



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 42/PUU-XX/2022**

Concerning

**Presidential and Vice-Presidential Candidate Threshold (Presidential Threshold)
and Mechanisms for the Recruitment of Presidential
and Vice-Presidential Candidates by Political Parties**

- Petitioner** : **Almizan Ulfa, et al**
Type of Case : Examination of Law Number 7 of 2007 concerning General Election (Law 7/2007) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)
Subject Matter : Article 222 and Article 223 of Law 7/2007 are in contrary to the Fourth Paragraph of the Preamble to the 1945 Constitution, Article 1 paragraph (2), Article 6 paragraph (1), Article 6A paragraph (1), Article 6A paragraph (2), Article 22E paragraph (1), Article 22E paragraph (2), Article 28D paragraph (1), Article 28D paragraph (3), Article 28F of the 1945 Constitution.
Verdict : To declare that the Petitioners' petition is inadmissible
Date of Decision : Tuesday, May 31, 2022.
Overview of Decision :

Whereas the Petitioners are individual Indonesian citizens and taxpayers who have the right to vote and be the candidates for president and vice president in the general election.

Whereas regarding the authority of the Court, since the petition of the Petitioners is a petition to examine the constitutionality of legal norms, *in casu* Article 222 and Article 223 of Law 7/2007 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Whereas in relation to the qualifications of the Petitioners as individual Indonesian citizens who have the right to vote, in the constitutionality review of Article 222 of Law 7/2017, the Court has considered such matter in the Decision of the Constitutional Court Number 74/PUU-XVIII/2020, dated January 14, 2021, which subsequently reaffirmed in the Decision of the Constitutional Court Number 66/PUU-XIX/2021, dated February 24, 2022 which in principal state 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 Decision of the Constitutional Court 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. Furthermore, the Court stated that in principal a political party or coalition of political parties participating in the election has the right to declare the loss of constitutional rights and

to file a petition for a review of Article 222 of Law 7/2017 which is in line with the mandate of 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;

Whereas furthermore, regarding the perceived loss of constitutional rights of the Petitioners as individual Indonesian citizens who have the right to vote in the General Election due to the promulgation of the norms of Article 222 of Law 7/2017, the Court has considered such matter in the Decision of the Constitutional Court Number 8/PUU-XX/2022, dated March 29, 2022 and subsequent Court decisions which principally state that 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, regarding the assumption that the Petitioners' constitutional rights have been prejudiced due to the obstruction of their right to vote, the Court is of the opinion that Article 222 of Law 7/2017 does 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 Petitioners not having a loss of constitutional rights with the promulgation of the norms of Article 222 of Law 7/2017, there is no causal relationship between the *a quo* norms and the assumption that the Petitioners are having a loss of their constitutional right to vote;

Whereas regarding the perceived loss of constitutional rights of the Petitioners due to the promulgation of the norms of Article 222 of Law 7/2017, it was caused by the misunderstanding and miscomprehension of the Petitioners due to the lack of socialization of the results of the 2014 election for the members of DPR which was used to fulfil the requirements for nominating the 2019 presidential and vice-presidential candidates. The Court is of the opinion that this is not a matter of the constitutionality of norms, but rather a problem of the implementation of the *a quo* norms;

Based on the entire description of the aforementioned legal considerations, the Court is of the opinion that the Petitioners do not have the legal standing to file the petition for a review of Article 222 of Law 7/2017;

Whereas there are 4 (four) Constitutional Justices who submit dissenting opinions, namely Constitutional Justices Manahan M.P. Sitompul and Enny Nurbaningsih and Constitutional Justices Suhartoyo and Saldi Isra. In these dissenting opinions, which is fully contained in the Decision of the Constitutional Court Number 66/PUU-XIX/2021, the Constitutional Justice Manahan M.P. Sitompul and Enny Nurbaningsih are of the opinion that as long as an individual petitioner can explain or describe that he has the right to vote, he has the legal standing, but 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 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 regarding the review of the norms of Article 223 of Law 7/2017, before the Court considers the legal standing of the Petitioners who submit the *a quo* petition and the subject matter of the petition, the Court will first consider several things, namely:

1. Whereas the Court has examined the Petitioners' petition in the Preliminary trial on Thursday, April 14, 2022 and has provided advice to the Petitioners to revise their

- petition, especially in relation to the section on the petition, *Posita*, and *Petitum*;
2. Whereas after the Court carefully examined the revision of the Petitioners' petition, it turned out that the Petitioners in the section concerning the Petition has mentioned the review of Article 222 and Article 223 of Law 7/2017, then in the description of the legal standing of the Petitioners, they have described the constitutional loss of the Petitioners due to the promulgation of Article 222, Article 223 paragraphs (1) and (3) of Law 7/2017, then in the section on the reasons for submitting the petition (*Posita*), the Petitioners has stated that the subject matter to be examined are Article 222 and Article 223 paragraph (1), paragraph (2), and paragraph (3) of Law 7/2017 [*vide* the Revision of the Petitioners' Petition number 40 page 26], but the overall description is related to the review of *a quo* Article 223 only contains a description related to the reasons for the review against Article 223 paragraph (1) and paragraph (3) of Law 7/2017;
 3. Whereas there is an inconsistency, namely in the *Petitum* section number 3, the Petitioners petition for the Court to declare that Article 223 regarding the phrase "in accordance with the internal mechanism of the relevant political party" and the phrase "in accordance with the internal mechanism of the Political Party and/or the Coalition of Political Parties deliberation" is in contrary to the 1945 Constitution and has no binding legal force. The Petitioners did not mention in detail which part (what paragraph) of the *a quo* Article 223 is petition for removal, this makes the petition of the Petitioners is unclear since the provisions of the *a quo* Article 223 consists of 4 (four) paragraphs;
 4. Whereas in *Petitum* number 4, the Petitioners petition for the Court to declare that the Elucidation of Article 223 of Law 7/2017 regarding the phrase "sufficiently clear" is in contrary to the 1945 Constitution and has no binding legal force. Regarding the petition, the Petitioners did not elaborate on the reasons for the petition to cancel the provisions of the Elucidation of the *a quo* Article 223. The Court is of the opinion that the phrase "Sufficiently clear" in the Elucidation of Article 223 of Law 7/2017 was written because the legislators considered the formulation of the *a quo* Article 223 is sufficiently clear or does not require any further explanation for the words, phrases, sentences, or equivalent words or terms contained in the provisions of the *a quo* Article 223. Therefore, since the Petitioners petition for the removal of the Elucidation of Article 223 of Law 7/2017 which the legislators stated was sufficiently clear without being accompanied by an argument as to why the phrase is in contrary to the 1945 Constitution, the Court is of an opinion that this is an invalid or unclear petition, moreover regarding the petition of the Petitioners, the Panel of Judges has given their advice but the Petitioners have remained in their position;
 5. Whereas based on all of the aforementioned legal considerations, the Court is of an opinion that the Petitioners' petition regarding the review of the constitutionality of Article 223 of Law 7/2017 is invalid or unclear. Therefore, the Court shall not consider the legal standing of the Petitioners and the subject matter of the petition;

Whereas based on the entire description of the aforementioned legal considerations, the Court is of the opinion that the Petitioners do not have the legal standing to file the *a quo* petition regarding the review of the constitutionality of Article 222 of Law 7/2017, the Petitioners' petition regarding the review of the constitutionality of Article 223 of Law 7/2017 is invalid or unclear, and the Legal Standing of the Petitioners regarding the review of the constitutionality of Article 223 of Law 7/2017 and the subject matter of the Petitioners' petition shall not be considered.

Accordingly, the Court subsequently issued a decision which verdict state that the Petitioners' petition is inadmissible.