



THE CONSTITUTIONAL COURT

REPUBLIC OF INDONESIA

SUMMARY OF DECISION

ON CASES NUMBER 37 / PUU-XVII / 2019

Concerning

Concurrent General Elections

Petitioner: **Arjuna Election Monitoring, et al.**

Case : Review of Law Number 7 of 2017 concerning General Elections (Election Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945).

Case of Lawsuit : Article 167 paragraph (3) and Article 347 paragraph (1) The Election Law is contrary to Fourth paragraph of the Preamble of the 1945 Constitution, Article 28G paragraph (1), Article 28H paragraph (1), and Article 28I paragraph (4) UUD 1945.

Injunction : Reject the Petitioners' petition in its entirety.

Date of Decision : Wednesday, 26 February 2020.

Decision Overview :

The Petitioners in describing their positions the law explains that as an individual Indonesian citizen and private legal entity their constitutional rights are impaired by the enactment of Article 167 paragraph (3) and Article 347 paragraph (1) of the Election Law so that it is contrary to Fourth paragraph of the Preamble of the 1945 Constitution, Article 28G paragraph (1), Article 28H paragraph (1), and Article 28I paragraph(4) UUD 1945.

Related to the authority of the Constitutional Court, because what the Petitioners are requesting is a judicial review, *in casu* the Election Law, against the 1945 Constitution which is one of its jurisdictions, so the Court has the authority to try the a quo petition.

With regard to the Petitioners' legal position regardless of whether or not the Petitioners' argument is proven regarding the contradiction of Article 167 paragraph (3) and Article 347 paragraph (1) of the Election Law with Fourth paragraph of the Preamble of the 1945 Constitution, Article 28G paragraph (1), Article 28H paragraph (1), and Article 28I paragraph (4) of the 1945 Constitution, The Court shall consider the following matters:

- a. That Petitioner I and Petitioner II are associations / legal entities in the form of election monitoring institutions that have been accredited based on certificates

Accreditation issued by the General Election Supervisory Agency. According to the Court, it is true that based on the evidence submitted to the Court, Petitioner I and Petitioner II are certified election observers. However, because Petitioner I and Petitioner II both describe themselves as Election observer associations (namely Arjuna

Pemantau Pemilu and Pen Pemantau Pemilu), both of them must explain who can actually represent the organizations of Petitioner I and Petitioner II in facing legal problems both inside and outside the court. In this case, Petitioner I did not explain who could represent his organization in facing legal problems both inside and outside the court. Meanwhile, Petitioner II also explained that he represented an association or legal entity in the form of an election monitoring institution that had been accredited based on the Accreditation Certificate issued by the General Election Supervisory Body. As an association, in explaining its legal position Petitioner II did not explain and submit evidence at all as to who could or has the right to represent the Election Observer Pen Association both inside and outside the court. Therefore, according to the Court, Petitioner II does not have the legal position to apply for the a quo petition; In explaining his legal position, Petitioner II did not explain and submit evidence as to who could or has the right to represent the Election Observing Pen Association both inside and outside the court. Therefore, according to the Court, Petitioner II does not have the legal position to apply for the a quo petition; In explaining his legal position, Petitioner II did not explain and submit evidence as to who could or has the right to represent the Election Observing Pen Association both inside and outside the court. Therefore, according to the Court, Petitioner II does not have the legal position to apply for the a quo petition;

- b. That Petitioner III, Petitioner IV, Petitioner V, Petitioner VI, and Petitioner VII as individual Indonesian citizens have specified that with the enactment of the provisions of Article 167 paragraph (3) and Article 347 paragraph (1) of the Election Law, the constitutional rights of the Petitioners have been impaired as described in the a quo

Petition. According to the Court, the loss is clearly a relationship causality with the norm of the law petitioned for review [in casu Article 167 paragraph (3) and Article 347 paragraph (1) of the Election Law] and if the a quo petition is granted, such impairment of constitutional rights will not or will no longer occur. Therefore, Petitioner III, Petitioner IV, Petitioner V, Petitioner VI, and Petitioner VII have specifically explained the constitutional loss that has occurred or has the potential to occur with the enactment of the statutory norms submitted for the petition. Moreover, Petitioner III, Petitioner IV, Petitioner V, Petitioner VI, and Petitioner VII explain the connection with their voting rights. Thus, Petitioner III, Petitioner IV, Petitioner V, Petitioner VI, and Petitioner VII have a legal position to act as Petitioners in the a quo Petition;

In relation to the principal of the Petitioners 'petition, that before considering the Petitioners' argument, it is important for the Court to put forward the basis for the holding of the Simultaneous Election as set out in the Constitutional Court Decision Number 14 / PUU-XI / 2013. In the decision pronounced on January 23, 2014, the Court considered, among others:

[3.17] Weigh that according to Court, to determine constitutionality the holding of the presidential election whether after or simultaneously with the holding of the Election for Representative Institution Members, at least three main considerations must be considered, namely the relationship between the electoral system and the choice of the presidential system of government, original intent from the creators of the 1945 Constitution, the effectiveness and efficiency of holding general elections, as well as the right of citizens to vote intelligently.

Based on these basic considerations, the Court declared the separation of the general elections for president and vice president from elections general legislative members as stated in the norms of Article 3 paragraph (5), Article 12 paragraph (1) and paragraph (2), Article 14 paragraph (2), and Article 112 of Law Number 42 of 2008 concerning the General Election of the President and Vice President are contrary to the 1945 Constitution and have no binding legal force. This means that substantively the Court is in a position that separating the holding of the general elections for president and vice president from general elections for legislative members is contrary to the 1945 Constitution. Because with these main considerations, the Court is of the opinion that the general election for president and vice president from general election for legislative members is constitutional is that which is implemented in a manner simultaneously;

Whereas after seeing the empirical expanse in the holding of the 2019 Concurrent Elections, on the grounds of realizing a just and humane general election as a form of "living constitution", the Petitioners are trying to pick up and revive the spirit of Article norm3 paragraph (5), Article 12 paragraph (1) and paragraph (2), Article 14 paragraph (2), and Article 112 of Law Number 42 Year 2008 concerning the General Election of President and Vice President which have been declared unconstitutional by the Court. With the effort to retrieve and revive the a quo norm, the Petitioners want the Court to declare that the general election for president and vice president with the general election for legislative members held simultaneously is against the 1945 Constitution or is unconstitutional;

Whereas with regard to the wishes of the Petitioners, the practice of reviewing the constitutionality of laws has occurred so far, it is possible to change the position of the Court. With regard to the possibility to change the stance of the previous decision, for example, in

the legal consideration of the Constitutional Court Decision Number 24 / PUU-XVII / 2019, as also used by the Petitioners to strengthen the arguments of their petition, the Court stated:

[3.18] Considering whereas doctrinally and practically, in examining the constitutionality of laws, a change in the establishment of the Court is not something without basis. This is something that is common. In fact, for example, in the United States, which is in the common law tradition, which very strictly applies the precedent or *stare decisis* or *res judicata*, has become a common practice in which courts, in particular The Supreme Court of the United States (which also functions as the Constitutional Court), changes its stance on matters relating to the constitution (p. 63).

Meanwhile, with regard to petition *a quo* The Court is of the view that relying on the basis of argumentation to change the Court's stance on the empirical landscape that occurred in the implementation of the 2019 Concurrent General Elections is still far from sufficient and not that simple. For the Court, various records regarding the holding of general elections simultaneously must receive special attention. However, all of that is not enough to change the stance of the Court because after all the considerations to strengthen the presidential system of government, as a form of government system agreed to by the amenders of the 1945 Constitution, are more fundamental in assessing the constitutionality of the general election for president and vice president held simultaneously with the general election of legislative members. The holding of the general election for the president / vice president. The president and the general election of legislative members (concurrent election), in theory and practice, are believed to be able to contribute to the strengthening of the presidential system of government, especially in countries that adopt a multiple party system. Based on all the

legal considerations mentioned above, the Court is of the opinion that the Petitioners' petition is groundless according to law.

Accordingly, the Court issued a decision which completely rejected the Petitioners' petition.