



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 20/PUU-XX/2022

Concerning

Presidential Candidate Threshold (presidential threshold)

Petitioner	: Adang Suhardjo, et al
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 deemed in contrary to the 1945 Constitution.
Verdict	: To declare that the Petitioners' petition is unjustifiable.
Date of Decision	: Wednesday, April 20, 2022.
Overview of Decision	:

The Petitioners are individual Indonesian citizens aged 17 (seventeen) years of age and older and based on Article 1 number 34 of Law 7/2017 they have the right to vote in the general election for president and vice president. According to the Petitioners, the Article 222 of Law 7/2017 which regulates the presidential candidate threshold (presidential threshold), which states that the candidates must have at least 20% (twenty percent) of the total seats in the DPR (House of Representatives) or must obtain 25% (twenty five percent) of the nationally valid votes in the previous election for the members of the DPR. Such threshold has been proven to reduce or limit the constitutional rights of the Petitioners to vote (right to vote) in the presidential/vice presidential election.

Regarding the authority of the Court, because the Petitioner petition for a judicial review of the Law *in casu* Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the legal standing, the Court, as of the Decision of the Constitutional Court Number 74/PUU-XVIII/2020, dated January 14, 2021, subsequently reaffirmed in the Decision of the Constitutional Court Number 66/PUU-XIX/2021, dated February 24, 2022 and the Decision of the Constitutional Court Number 8/PUU-XX /2022, dated March 29, 2022 in principal has considered as follows:

“[3.6.2] ... it is clear that the Court has the precedent to give the legal standing to individual citizens who have the right to vote to examine the norms regarding the Presidential and Vice-Presidential candidate threshold. However, because there are differences in the mechanisms and systems used in determining the Presidential and Vice Presidential candidate threshold in the 2014 General 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 whereas the parties who have the legal standing to submit the petition regarding the threshold requirements to nominate the 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 that have constitutional rights to petition for a review 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.”

Furthermore, the Court is of the opinion that regarding the assumption that there is a loss of constitutional rights experienced by the individuals who have the right to vote in elections, there are rules of the game related to the threshold requirements on the nomination of Presidential and Vice Presidential candidates as stipulated in Article 222 of Law 7/2017 for which the Petitioners have petition for a constitutional review, the rules has been enforced before the 2019 general election, in which the Petitioners also have the right to vote and have known that the result of their voting right in the 2019 legislative election will also be used as part of the threshold requirements for the upcoming nomination of the presidential and vice presidential candidates in the 2024. With such an analogy, the assumption of a constitutional loss, *in casu* the inhibition of the right to vote experienced by the Petitioners is legally unjustifiable. In addition, the arguments of the Petitioners that the threshold issue is not only related to the existence of political parties because the Petitioners as citizens who will receive the main benefits from holding the presidential and vice-presidential elections are irrelevant to the Petitioners' perceived constitutional loss, because the norms of Article 222 of the Law 7/2017 in no way restricts or hinders the rights of the Petitioners to elect or vote in the Presidential and Vice-presidential general election.

Regarding Petitioner I, where the Petitioner relates the right to file a review of Article 222 of Law 7/2017 with the Petitioner's constitutional right to participate in the efforts of state defence which according to the Petitioner are guaranteed in Article 30 paragraph (1) of the 1945 Constitution is incorrect, because the correct formulation of Article 30 paragraph (1) of 1945 Constitution is “Each citizen has the right and obligation to participate in the defence and security of the state.”, and not “...to participate in the efforts of state defence” as described by the Petitioner. Therefore, the constitutional norms become irrelevant to the reasons for the legal standing of the *a quo* Petitioners. Even if what is meant by the Petitioner is the right to participate in the efforts of defence and security of the state as guaranteed in Article 30 paragraph (1) of the *a quo* 1945 Constitution, the Court did not find a causal relationship between the norms for which the constitutionality was being examined and the assumption that the constitutional rights of the *a quo* Petitioner had been prejudiced, both actual and potential. Based on these considerations, the Court is of the opinion that the Petitioners do not have the legal standing to file the *a quo* petition;

Regarding the legal considerations that are used as the basis for the Decision of the Constitutional Court Number 66/PUU-XIX/2021 as described above, Constitutional Justice Enny Nurbaningsih and Constitutional Justice Manahan M.P. Sitompul are of the opinion that in reviewing the constitutionality of Article 222 of Law 7/2017, the individual Petitioners as long as they can explain or describe that they have the right to vote, they have the legal standing to file the petition. In the subject matter of the petition, the norm of Article 222 of Law 7/2017 which regulates the threshold requirements for the nomination of Presidential

and Vice-Presidential candidates is constitutional and it relates to the percentage limit specified in the *a quo* norm which is an open legal policy for the legislators, therefore the Petitioner's petition is dismissed. Meanwhile, Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra are of the opinion that the individual Petitioners as long as they could explain or describe that they have the right to vote, they have the legal standing to file the petition for a constitutional review of Article 222 of Law 7/2017, also in the subject matter of the petition, they are of the opinion that the norm of Article 222 of Law 7/2017 is unconstitutional and the Court should have granted the petition of the Petitioners as declared in the previous decisions.

Based on these considerations, the Court is of the opinion that the Petitioners do not have the legal standing to file the petition and in the Court's decision, the Petitioners' petition is declared as unjustifiable.