



# Legal Analysis of the Constitutional Court's Decision on Campaign Regulations in Schools and Universities

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Article	Abstract
<b>Keywords:</b> Constitutional Court Decision Number 65/PUU-XXI/, contrary, Violation	<p><i>This research aims to investigate the practice regarding the process of application. August 15, 2023, became a historic day for Indonesia with the approval of the Constitutional Court's Decision, allowing campaigning in educational institutions. The proposal to amend Constitutional Court Decision Number 65/PUU-XXI/2023 was first submitted by Ong Yenny and Handrey Mantiri, members of the Jakarta Regional People's Representative Council. This research falls under the category of normative juridical research, also known as conceptual and legal approaches. Normative juridical research is conducted by examining secondary sources such as literature and regulations related to the researched issue. According to the petitioner, the Constitutional Court Decision Number 65/PUU-XXI/2023 contradicts Law Number 7 of 2017, specifically Article 280 paragraph (1) letter b and its explanation. There are two different provisions in the law, which have resulted in legal norms becoming uncertain. The main issue with Article 280 paragraph (1) letter b of Law Number 7 of 2017 is not based on norm conflict, but rather on differences in law enforcement, leading to injustice in the conduct of elections. The primary purpose of elections is to provide an opportunity for Indonesian citizens to express their aspirations and choose their preferred leaders to represent them in government. Elections are a means of upholding popular sovereignty based on democratic values. The Constitutional Court's decision not only limits the role of campuses in educating future generations but also enhances Indonesia's democracy by helping to create voters who make decisions based on logical reasoning and facts.</i></p>

## INTRODUCTION

### 1. Background

Elections (General Elections) are a means of implementing people's sovereignty in a direct, general, free, honest, and fair manner in the Unitary State of the Republic of

Indonesia based on Pancasila and the 1945 Constitution, with the aim of electing members of the People's Representative Council, Regional Representative Council, Regional People's Representative Council and President and Vice President, as well as Regional Heads and Deputy Regional Heads directly by the people and for the people. In order to achieve democratic general elections, they must be implemented in a direct, general, free, honest, and fair manner.

According to Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council and Regional People's Representative Council, the definition of general elections is explained in detail. Elections are a means of implementing people's sovereignty which is carried out directly, generally, freely, secretly, honestly, and fairly in the Unitary State of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In other words, elections are a means for the people to exercise sovereignty and are a democratic institution.

According to Law Number 7 of 2017 Article 1 Paragraph (1) concerning Elections, the definition of elections is a means of people's sovereignty to elect members of the People's Representative Council, members of the Regional Representative Council, President and Vice President and to elect members of the Regional People's Representative Council, which is carried out directly, publicly, freely, secretly, honestly and fairly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Therefore, according to the minimalist theory of democracy as put forward by Joseph Schumpeter (Schumpeterian), it explains that

General elections are an arena that holds competition between policy actors that enables public political participation to determine choices and liberalize citizens' civil and political rights.

If the general election is approaching, the candidates for members of the People's Representative Council, Regional Representative Council, Regional People's Representative Council, President and The Vice President, and Regional Heads and Deputy Regional Heads directly, will be given time for campaigning.

A campaign is a simultaneous action carried out by political organizations or prospective candidates competing for seats and positions in parliament to gain support from the masses of voters in general elections during the voting period. In the campaign there are several methods, namely face-to-face, electronic media, and print media. On average, each candidate has different goals in campaigning, but the general goal of the campaign is to convey ideas or campaign messages so that the public likes and is interested in voting for the candidate. After the campaign is carried out, a General Election will be held which aims to choose the representatives we want through a voting process held simultaneously in various regions.

In a democracy, political campaigns often refer to election campaigns, where candidates or leaders are chosen. In some cases in certain countries, there is a term called a referendum, which is the determination of certain policies involving the vote of the people. The definition of a referendum system is a universal voting process to make a decision, especially a political decision that affects a country as a whole, such as the adoption or [amendment of a constitution](#) or new laws, or changes to a country's territory. In general, there are two types of referendums: legislative referendums and universal referendums. Legislative referendums are held when the adoption or amendment/renewal of the constitution or laws requires the approval of the entire people. Meanwhile, a universal referendum is a referendum action held based on the will of the people, which is preceded by a demonstration or petition that successfully gathers majority support.

General elections in Indonesia are regulated by Law Number 7 of 2017 concerning general elections. The subsequent general elections are a means of exercising the people's sovereignty to elect their representatives, namely, the People's Representative Council (DPR), members of the Regional Representative Council (DPRD), the President and Vice President, and members of the Regional DPRD (Regional House of Representatives). This is carried out directly, publicly, openly, honestly, and fairly within the Unitary State of the Republic of Indonesia. During the election period, there is a campaign period so that candidates can introduce themselves to the public.

August 15, 2023, is a historic day for Indonesia with the ratification of the Decision The Constitutional Court has allowed campaigning in educational settings. The idea to amend Constitutional Court Decision Number 65/PUU-XXI/2023 was first proposed by Ong Yenny and Handrey Mantiri, members of the Jakarta Regional People's Representative Council (DPRD). The Constitutional Court updated the Constitutional Court decision with the aim and reason of promoting an understanding of democracy, human rights, and critical thinking skills, which is more relevant than bringing politics into the educational arena. However, Constitutional Court Decision Number 65/PUU-XXI/2023 should be reviewed by considering its long-term impact on the primary goals of education and the character development of students.

In the past, campaigns in schools and universities were not permitted, so as not to cause negative effects from various existing effects, but now in the Constitutional Court's decision

Number 65/PUU-XXI/2023 after being ratified could give rise to various potential conflicts including social implications, fanaticism towards one of the candidates, and horizontal conflicts among both students and university students. The difference in norms between permitted and prohibited campaigns in school and college environments, in Law No. 7 of 2017 it is explained that there is a prohibition in school

and college environments and in the Constitutional Court Decision Number 65/PUU-XXI/2023 it is permitted to campaign in school and college environments, after seeing the existing problems, I as a writer am interested in writing the title of Juridical Analysis of the Constitutional Court Decision Regarding Campaign Regulations in School and College Environments.

## **2. Formulation of the problem**

1. What are the judges' considerations regarding ideal campaign regulations in Indonesia?
2. What are the legal implications of the Constitutional Court Decision Number 65/PUU-XXI/2023 which regulates Campaigns in School and College Environments?

## **METHOD**

This research is a type of normative legal research, or what is known as a conceptual approach and a legal approach. The normative legal approach is an approach carried out based on primary legal materials by means of examine the theories, concepts, legal principles and regulations related to this research. with the type of research above is normative juridical, so this research uses 4 research methods, including the case approach, the statute approach, the conceptual approach, and the historical approach. The types of legal materials used are: In writing this journal, the primary legal materials are in the form of statutory regulations and secondary legal materials.

The legal material collection technique that the researcher will use is a literature study. The research will utilize literature related to the title and problem formulation. The researcher will utilize and collect other legal sources. The collected legal material will then be classified into chapters and subchapters to be arranged sequentially and analyzed using a prescriptive method.

## **RESULTS AND DISCUSSION**

### **1. What are the judge's considerations regarding ideal campaign regulations in Indonesia?**

The one who adjudicates constitutional cases at the first and final level, issued a decision in the case of the Judicial Review of Law Number 7 of 2017 concerning General Elections against the 1945 Constitution of the Republic of Indonesia.

That furthermore, Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia states: The Constitutional Court has the authority to adjudicate at the first and final level, the decision of which is final, to test laws against the Constitution, decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties and decide on disputes regarding the results of General Elections.

That based on the provisions above, the Constitutional Court has the authority to examine and adjudicate the a quo application. The applicants request that the Constitutional Court of the Republic of Indonesia conduct a review of the Explanation of Article 280 paragraph (1) letter h of Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections. The Constitutional Court issued a ruling judging.

- a. Granting the petitioners' request in part;
- b. To state the explanation of Article 280 paragraph (1) letter (H) of the Republic of Indonesia Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) as long as the phrase "Government facilities, places of worship and educational places can be used if election participants attend without election campaign attributes at the invitation of the party responsible for government facilities, places of worship and educational places" is contrary to The 1945 Constitution of the Republic of Indonesia does not have binding legal force;
- c. Declaring that Article 280 paragraph (1) letter (H) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182 and Supplement to the State Gazette of the Republic of Indonesia Number 6109) is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "excluding government facilities and educational facilities as long as they obtain permission from the person responsible for the place in question and are present without election campaign attributes", so that Article 280 paragraph (1) letter (H) of the Republic of Indonesia Law Number 7 of 2017 concerning General Elections reads in full, "using government facilities, places of worship, and educational facilities, except for government facilities and educational facilities as long as permission is obtained from the person responsible for the place in question and attending without election campaign attributes."
- d. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate.

First, the content is contained in Article 280 Paragraph 2 letter k regarding the prohibition of election campaigns, second, the explanation is contained in Article 1 Number 34 of the Election Law regarding election provisions.

The second explanation is as follows: The age of a child is stated in Article 1, Number 1 of the Child Protection Law, concerning the age limit for children to vote. These three provisions indicate that according to Indonesian law, children are still under 18 years of age, unmarried children, and are prohibited from participating in

political campaign activities. The legal consequences of children's participation in campaign activities include criminal sanctions (imprisonment). and/or fines based on the Election Law and UU Child Protection) and administrative sanctions (removal of a candidate's name from the final list of candidates). or revoking the determination of a candidate as the winning candidate based on the Election Law.

The primary purpose of general elections is to give Indonesian citizens the opportunity to express their aspirations by electing leaders who will represent and uphold the rights of the people in government. In general elections, eligible voters have the opportunity to cast their votes for their chosen candidates or political parties. Election results are used to determine who will hold positions in government at the local, regional, and national levels.

"General elections are held by a national, permanent and independent general election commission" (Article 22E paragraph (5) of the 1945 Constitution). The implementation of the a quo constitutional provisions in the implementation of general elections to an independent institution which is then referred to as the General Election Commission in organizing elections, to maintain its independence this institution is given authority.

According to the applicant, the Constitutional Court decision Number 65/PUU-XXI/2023 is in conflict with Law Number 7 of 2017, specifically Article 280 Paragraph (1) Letter (H) and in its explanation, it actually completes it with the condition that it is invited by the person in charge and without campaign attributes. There are 2 (two) provisions that regulate this differently (although the explanation of the article is not a norm).but contains the formulation of norms) has resulted in legal norms becoming uncertain. The problem that occurs in Article 280 Paragraph (1) Letter

(H) Law No. 7 of 2017 is not based on a conflict of norms, but rather on differences in implementation. law with law enforcement resulting in injustice in the implementation of elections.

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Based on the arguments submitted by the applicant in the Constitutional Court decision Number 65/PUU-XXI/2023 concerning the unconstitutionality of Article 280 paragraph (1)

UU Number 7 of 2017 Letter H, especially in the field of education: We provide the following explanation.

“Equal treatment” in order to ensure the principles of fairness in elections by allowing campaigning in government offices and educational institutions.

According to Constitutional Court Decision No. 65/PUU-XXI/2023, the hearing stated that campaigning in schools and universities is permitted, meaning that campaigning may involve children and adolescents. However, the Head of the Election Supervisory Agency (Bawaslu), Rahmat Bagja, stated that this would potentially create problems, and the Bawaslu will encourage the General Elections Commission (KPU-RI) to revise campaign regulations to regulate campaign provisions in more detail, in order to create an ideal campaign in Indonesia.

2. What are the legal implications of the Constitutional Court Decision Number 65/PUU-XXI/2023 which regulates Campaigns in School and College Environments?

The Constitutional Court is a judicial body tasked with evaluating and deciding cases related to a country's constitution. The Court's primary function is

The Constitution maintains the validity and enforceability of the constitution, and ensures that laws or government actions do not violate the principles contained in the constitution. In many countries, the Constitutional Court plays a vital role in maintaining balance between the branches of government, such as the executive, legislative, and judiciary, and in protecting individual rights within the constitutional context. The Constitutional Court serves as the final interpreter of the constitution and has general authority. test laws that conflict with constitutional provisions.

Every country has a Constitutional Court, which may have a different name and role, but its purpose is to ensure that the constitution is respected and implemented in accordance with its fundamental principles. The Constitutional Court also serves as a mechanism for resolving constitutional disputes that may arise between governments, individuals, or other bodies.

Implications are the future impacts or conclusions felt when doing something. Legal implications can be called legal consequences, meaning the future impacts of an action, as viewed from a legal perspective.

Furthermore, legal consequences or legal consequences are the consequences arising from a law in connection with an act committed by a legal subject. Furthermore, legal consequences are also the consequences of actions aimed at achieving the desired outcome by the legal subject. In this case, the consequences referred to are those regulated by law, and the act committed is a legal act, that is, an

act carried out whether according to applicable law or not. On the other hand, legal consequences are the consequences arising from the occurrence of a legal event.

As a democratic nation, citizens have an obligation to intervene and participate in the administration of government and the state, including participation in the political sphere. Political participation is active participation in political life by exercising the right to vote to elect candidates for head of state and legislative candidates, directly or indirectly, and influencing government policies implemented through political campaigns in elections.

Article 83 of Election Law Number 8 of 2012 stipulates that legislative election campaigns begin three days after a political party is officially nominated as a participant in the election and end with the start of the cooling-off period. Positive campaigning must not involve insulting individuals, races, ethnicities, religions, groups of candidates or election participants, or inciting hostility among individuals or the public.

On August 15, 2023, the Constitutional Court (MK) issued a decision that permits campaigning in schools and universities with several provisions, but continues to prohibit campaigning in places of worship without exception. This decision is related to Law Number 7 of 2017, especially Article 280 Paragraph (1) Letter (H), which has been challenged at the Constitutional Court and given Number 65/PUU-XXI/2023. This legal uncertainty is caused by the contradiction between the norms and the explanations, which has given rise to conflict and chaos in the field.

The Constitutional Court (MK) has ruled in favor of the challenge to Constitutional Court Decision Number 65/PUU-XXI/2023, which states that campaigners are permitted to use educational facilities, but must obtain permission from the educational institution's administrator. This ambiguity between the norm and its explanation can be exploited by powerful parties. For example, incumbent politicians may use state facilities to run for reelection under the pretext of not campaigning.

Academics consider the Constitutional Court's decision detrimental and dangerous because it does not explain clearly and in detail about the design of the educational environment or the importance of children, thus giving rise to various interpretations in society.

Conceptually, campaigning in educational settings is prohibited by law. This prohibition would create an imbalance in electoral activity between highly educated and less educated voters. Furthermore, education is a place where knowledge can be acquired or refined without the interference of external political practices. Therefore, to conduct scientific activities in educational settings, it is reasonable to conduct outreach activities to election participants without the use of campaign attributes.



Constitutional Court (MK) Decision Number 65/PUU-XXI/2023. The Constitutional Court (MK) granted the lawsuit against Law Number 7 of 2017, specifically Article 280 Paragraph (1) Letter (H). As a result, those involved in election campaigns are prohibited from using educational institutions unless they have permission from the school management, and they are required to participate without wearing campaign attributes.

Indonesia is a democratic country. As a democratic country, the people are required to participate in the administration of government and the state. One way to do this is by actively participating in politics. Political participation is the activity of actively participating in political activities by exercising one's right to vote to elect leaders. the state either directly or indirectly, influence government policies implemented through political campaigns in elections.

Election campaign based on Article 267 of Law Number 7 of 2017 concerning Elections General elections are part of civic education and are implemented responsibly. Election campaigns will be held simultaneously for the President and Vice President, as well as members of the House of Representatives (DPR), Regional Representative Council (DPD), and Regional People's Representative Council (DPRD). Election campaigns are conducted by campaign organizers and participated in by campaign participants (the public). Based on these provisions, it can be said that campaign implementation can be carried out and can be accounted for, but problems often arise.

In principle, the educational environment should be a place for learning and development without any disturbing political influences. Constitutional Court Decision No. 65/PUU-XXI/2023, which permits political campaigning in educational settings, opens the door to disrupting a learning environment that should be free from political polarization.

The educational environment should be a politically neutral space, allowing students to explore diverse ideas and perspectives without the pressure of political campaigns. Bringing the educational environment into politics risks neglecting the valuable space for developing independent thinking and diverse perspectives. Quality education requires a safe and comfortable space for children to learn, discuss, and develop their broad perspectives.

Allowing campaigning in educational settings poses a significant risk that educational goals will be exploited for political ends. Certain parties or groups may attempt to exploit this situation to influence students' opinions and views in their own favor by providing inappropriate incentives and incentives.

Children and adolescents tend to be easily influenced and less able to see the manipulation behind various political arguments. This decision opens the door for political agendas to infiltrate the curriculum, thereby weakening the integrity of education and jeopardizing the character development of students. It is crucial for

schools and universities to maintain the independence and integrity of education and prevent harmful political interference.

If the protection of children's rights is combined with the concept of a state based on law and a democratic state, then the principle of a state based on law is that every child has the right. While some people are protected from abuse in political life, in a democratic country everyone has the right to participate in government and has the right to participate. This does not rule out the possibility of child abuse in the implementation of democracy through general elections. One problem frequently encountered is the violation of ethical rules by election organizers during political campaign activities. Often children participate in campaign activities. Based on data from the Indonesian Child Protection Council (KPAI) in 2018, there were 15 types of violations and 34 cases of abuse. Meanwhile, in 2014, there were 248 incidents involving children in political campaign activities. Children's participation in political campaign activities is a phenomenon that occurs every five years or every election cycle. Children are not only invited to political speeches, but also take part in motorcades that often recklessly and ignore traffic regulations. Sometimes there are children carrying flags and attributes of certain political parties, and sometimes the children's faces are painted with colors chosen by the political party supported by their families, thus making them look like loyal young supporters. The risks faced by children include not only physical problems, but also psychological problems, and the psychological impact can be transmitted from children to adults, so involving children is a dangerous act and an uncalculated risk.

Based on a systematic interpretation of the *a quo* article and based on Law Number 12 of 2011, a legal fact is obtained that normatively, currently campuses cannot be used as venues for election campaigns. Law Number 7 of 2017 also expressly states the prohibition of campaigning in school and university environments during general elections. First, it is stated in Article 280 Paragraph 2 Letter k regarding the prohibition of election campaigns, second, the explanation is given in Article 1 Paragraph 34 of the Election Law regarding voter regulations, and third, this is stated in Article 1 paragraph 1 of the Child Protection Law, regarding the age of children. These three provisions indicate that according to Indonesian law, children are prohibited from participating in political campaign activities. The legal consequences of children's participation in campaign activities include criminal sanctions (imprisonment and/or fines based on the Election Law and the Law Child Protection) and administrative sanctions (removal of candidates from the permanent candidate list).

## CONCLUSION

The main objective of holding general elections is to provide an opportunity for Indonesian citizens who have the right to vote to express their aspirations and elect

their chosen leaders who will represent the rights of the people in the government sphere.

Elections are fundamentally a means of upholding popular sovereignty based on democratic values. The amended 1945 Constitution of the Republic of Indonesia (UUD NRI) contains several principles intended to foster or foster the spirit of democratic elections. Campaigns are based on the principle of impartiality and freedom from interference from any party. Campaigns help the public actively decide and vote on the vision, mission, and programs of candidate pairs. Campaigns aim to foster communication between candidate pairs and their citizens so that a broad sense of satisfaction with democracy can be felt. Election campaigns are part of local political education and are conducted responsibly. Responsibility in election activities means going beyond limits to avoid causing harm or injustice to other election participants.

The Constitutional Court (MK) stated that it decided to refer to the Constitutional Court's Decision Constitution Number 65/PUU-XXI/2023, which permits the use of state institutions, places of worship, and educational institutions on the condition that election participants may not wear political attire while participating in election campaigns at the invitation of the relevant political party, is a violation of the 1945 Constitution and is not legally binding. This Constitutional Court decision not only limits the role of universities in educating future generations, but also improves the quality of Indonesian democracy by help create voters who take Decisions must be based on logical thinking and facts. Violations of election activities in educational institutions do not constitute a restriction on the human rights of all election participants. Election activities are part of the right to freedom of expression and the right to deprivation.

The Constitutional Court continues to uphold the provisions of Article 280 paragraph 1 letter h concerning the prohibition of election activities by state institutions, places of worship, and educational institutions, and the exception is still necessary and is included in the text of Law Number 7 of 2017 as a separate norm. Article 280 paragraph (1) letter (H) The purpose of judicial consolidation of textual exceptions is to create legal certainty in law enforcement regarding election violations.

## SUGGESTION

As the 2024 elections approach, campuses will undoubtedly become targets for politicians to conduct political campaigns. With Constitutional Court Decision No. 65/PUU-XXI/2023 permitting campaigning on campus, it is hoped that the neutrality of educational institution leaders will be guaranteed and that campus campaigns can be successfully implemented in accordance with regulations. Various parties involved in the educational environment, especially schools and universities, are expected to actively participate in the campaign process for legislative and executive candidates on campus to minimize violations. Students, lecturers, and

campus communities can become rational voters by studying the candidates' character through open discussions, direct interactions, and a fair exchange of ideas. The educational environment will help attract informed and critical voters to elect Indonesia's future leaders. As agents of control, students are expected to think critically and respond to the Indonesian political system in order to hold fair and peaceful elections.

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