



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 5/PUU-XX/2022

Concerning

Presidential Candidate Threshold

- Petitioner** : Lieus Sungkharisma
Type of Case : Examination of Law Number 7 of 2017 concerning General Election (Law 7/2017), against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject matter : Article 222 of Law 7/2017 is in contrary to Article 6 paragraph (2) and Article 6A paragraph (2) of the 1945 Constitution
Verdict : To declare that the Petitioner's petition is unjustifiable.
Date of Decision : Thursday, February 24, 2022
Overview of Decision :

The petitioner is an individual Indonesian citizen who has the right to vote in the presidential and vice-presidential elections as regulated in Article 1 number 34 of Law 7/2017, which states that: The voters are Indonesian citizens who have reached the age of 17 (seventeen) years of age or older, are married, or have been married.

Regarding the Authority of the Court, because the Petitioner petition for a review of the constitutionality of legal norms, *in casu* Article 222 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the Petitioner's petition.

Whereas in relation to the Legal Standing, the Petitioner argues that in relation to the provisions regarding the threshold for the Presidential and Vice-Presidential candidates. In submitting a petition for a review of such provisions, the Petitioner is an individual Indonesian citizen who has constitutional rights to obtain fair legal certainty and equal treatment before the law.

Whereas regarding the legal status of individual citizens in submitting petition for the review of the provisions regarding the threshold for the Presidential and Vice-Presidential candidates *in casu* Article 222 of Law 7/2017, the Court has considered such matter in the Decision of the Constitutional Court Number 66/PUU-XIX/2021 dated February 24, 2022, which has been declared before, the decision has stated among others:

[3.6.2] ...it is clear that the Court has given legal standing to individual citizens who have the right to vote to examine the norms regarding the provisions on the threshold for presidential candidates. However, because there are differences in the mechanisms and systems used in determining the threshold for presidential and vice presidential candidates in the 2014 election with the 2019 election and the next general election in 2024, there has been a shift as considered in the Constitutional Court Decision Number 74/PUU-XVIII/2020 that parties who have legal standing to submit the petition regarding the threshold requirements for Presidential and Vice Presidential candidates (presidential threshold) *in casu*, Article 222 of Law 7/2017 shall be a political party or coalition of political parties participating in the election. **[3.6.3]** Whereas a political party or coalition of political parties participating in the General Election has the constitutional right to apply for an examination of Article 222 of Law 7/2017 is in line with the constitutional mandate, namely Article 6A paragraph (2) of the 1945 Constitution

which determines that the nomination of Presidential and Vice-Presidential candidates shall be determined by a political party or coalition of political parties, not by individuals. This is also in line with Article 8 paragraph (3) of the 1945 Constitution which explicitly stipulates that only a political party or coalitions of political parties whose candidates for President and Vice President received the first and second most votes in the previous general election may nominate two pairs of candidates for President and Vice President to be elected by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*), if the President and the Vice President pass away, resign, dismissed, or unable to perform their obligations during their term of office simultaneously. The constitutional provisions further emphasize that the Court that the party with the legal standing to petition for the constitutionality review of Article 222 of Law 7/2017 is a political party or coalition of political parties participating in the General Election, not an individual citizen who has the right to vote.

Meanwhile, individual citizens who have the right to be elected may be deemed to have their constitutional rights being prejudiced as long as they can prove that they are supported by a political party or coalition of political parties participating in the General Election to nominate themselves or be nominated as a pair of candidates for President and Vice President or to submit their petition together with the supporting political party. The Court is of the opinion that the assessment of the loss of constitutional rights is still in line with Article 6A paragraph (2) and Article 8 paragraph (3) of the 1945 Constitution.

In the decision there are 4 (four) Constitutional Justices who submitted dissenting opinions, namely Constitutional Justice Manahan M.P. Sitompul and Constitutional Justice Enny Nurbaningsih as well as Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra. In this dissenting opinions, which is fully contained in the Decision of the Constitutional Court Number 66/PUU-XIX/2021, Constitutional Justice Manahan M.P. Sitompul and Constitutional Justice Enny Nurbaningsih are of the opinion that although the individual Petitioner has the legal standing to file a petition regarding the threshold requirement for the Presidential and Vice-Presidential candidates, the subject matter of the petition is legally unjustifiable, so that the Petitioner's petition is dismissed. Meanwhile, Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra are of the opinion that the individual Petitioner has a legal standing and the subject matter of the petition is legally justifiable, therefore the Petitioner's petition is granted.

Whereas based on the consideration of the Decision of the Constitutional Court Number 66/PUU- XIX/2021, in relation to the qualifications of the Petitioner, as an individual Indonesian citizen who has the right to vote in the Presidential and Vice-Presidential Elections, is an Indonesian citizen, who is 17 (seventeen) years of age or older, is married, or has been married, the Petitioner must prove that the Petitioner has actually participated in the general election as voter and has exercised his voting right as evidenced by the documents such as voter card and his name is listed in the Permanent Voters List (*Daftar Pemilih Tetap* or DPT). Even if the evidence exists, *quod non*, regarding the implementation of the 2019 General Election, the election of legislative members and the election of the president and vice president were conducted at the same time (simultaneous elections), the mechanism and system for determining the threshold requirements for the nomination of the presidential and vice-presidential candidates in the 2019 election. The Court is of the opinion that the Petitioner has known that the result of his voting right in the 2019 legislative election will also be used as part of the threshold requirements for the nomination of the presidential and vice-presidential candidates in 2024 which can only be proposed by a political party or coalitions of political parties participating in the general election, so there is no constitutional loss on the side of the Petitioner. The issue of the number of pairs for the Presidential and Vice-Presidential candidates who will compete in the Presidential and Vice-Presidential election does not correlate with the norms of Article 222 of Law 7/2017 because the *a quo* norms do not limit the number of pairs of Presidential and Vice Presidential candidates who are entitled to participate in the Presidential and Vice Presidential election. Therefore, in addition to the Petitioner not having a constitutional loss with the promulgation of the norms

of Article 222 of Law 7/2017, there is also no causal relationship between the *a quo* norms and the constitutional rights of the Petitioner as a voter in the election.

Whereas in relation to the Petitioner's argument that political parties are only vehicles for the Presidential and Vice-Presidential Candidates, while the main beneficiaries of the holding of the presidential and vice-presidential elections are citizens, including the Petitioner, this is not a fundamental issue in the *a quo* petition. The provisions of Article 1 paragraph (2) of the 1945 Constitution states, *Sovereignty is in the hands of the people and shall be implemented according to the Constitution*. The meaning of "sovereignty is in the hands of the people", namely that the people have sovereignty, responsibilities, rights and obligations to democratically elect leaders who will form a government to manage and serve all levels of society, and elect representatives of the people to oversee the running of the government. The embodiment of people's sovereignty is carried out through elections as a means for the people to elect leaders through the direct election of the president and vice president.

Furthermore, the electoral system of the Indonesian nation is an embodiment of people's sovereignty in order to create a democratic state government based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The holding of general election can be deemed to be held democratically if every Indonesian citizen who has the right to vote can channel his/her choice in a direct, public, free, confidential, honest and fair manner. Each voter can only exercise his/her right to vote once and has the same value, namely one vote (one person, one vote, one value). Meanwhile, what is meant by election participants are political parties for the election of members of the DPR, members of the provincial DPRD, members of regency/municipal DPRD, individuals for the election of members of the DPD, and the pairs of candidates proposed by a political party or a coalition of political parties for the Presidential and Vice-Presidential election (*vide* Article 1 number 27 of Law 7/2017). Therefore, the assumption of potential loss as described by the Petitioner is not related to the issue of the constitutionality of *a quo* norms, therefore the Court is of the opinion that the Petitioner does not have the legal standing to file the *a quo* petition.

Whereas based on the entire description of the legal considerations above, the Court is of the opinion that the Petitioner does not have the legal standing to file the *a quo* petition.

Accordingly, the Court subsequently issued a decision which verdict states that the Petitioner's petition is legally unjustifiable.