



CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 57/PUU-XX/2022

Concerning

Political Party Verification

- Petitioner** : Partai Rakyat Adil dan Makmur (Prima) as represented by Agus Priyono as the General Chairman of Prima and Dominggus Oktavianus as the Secretary General of Prima
- Type of Case** : Material 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** : The examination of Article 173 paragraph (1) of Law 7/2017 whether it is in contrary to Article 28D paragraph (1) of the 1945 Constitution.
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Thursday, July 7, 2022.
- Overview of Decision** :

The Petitioner is a political party that has a public legal entity based on the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number: M.HH-22 AH.11.01 of 2020, whose constitutional rights have the potential to be prejudiced by the promulgation of the provisions of Article 173 paragraph (1) of Law 7/2017. The Petitioner considers that the verification of the political parties participating in the election by the KPU has the potential to lead to unequal treatment between the Petitioner and the political parties that fulfil the Parliamentary Threshold requirement in the 2019 Election, so that the Petitioners believe that the promulgation of the provisions of the *a quo* article is in contrary to the sense of justice and the principle of equality before the law as contained in Article 28D paragraph (1) of the 1945 Constitution;

Regarding the authority of the Court, since the Petitioner petition for a review of the constitutionality of legal norms, *in casu* Article 173 paragraph (1) Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Regarding the legal standing of the Petitioner, the Court is of the opinion that based on the arguments that have been stated by the Petitioner in the *a quo* petition, there has been a causal relationship (*causal verband*) between the Petitioner's losses as a new political party regarding its constitutional rights which are prejudiced and the promulgation of the *a quo* Article. Therefore, regardless of whether or not the unconstitutionality of the norm petitioned for a review by the Petitioner is proven, the Court is of the opinion that if the Petitioner's petition were granted, the potential loss as referred to in the petition would not have occurred. Therefore, based on these considerations, the Court is of the opinion that the Petitioner has the legal standing to act as the Petitioner in the *a quo* petition;

Whereas because of the *a quo* petition is clear then based on Article 54 of the Constitutional Court Law, the Court is of the opinion that there is neither the urgency nor the

need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.

Whereas before considering the arguments of the *a quo* Petitioners' petition any further, the Court will first consider the Petitioner's petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of the Regulation of the Constitutional Court Number 2 of 2021 concerning Proceedings in Judicial Review Cases (PMK 2/2021), which in principal, the basis that is used in reviewing the Case Number 53/PUU-XV/2017 and Case Number 55/PUU-XVIII/2020 has no relevance to the provisions of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021. This is because the norms of Article 173 paragraph (1) of the Law 7/2017 in both cases are not new legal norms which have been interpreted by the Court. Therefore, the Court will consider the applicability of Article 60 of the Constitutional Court Law and Article 78 of PMK 2/2021 against Article 173 paragraph (1) of Law 7/2017 which has been interpreted by the Court. Furthermore, the petition for the review of Article 173 paragraph (1) of Law 7/2017 after being interpreted by the Court, has been reviewed in Case Number 48/PUU-XIX/2021. Therefore, the Court will link the basis for the review in the *a quo* application on the basis for the review in Case Number 48/PUU-XIX/2021 and its constitutional reasons;

Furthermore, it is evident that there are differences in the basis for the review in the petition for Case Number 48/PUU-XIX/2021 with the basis for the review in the *a quo* petition, where the *a quo* petition uses Article 28D paragraph (1) of the 1945 Constitution as the basis for the review which was not used as the basis for the review in Case Number 48/PUU-XIX/2021. In addition, there are also differences in the constitutional reasons in the petition for Case Number 48/PUU-XIX/2021 with the constitutional reasons in the *a quo* petition. Therefore, regardless of whether the Petitioners' petition is legally justifiable or not, based on the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) of PMK 2/2021, the *a quo* petition can be resubmitted;

Regarding the constitutionality review of Article 173 paragraph (1) of Law 7/2017 as argued by the Petitioners, the Court is of the opinion as follows:

- Whereas regarding the *a quo* case, the Court has stated its position regarding the verification of political parties participating in the General Election as stipulated in Article 173 paragraph (1) of Law 7/2017 which has been decided by the Court in the Constitutional Court Case Number 55/PUU-XVIII/2020;
- Whereas regarding the legal considerations that are used as the basis for the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, there are 3 (three) Constitutional Justices who submitted dissenting different, namely Constitutional Justice Saldi Isra, Constitutional Justice Suhartoyo, and Constitutional Justice Enny Nurbaningsih. However, regardless of the existence of these dissenting opinions in the *a quo* Decision, the Court is of the opinion that regarding Article 173 paragraph (1) of Law 7/2017 which states, "The Political Parties participating in the General Election shall be the political parties that have passed verification by the KPU" is in contrary to the 1945 Constitution as long as it is not interpreted as, **"The Political Parties that have passed the verification of the 2019 General Election and have passed/fulfil the Parliamentary Threshold requirement in the 2019 Election still shall be administratively verified but not factually verified, as for the political parties that do have not passed/do not fulfil the Parliamentary Threshold requirement, the political parties that only have representation at the Provincial/Regency/City DPRD level and the political parties that do not have representation at the Provincial/Regency/City DPRD level, shall be required to re-verify administratively and factually, this is the same as the requirements applicable to new political parties"**.
- Whereas because the substance being petitioned for review by the Petitioners is in principal the same as what has been decided by the Court in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, even though the Petitioner uses different basis for review and different constitutional reasons, the essence being

petitioned for review in this *a quo* case shall be the same as the previous case, namely reviewing the verification of political parties, both administratively and factually. Therefore, the legal considerations in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 *mutatis mutandis* shall apply to the *a quo* legal considerations.

Whereas based on the entire description of the aforementioned considerations, the Court is of the opinion that the subject matter of the Petitioner's petition is legally unjustifiable. Accordingly, the Court subsequently issued a decision which verdict state that the Petitioner's petition is dismissed in its entirety.