DECISION OF CASE NUMBER 19 / PUU-XVII / 2019**

**About**

**The Rights of Voters Who Change Their Domicile During the 2019 General  
Election**

- Petitioner : Joni Iskandar dan Roni Alfiansyah Ritonga
- Judicial Review : Examination of Law Number 42 of 1999 concerning General Elections (Law 42/1999) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).
- Case of Lawsuit : Examination of the constitutionality of Article 210 paragraph (1), paragraph (2) and paragraph (3), Article 344 paragraph (2), and Article 348 paragraph (4) of the Election Law on Article 1 paragraph (2), Article 6A paragraph (1), Article 18 paragraph (3), Article 19 paragraph (1), Article 22C paragraph (1), Article 22E paragraph (1), paragraph (2), paragraph (5), Article 27 paragraph (1), Article 28C paragraph (2), Article

28D paragraph (1), Article 28E paragraph (3), and Article 28H paragraph (1) of the 1945 Constitution.

**Injunction** : In Provision: To grant the Petitioners' provisions partly to the extent that they relate to expediting the petition's examination. In the Principal of Application:

1. To declare that the Petitioners' petition as long as it relates to Article 210 paragraph (1) of Law Number 7 Year 2017 concerning General Elections cannot be accepted;

2. Reject the Petitioners' petition for other than and the rest.

**Date of the Decision** : Thursday, 28 March 2019.

#### Decision Overview:

Whereas in relation to the authority of the Constitutional Court (Court), because what is petitioned for review is the law in casu Law Number 7 of 2017 concerning General Elections (Election Law), the Court has the authority to try the a quo petition.

Concerning the Petitioners' legal position, the Petitioners are individual Indonesian citizens. Petitioner I is a student from North Sumatra Province whose name is not registered in the Permanent Voters List (DPT) for the 2019 General Election (Pemilu), so they cannot also be registered in the Additional Voters List (DPTb). Petitioner II is a student from the Province of Sumatra, whose name is registered in the DPT to vote at the polling stations (TPS) around the higher education institution in Bogor Regency, West Java. However, Petitioner II is worried that he will not be able to vote due to the lack of ballots at the TPS. the provisions filed by the

Petitioners stipulate the maximum time limit for the preparation of additional voter lists, the requirements for being registered in the additional voter lists, the number of backup ballots, and the types of elections that transferred voters may participate. These provisions basically regulate and/or create limitations regarding the implementation of voting so that it intersects and, therefore, can harm the Petitioners' constitutional rights, mainly because the Petitioners are voters who live outside their area of origin. If granted, the Petitioners' petition is granted. Then the potential for constitutional loss argued by the Petitioners will not occur. Thus the Petitioners have the legal position to submit the a quo petition.

The Petitioners submitted a petition for provisions which basically requested the Court to prioritize the examination of the a quo case and to issue a decision before 30 (thirty) days of the implementation of the voting and counting stages at the TPS in the 2019 simultaneous election, namely on April 17, 2019. Since the Petitioners' petition is closely related to the implementation stages of the 2019 Election, so that it does not hamper the implementation of the 2019 Election stages carried out by the Election organizers, the Petitioners' petition for provisions is legally grounded in part, namely as long as it is concerned with prioritizing the examination of the a quo case. Meanwhile, concerning the petition for provisions so that the a quo case is decided 30 (thirty) days before the voting day, it is impossible to fulfill it because by fulfilling the procedural law provisions in the Constitutional Court, such a deadline has definitely been passed. Therefore, the petition for provisions so that the a quo case is decided 30 (thirty) days before the voting day is not legally grounded.

Concerning the review of Article 210 paragraph (1) of the Election Law, the Court found a mismatch between the Petitioners' argument between the posita section and the petitum portion of the petition. In the posita section (page 15) the Petitioners state that Article 210 paragraph (1)

of the Election Law is contrary to Article 28H paragraph (2) of the 1945 Constitution and requested to be replaced so that it states, "*can be completed with an additional voter list no later than 7 (seven days). ) the day before polling day*" without stating which part or phrase is requested to be changed. However, in the *petitum* section of the Petitioners' petition, it is requested that Article 210 paragraph (1) as long as the phrase "no later than 30 (thirty) days before voting day" is declared contrary to the 1945 Constitution and has no binding legal force. Thus, as long as Article 210 paragraph (1) of the Election Law is concerned, it is unclear.

Whereas the Petitioners argue that Article 210 paragraph (2) provides the phrase "has been registered in the final voter list at a TPS" and paragraph (3) as long the phrase "has been registered as a voter in the permanent voter list at the original TPS" The Election Law is contrary to the 1945 Constitution. The Court believes that the preparation of the DPT and DPTb is not an independent stage but has been preceded by the DPS drafting stage in which the DPS drafting and improvement stage opens opportunities for prospective voters who have not been registered in DPS to register themselves. Basically, in Indonesia, voter registration uses a passive system, which means that citizens who have met the requirements to become voters will be registered in the population data, then registered in the DPS, and then registered in the DPT. The DPTb, according to the voter registration procedure in the Election Law, is a list of voters who have previously been registered in the DPT at a certain TPS, according to their electronic KTP address (KTP-el) but will participate in voting outside the TPS area where the person concerned was initially registered as a voter. The arrangement of the DPTb, which requires that moving voters must have been previously registered in the DPT at the TPS according to the address of the e-KTP, does not contradict the 1945 Constitution because voters who are prevented from obtaining DPTb at a TPS where they live when they want to vote can still exercise their voting rights at the

TPS in place residence that matches the address contained in his e-KTP, although not registered in the DPT. This means that such conditions or restrictions do not obstruct voters' constitutional right to use their voting rights in the Special Voters List (DPK). The provisions of Article 210 paragraph (2) and paragraph (3) of the Election Law do not regulate the registration of prospective voters (i.e., citizens who have not been registered as voters) to become voters, but instead regulate the method for voters (citizens who have been registered as permanent voters) to become voters. Move to choose. Based on the above considerations, the Court believes that the Petitioners' petition regarding the unconstitutionality of Article 210 paragraph (2) of the Election Law as long as the phrase "has been registered in the final voter list at a TPS" and Article 210 paragraph (3) of the Election Law as long as the phrase "has been registered as a voter. in the permanent voter list at the original TPS "is not legally grounded.

The Petitioners request that Article 344 paragraph (2) of the Election Law insofar as the phrase "from the number of permanent voters" is declared contrary to the 1945 Constitution. The Court believes that if the phrase "from the number of permanent voters" is omitted, there will be legal uncertainty due to the printing of 2 ballots. % becomes immeasurable. Not measurable in the sense that it will not be known with certainty which data or voter lists will be used as the basis for determining the number of backup ballots. In addition, if the number of reserve ballots is not determined, the percentage limit is very likely the election organizer will print more ballots or print fewer ballots than the required number of reserve ballots. The number of reserve ballots 2%, which refers to the number of voters in the DPT is correct because the DPT in the Election Law is the final (and up to date) list of the number of voters. After the DPT has been compiled, changes, both the addition or reduction of voters' number, can no longer be made. As for the Petitioners' concern that the number of backup ballots of 2% of the total DPT will not be

sufficient for voters at a TPS, this can be resolved by using the excess unused ballots from the nearest TPS (vide Article 228 General Election Commission Regulation Number 3 of 2019 concerning Voting and Counting of Votes in General Elections]. Even with the provision of a limit of 30 (thirty) days before polling day to register himself in the DPTb, such shortages should have been anticipated by the election organizers. Thus, the Petitioners' argument, which states that the phrase "from the number of permanent voters" in Article 344 paragraph (2) of the Election Law is contrary to the 1945 Constitution, is groundless according to law.

Concerning the Petitioners' argument, which states that Article 348 paragraph (4) of the Election Law is contrary to Article 28D paragraph (1) of the 1945 Constitution because the Petitioners cannot exercise their voting rights in their place of origin so that they do not have the opportunity to exercise their voting rights for all types of elections (to vote members of the DPR, DPD, and DPRD) but only to elect pairs of candidates for President and Vice President. The Court believes that the provisions contained in Article 348 paragraph (4) of the Election Law are applicable to "Voters with certain conditions" as referred to in Article 348 paragraph (3) of the Election Law. What is meant by "Voters with certain conditions", as stipulated in the Elucidation of Article 348 paragraph (3) of the Election Law, are voters who are currently studying and/or working outside their domicile, are sick, and voters who are currently serving prison or imprisonment. Meanwhile, restrictions on the right to vote for candidates/election participants as stipulated in Article 348 paragraph (4) of the Election Law are a logical consequence of electoral districts' existence and establishment. As the basis for elections and the accountability of elected representatives of the people, the electoral district is also the basis for the relationship between representatives and those they represent. An electoral district is an area where two subjects in a representative system interact with each other. In order for the interaction between

representatives and those represented as subjects in an electoral district, the people's representatives who are elected must be people who can be held accountable by the people/voters. At the same time, the people who vote are also people who can hold their representatives accountable. Limitation on the right to elect candidates/election participants according to the level as stipulated in Article 348 paragraph (4) of the Election Law applies based on the scale of voting. In a sense, the inapplicable right to vote is the right to elect a candidate in an electoral area left behind. However, if the place to choose is still in the same electoral area, a voter still has the right to elect the candidate/participant in the election concerned. Such a legal framework cannot be considered as a deprivation of the right to vote for legislative members as argued by the Petitioners. This is because the right to vote for candidates/election participants for voters who do not come from the electoral district concerned does not exist. This means that when the voters have left their constituency, their right to vote is no longer valid. When the right to vote is still given to voters whose base of representation is not in the electoral district concerned, the concept of electoral area boundaries and the responsibilities of elected representatives will become unclear. Therefore, Article 348 paragraph (4) of the Election Law is contrary to the 1945 Constitution and is not legally grounded.

Based on the above opinion, the Court subsequently issued a decision that stated: In Provision: To grant the Petitioners' provision partly as long as it is related to expediting the petition's examination.

In the Principal of the Petition:

1. State the Petitioners' petition as long as it relates to Article 210 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017

Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109)  
cannot be accepted;

2. Reject the Petitioners' petition for other than and the rest.