



## DECISION

Number 16/PUU-V/2007

**FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**

[1.1] Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a Decision in the case of petition for judicial review of Law Number 12 Year 2003 regarding General Elections of the Members of the People's Legislative Assembly (DPR), the Regional Representative Council (DPD), and the Regional People's Legislative Assembly (DPRD) (State Gazette of the Republic of Indonesia Year 2003 Number 37, Supplement to the State Gazette of the Republic of Indonesia Number 4277, hereinafter referred to as the General Elections Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), filed by:

- [1.2]
1. United Regions Party (PPD), having its address at Jalan Prof. DR. Satrio C-4 Number 18 South Jakarta;  
Hereinafter referred to as ----- **Petitioner I**;
  2. New Indonesia Alliance Party (PPIB), having its address at Jalan Teuku Cik Ditiro Number 31 Jakarta;

Hereinafter referred to as ----- **Petitioner II;**

3. Reform Star Party (PBR), having its address at Jalan KH. Abdullah Syafii Number 2 Tebet South Jakarta;

Hereinafter referred to as ----- **Petitioner III;**

4. Prosperous Peace Party (PDS), having its address at Jalan Tirtayasa Number 20 Kebayoran Baru South Jakarta;

Hereinafter referred to as ----- **Petitioner IV;**

5. Crescent Star Party (PBB), having its address at Jalan Raya Pasar Minggu KM 18 Number 1-B South Jakarta;

Hereinafter referred to as ----- **Petitioner V;**

6. Indonesian Justice and Unity Party (PKPI), having its address at Jalan Cilandak Raya KKO Number 32 South Jakarta;

Hereinafter referred to as ----- **Petitioner VI;**

7. United Democratic Nationhood Party (PPDK), having its address at Jalan Pejaten Number 30 Jakarta;

Hereinafter referred to as ----- **Petitioner VII;**

8. Freedom Bull National Party (PNBK), having its address at Jalan Penjernihan I/50 Jakarta;

Hereinafter referred to as ----- **Petitioner VIII;**

9. Vanguard Party (PP), having its address at Jalan Pegangsaan Timur Number 17A Jakarta;

Hereinafter referred to as ----- **Petitioner IX;**

10. Indonesian Democratic Vanguard Party (PPDI), having its address at Jalan Letjen Suprpto Number 22G Cempaka Putih West Jakarta;

Hereinafter referred to as ----- **Petitioner X;**

11. Social Democratic Labor Party (PBSD), having its address Jalan Tanah Tinggi II Number 44B Central Jakarta;

Hereinafter referred to as ----- **Petitioner XI;**

12. Indonesian Unity Party (PSI), having its address at Jalan Kemang Utara Raya Number 06 South Jakarta;

Hereinafter referred to as ----- **Petitioner XII;**

13. Concern for the Nation Functional Party (PKPB), having its address at Jalan Cimandiri 30 RT.006 RW.004, Cikini, Menteng, Central Jakarta;

Hereinafter referred to as ----- **Petitioner XIII;**

Based on Special Powers of Attorney dated June 4, 2007, June 6, 2007, and June 7, 2007, have authorized Syaiful Ahmad Dinar, S.H.,M.H., having his office address at Syaiful

Ahmad Dinar, S.H.,M.H & Partners Advocates and Legal Consultants in Sakti Plaza Building 2<sup>nd</sup> Floor, Jalan Letjen MT. Haryono Kav. 2 Pancoran South Jakarta;

Hereinafter referred to as ----- **the Petitioners;**

- [1.3]** Having read the Petition of the Petitioners;  
 Having heard the statement of the Petitioners;  
 Having heard the statement of the expert presented by the Petitioners;  
 Having read and heard the written statement of the Government;  
 Having read and heard the written statement of the People's Legislative Assembly of the Republic of Indonesia;  
 Having examined the evidence presented by the Petitioners;  
 Having read the concluding opinion of the Petitioners;

### **3. LEGAL CONSIDERATIONS**

- [3.1]** Considering whereas the purpose and objective of the Petitioners' Petition are to petition for judicial review of the constitutionality of Article 9 Paragraph (1) and Paragraph (2) of Law Number 12 Year 2003 regarding General Elections of the Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Legislative Assembly (State Gazette of the Republic of Indonesia Year 2003 Number 37, Supplement to the State Gazette of the Republic of Indonesia Number 4277,

hereinafter referred to as the General Elections Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

**[3.2]** Considering whereas prior to further examining the Principal Case of the Petitioners' Petition, it is necessary for the Constitutional Court (hereinafter referred to as the Court) to first consider:

1. The authority of the Court to examine, hear, and decide upon the Petitioners' Petition;
2. The legal standing of the Petitioners to file the petition;

#### **AUTHORITY OF THE COURT**

**[3.3]** Considering whereas based on the provision of Article 24C Paragraph (1) of the 1945 Constitution, one of the constitutional authorities of the Court is to hear at the first and final level the decision of which shall be final for judicial review of a law against the Constitution;

**[3.4]** Considering whereas because the Petitioners' petition is for judicial review of the General Elections Law against the 1945 Constitution, hence the Court declares itself as having the authority to examine, hear, and decide upon the *a quo* petition.

#### **LEGAL STANDING OF THE PETITIONERS**

**[3.5]** Considering whereas based on the provision of Article 51 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law), the parties having the right to become Petitioners in judicial review of a law against the 1945 Constitution shall be the parties which deem that their constitutional rights and/or authority are impaired by the coming into effect of a law, namely a) individual Indonesian citizens; b) customary law community units insofar as they are still in existence and in line with the development of the communities and the principle of the Unitary State of the Republic of Indonesia as regulated in law; c) public or private legal entities; d) state institutions;

**[3.6]** Considering whereas based on Article 51 Paragraph (1) of the Constitutional Court Law, the parties which have the right to petition for judicial review of a law against the 1945 Constitution, shall be, among others, individual Indonesian citizens who claim that their constitutional rights and/or authority granted by the 1945 Constitution are impaired by the coming into effect of a law. Meanwhile, following the Decision Number 006/PUU-III/2005 and subsequent decisions, it has been the stand of the Court that the aforementioned constitutional rights and authority must fulfill five requirements, namely:

- a. the Petitioner must have constitutional rights and/or authority granted by the 1945 Constitution;

- b. the Petitioner's constitutional rights and/or authority have been impaired by the coming into effect of the law petitioned for review;
- c. the impairment of such constitutional rights and/or authority must be specific and actual or at least potential in nature which, pursuant to logical reasoning, will take place for sure;
- d. there is a causal relationship (*causal verband*) between the impairment of rights and/or constitutional authority and the coming into effect of the law petitioned for review;
- e. if the petition is granted, it is expected that such impairment of constitutional rights and/or authority will not or does not occur any longer;

**[3.7]** Considering whereas the Petitioners are 13 (thirteen) political parties which have been authorized as legal entities by the Department of Law and Human Rights (Exhibit P-67 through Exhibit P-79), and hence, as argued, they shall qualify as Petitioners. The Petitioners claimed that they have the constitutional rights and/or authority granted by the 1945 Constitution as stated in:

- Article 27 Paragraph (1): "*Without exception, all citizens shall have an equal position before the law and government and shall be obligated to uphold such law and government*";

- Article 28A: *“Every person shall have the right to live and to defend his/her life and living”*;
- Article 28C Paragraph (2): *“Every person shall have the right to improve him/herself in striving for his/her rights collectively for building his/her society, nation, and state”*;
- Article 28D Paragraph (1): *“Every person shall have the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law”*;
- Article 28G Paragraph (1): *“Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes human right”*;
- Article 28I Paragraph (2): *“Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment”*;

**[3.8]** Considering whereas the Petitioners claimed that their constitutional rights and/or authority as political parties to participate in general elections, as guaranteed by Article 22E Paragraph (3) of the 1945 Constitution have been impaired by the coming into effect of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law due to the fact that Petitioners



cannot participate in the following general elections, namely the 2009 General Elections as a result of the provision of the *a quo* Article which reads:

- (1) In order to participate in future General Elections, a General Elections Participating Political Party must:
  - a. Obtain at least 3% (three percent) of the total number of seats in the People's Legislative Assembly;
  - b. Obtain at least 4% (four percent) of the total number of seats in Provincial People's Legislative Assemblies which are spread in at least  $\frac{1}{2}$  (half) of the total number of provinces in Indonesia; or
  - c. Obtain at least 4% (four percent) of the total number of seats in Regional People's Legislative Assemblies of Regencies/Municipalities which are spread in at least  $\frac{1}{2}$  (half) of the total number of regencies and municipalities in Indonesia.
  
- (2) A General Elections Participating Political Party which does not fulfill the provision as intended in Paragraph (1) shall be eligible to participate in the following General Elections only under the following conditions:
  - a. It merges with other General Elections Participating Political Parties which have fulfilled the provision as intended in Paragraph (1);
  - b. It merges with other political parties which do not fulfill the provision as intended in Paragraph (1) and thereafter bearing the name and

symbol of one of the merged political parties so that they fulfill the minimum number of seats required; or

- c. It merges with other political parties which do not fulfill the provision as intended in Paragraph (1) by establishing a new political party with a new name and symbol so that they fulfill the minimum number of seats required.

**[3.9]** Considering whereas the constitutional rights and/or authority claimed by the Petitioners to have been impaired, namely their non-eligibility to participate in the 2009 General Elections, are actual and have a causal relationship with the provisions of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law, and therefore if the petition is granted, it is certain that the impairment of the aforementioned constitutional rights and authority will not occur any longer;

**[3.10]** Considering whereas hence, the Petitioners have fulfilled the legal standing requirements to petition for judicial review of the General Elections Law against the 1945 Constitution, and therefore, the Principal Case of the Petition must be considered;

### **PRINCIPAL ISSUE OF THE PETITION**

**[3.11]** Considering whereas in the Principal Issue of the Petition, Petitioners have argued the following matters:

- a. Whereas Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is contrary to Article 27 Paragraph (1) of the 1945 Constitution by denying the rights of the Petitioners as legal entities based on their equal positions before the law, *in casu* the right to participate in General Elections. The legislators (the People's Legislative Assembly and the Government) should not have given a discriminatory treatment to political parties for participating in general elections by stipulating the provision as stated in the *a quo* Article of the General Elections Law, while in fact the existence of the Petitioners has been recognized by Law Number 31 Year 2002 regarding Political Parties (hereinafter referred to as the Political Parties Law);
- b. Whereas Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is contrary to Article 28A of the 1945 Constitution which provides for the right to life and to defend one's living, because the Article has directly or indirectly violated the right to life of the Petitioners as political parties;
- c. Whereas Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is contrary to Article 28C Paragraph (2) of the 1945 Constitution which provides for the right to improve oneself and to strive for one's rights collectively for developing one's society, nation, and state. This is because the *a quo* Article has arbitrarily deprived the Petitioners of

- their right to participate in developing democracy through general elections;
- d. Whereas Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is contrary to Article 28D Paragraph (1) of the 1945 Constitution which provides for the right to the recognition, the guarantee, the protection and the legal certainty of just laws as well as equal treatment before the law because the *a quo* Article has unfairly treated the Petitioners which are legal entities in the form of political parties;
- e. Whereas Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is contrary to Article 28I Paragraph (2) of the 1945 Constitution which provides for the right to be free from any discriminatory treatment since the *a quo* Article has hindered political parties to participate in general elections, which implies slowly destroying the Petitioners' participation and existence;

**[3.12]** Considering whereas in order to support their arguments, the Petitioners have presented written evidence (Exhibit P-1 through Exhibit P-79) and also presented an expert named Indri Jay Piling who has given a statement under oath as follows:

- Whereas according to the expert, the provision regarding *electoral threshold* (ET) is not recognized in other states. If such a provision does exist, it will be referred to as *parliamentary threshold*, as adopted in

- Germany, which regulates the participation of political parties to sit in the parliament based on certain minimum requirements; it is not at all intended for the parties to participate in general elections. Therefore, it is not necessary to regulate the ET provision by law. If the reason is to establish a simple multiparty system conforming to the presidential government system based on the notion that multiparty system is not compatible with presidential system, it should not be carried out by means of ET provision, but rather through for instance, non-sequential proportional open system and by reducing the number electoral areas;
- Suppressing the aspiration of political parties to participate in general elections by the existence of ET creates a problem as to how the political parties affected by the aforementioned ET can answer to the general public if they are required to change their names when they participate in the following general elections. An interesting example would be the name of “the Crescent Star Party” which are to be changed into “the Star Crescent Party” if they wish to participate in the following general elections. Such a condition will result in double management system from the central to the regional governments and ultimately have serious social consequences in social, economic and political aspects. The accountability of the Crescent Star Party towards the constituents cannot be replaced by that of the Star Crescent Party because the party registered in the parliament (the People’s Legislative Assembly) is the

Crescent Star Party and hence this is disadvantageous for the constituents;

- The ET provision, the expert continued, will slowly destroy political parties because they are hence unable to account for their vision, mission, platform, work plan and promises which they publicly announced during their general elections campaigns in 2004. In fact, the 2009 General Elections should ideally be an occasion to evaluate the performance of those parties which do not fulfill the ET provision. Hence, the Indonesian people actually suffer a great loss by being unable to judge, for example on the work performance of the aforementioned 13 political parties if these parties decide to merge into a new party or if they are required to change their names;
- According to the expert, there are several reasons as to why ET is not necessary. First, ET is determined by the General Elections Law which means it is politically-tailored by political parties who have seats in the People's Legislative Assembly. For instance the ET provision for the 1999 General Elections Law was decided by the Golkar Party, the United Development Party (PPP), the Indonesian Democratic Party (PDI), and the Indonesian Armed Forces/the Indonesian Police Faction in the People's Legislative Assembly as a result of the 1997 General Elections. This implies that the ET provision was not decided by the 1999 General Elections participants. Likewise, the provision to raise and lower ET in the

General Elections Law is construed by parties in parliament, while in fact there are many political parties outside the parliament. Second, ET requires political parties to change their names, symbols, and other related identifications in order to advance in the general elections which means that the political parties have been forced to change their names, symbols, and other related identifications which in fact represent the philosophy, ideology and historical values of a party. Hence, technical requirements have taken over issues which are more philosophical, ideological and substantive

- Whereas according to the expert, there are other alternatives to ET, for instance first, by means of a provision which requires political parties as general elections participants to deposit a certain amount of fund (financial instrument) and second, parties which do not reach the parliamentary threshold but are wishing to participate in the following general elections must be re-verified by the General Elections Commission (KPU) as it is the case with new political parties without having to change their names, symbols, or any other identifying attributes as well as other alternatives to ET which evidently cause political parties to lose their identities;
- Whereas based on a survey, the behaviors of our constituents are still fluctuating, the existence of ET will thus cause many political parties not yet familiar to the constituents to die young, while in fact all of us wish for

our political parties to be deeply rooted in the heart of the Indonesian politics for even hundreds of years whenever possible;

**[3.13]** Considering whereas the Government has presented written and oral statements which are completely described in the Principal Case, which in essence state the following matters:

- a. Whereas according to the Government, a political party which has fulfilled the requirements to be authorized as a private legal entity by the Department of Law and Human Rights (formerly known as the Department of Justice), although it is not eligible to participate in general elections, may still carry out its objectives, functions, rights and responsibilities as a political party with neither reduction nor hindrance because the objectives and functions of political parties as stated in the Political Parties Law are not only in order to participate in general elections;
- b. Whereas the political parties which do not fulfill ET as stipulated in Article 9 Paragraph (1) of the General Elections Law may still participate in the following general elections upon the fulfillment of requirements as stipulated in Article 9 Paragraph (2) of the General Elections Law, and hence the Petitioners' rights are not at all denied;
- c. Whereas according to the Government, the reduction or total elimination of the provision regarding the minimum electoral threshold should be strived for through legislative review, since there are also parties amongst



- the Petitioners which have representatives in the People's Legislative Assembly. Thus, the Government does not agree with the Petitioners' reasons and arguments which state that the political parties which are still in existence and have the status of legal entity must be registered in the following general elections without having to undergo the implementation stages of the general elections, because such an action will imply that the Government grants special privileges to certain political parties and therefore denies the rights of other political parties;
- d. Whereas the provision of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are intended for the establishment of simple multiparty system for implementing the nation-oriented social and state objectives in order to create a stable government system. The *a quo* provision may also serve as a legitimate parameter to measure the public support towards political parties;
- e. Whereas the provisions of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law cannot be immediately considered as a discriminatory treatment because they are not based on differences in religion, nationality, race, ethnicity, group, level, social status, economic status, sex, language and belief (*vide* Article 1 Sub-Article 3 of Law Number 39 Year 1999 regarding Human Rights *juncto* Article 2 of the International Covenant on Civil and Political Rights), and hence they are not contrary to the 1945 Constitution;

**[3.14]** Considering whereas the People's Legislative Assembly (DPR) has presented written and oral statements as completely described in the Principal Case, and which in essence elucidate the following matters:

- a. Whereas indeed the 1945 Constitution guarantees every Indonesian citizen's rights and freedom of association and assembly as well as the freedom of expression of thought, for example by forming a political party, however the 1945 Constitution has delegated further regulation to laws, one of them being the General Elections Law;
- b. Whereas based on Article 1 Paragraph (3) of the 1945 Constitution, Indonesia is a constitutional state, with all rights and responsibilities of citizens in national and state lives being accordingly guaranteed by the 1945 Constitution, including the ones spelled out in Article 27 Paragraph (1), Article 28A, Article 28C Paragraph (2), Article 28D Paragraph (1), Article 28G Paragraph (1), and Article 28I Paragraph (2), the implementation of which is regulated in various laws;
- c. Whereas the basic rights (the human rights) in the 1945 Constitution which constitute the legal bases for the Petitioners to express their objection towards Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are not of absolute applicability, because they are limited by the provisions of Article 28I Paragraph (5) and Article 28J Paragraph (2) of the 1945 Constitution;

- d. Whereas the Petitioners themselves actually comprehend the regulation on the electoral threshold in general elections regulations by referring to Sweden, Germany, the Netherlands, and New Zealand, because the aforementioned principle is applied to implement limitations on representatives, although the Petitioners considered the provisions of the General Elections Law are not appropriate because they prevent political parties more from participating in general elections than from sitting in the parliament. According to the People's Legislative Assembly, both electoral threshold and parliamentary threshold have essentially the same objective, namely to filter the number of interested parties, while the number of seats stipulated by law is limited. The ET provision is a clear and rational standard to measure the maturity level of political parties and to implement political education;
- e. Whereas the ET provision applied for political parties to participate in the following general elections also serves the function as a means for public supporters to evaluate the extent to which the vision and mission of a political party obtain appreciation and support from the general public;
- f. Whereas the provisions of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law do not deny the rights of political parties to participate in the following general elections, but are intended to regulate the requirements to be fulfilled by political parties to be eligible as participants in the following general elections and at the same time to

serve as a parameter for political parties as to how much they have gained the society's support which represents the legitimate existence of the aforementioned political parties;

- g. Whereas there are many arguments stating that total multiparty system is not compatible with presidential system, and thus the ET provision may serve as a tool to simplify political parties without repressing the Petitioners' freedom to exercise their constitutional rights by establishing new political parties or merging with other political parties;
- h. Whereas hence, the provisions of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are not contrary to the articles of the 1945 Constitution as argued otherwise by the Petitioners;

**[3.15]** Considering whereas based on the above, the Court declares its stand as follows:

- a. Whereas, as argued by the Petitioners, it is true that political parties occupy a strategic position in the Indonesian state life which is supported by Article 6A Paragraph (2) of the 1945 Constitution which reads, "*The pair of candidates for President and Vice President shall be proposed by a political party or a coalition of political parties participating in the general elections prior to the implementation of the general elections*" and Article 22E Paragraph (3) of the 1945 Constitution which reads, "*Participants of general elections for electing members of the People's Legislative*

*Assembly and the Regional People's Legislative Assembly shall be political parties*". Even so, the implementation must still be regulated in or by law, as stated in Article 6A Paragraph (5) of the 1945 Constitution, "*The procedures for electing the President and the Vice President shall be further regulated by law*" and according to Article 22E Paragraph (6), "*Further provisions on general elections shall be regulated by law*". This implies that the legislators have the authority to regulate issues concerning general elections and presidential elections, insofar that the laws regulating such matters are not contrary to the 1945 Constitution;

- b. Whereas the law mandated by Article 22E Paragraph (6) of the 1945 Constitution is the General Elections Law petitioned for judicial review by the Petitioners which among other things contains the provisions of Article 9 Paragraph (1) and Paragraph (2) which essentially relate to the requirements for political parties to be able to participate in the following general elections, namely that political parties must:
- 1) fulfill the electoral threshold (ET) provision set out in Article 9 Paragraph (1) of the General Elections Law;
  - 2) merge with other political parties if the ET provision is not fulfilled [Article 9 Paragraph (2) of the General Elections Law];
- c. Whereas the Court is of the opinion that the provisions of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are not

contrary to the articles of the 1945 Constitution, as otherwise argued by the Petitioners, namely because:

- 1) Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are not contrary to Article 27 Paragraph (1) of the 1945 Constitution regarding the equal position before the law and the government, since the *a quo* Article only contains objective requirements for all political parties without exception if they wish to participate in the following general elections and it does not lower the position of citizens before the law and the government, and in fact, as Indonesian citizens, the Petitioners should uphold such provision;
- 2) Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is not contrary to Article 28A of the 1945 Constitution regarding the right to life and to defend one's living because the provision concerning one's right to life as stated in Article 28A of the 1945 Constitution is intended for persons in the sense of natural persons (*natuurlijke persoon*), rather than for persons in the sense of legal entities (*rechtspersoon*). Hence, the juxtaposition of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law with Article 28A of the 1945 Constitution is not appropriate;
- 3) Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is not contrary to Article 28C Paragraph (2) of the 1945

Constitution regarding every person's right to improve himself/herself in striving for his/her rights collectively for building his/her society, nation, and state, since the *a quo* article does not hinder the Petitioners in striving collectively for building their society, nation, and state, including for participating in the following general elections, insofar as they comply with the provisions set out in the *a quo* article. In fact, if the provision of Article 9 Paragraph (2) of the General Elections Law is implemented, it is likely that the aforementioned collective struggle will create an even greater impact;

- 4) Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law is not contrary to Article 28G Paragraph (2) of the 1945 Constitution because the provisions set out in the aforementioned Article 9 Paragraph (1) and Paragraph (2) do not cause threats to the Petitioners' themselves, their families, honor, dignity and properties, and furthermore they do not diminish the feeling of security and do not create a threat of fear to do, or not to do something in relation to the Petitioners' existence as political parties;
- 5) Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law are not contrary to Article 28I Paragraph (2) of the 1945 Constitution regarding the right to be free from discriminatory

treatments because the aforementioned requirements to be able to participate in the following general elections apply to all political parties after having democratically passed the competition through general elections. Whether or not the ET provision is fulfilled as the requirements to participate in the following general elections depends on the relevant political parties and the constituents' support, and therefore it will not imply that the law is flawed if such requirements are not fulfilled. Such matter is also not discrimination according to the human rights perspective as intended in the Human Rights Law and the *International Covenant on Civil and Political Rights* (ICCPR);

- d. Whereas in addition, based on the General Elections Law, it is true that political parties which have obtained the a status as a legal entity according to the Political Parties Law cannot automatically participate in general elections, since they are still obliged to fulfill the requirements provided for by the General Elections Law, such as administrative verification and factual verification performed by the General Elections Commission (*vide* Article 7 of the General Elections Law), and hence the existence of political parties and the participation of political parties in general elections are two distinct issues and not to be confused. At the very least, such matters are the legal policy of the legislators and such policies are not contrary to the 1945 Constitution because in fact, the 1945 Constitution has in fact mandated the freedom for legislators to regulate



such matters, including the requirements to participate in the following general elections by means of the ET provision;

- e. Whereas the ET provision has been recognized since the 1999 General Elections which is set out in Law Number 3 Year 1999 regarding General Elections and which is further adopted in Law Number 12 Year 2003 regarding General Elections, which raises the ET from 2% (two percent) to 3% (three percent), and therefore the Petitioners should have understood well enough in the first place that the aforementioned ET provision is indeed a policy option made by the legislators in order to establish a simple multiparty system in Indonesia. According to the Court, such legal policy in the aspects of party-related issues and general elections is objective in nature, in the sense that it serves as a natural and democratic selection to simplify the multiparty system re-existing in Indonesia since the reform era, following the adoption of three-party system during the New Order era through forced merger of parties. In this matter, some parties amongst the Petitioners even participated in determining the quota of ET, and by participating in the 2004 General Elections, the Petitioners as a whole should have been fully aware that they have accepted the ET provision set out in the General Elections Law.
- f. Whereas it is true that generally, in many countries, ET does not serve as a requirement for political parties to participate in the following general elections, but *parliamentary threshold* (PT) does instead, which restricts a

political party to have its representatives in the parliament upon achieving a certain percentage (for instance 5% in Germany). However, whether to opt for the ET model or the PT one is an issue of policy option in the context of establishing strong party system and representative system in state administration and politics through democratic and constitutional measures;

- g. Whereas with respect to the Petitioners' argument stating that the compulsory merger for political parties which do not fulfill ET is extremely difficult, for example the Crescent Star Party (PBB) which strive for Islamic sharia in a democratic and constitutional manner and the Prosperous Peace Party (PDS) whose aspiration is Christianity, the Court is of the opinion that such a matter does not have any relationship with the constitutionality of Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law. Moreover, based on Article 10 Paragraph (2) of the Political Parties Law, every political party must be open for all citizens without discrimination;
- h. Whereas from the human rights perspective as argued by the Petitioners, the provisions set out in Article 9 Paragraph (1) and Paragraph (2) of the General Elections Law do not affect the right of association and assembly, including the right to establish a political party, and there is no element in such provisions which is discriminatory in nature, therefore the provisions of the *a quo* Article are not contrary to human rights;

#### 4. CONCLUDING OPINION

Article 9 Paragraph (1) and Paragraph (2) of Law Number 12 Year 2003 regarding the General Elections of the Members of the People's Legislative Assembly, the Regional Representative Council, and the Regional People's Legislative Assembly (State Gazette of the Republic of Indonesia Year 2003 Number 37, Supplement to the State Gazette of the Republic of Indonesia Number 4277) is not contrary to the 1945 Constitution. Hence, the arguments presented by the Petitioners are not sufficiently grounded and accordingly it must be declared that the petition of the Petitioners shall be rejected;

#### 5. DECISION

In view of Article 56 Paragraph (5) of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316);

##### **Passing the decision:**

**To declare that the Petition of the Petitioners shall be rejected;**

Hence the decision was passed in the Consultative Meeting of Constitutional Court Justices on Monday, October 22, 2007 by nine Constitutional Court Justices and pronounced in the Plenary Meeting open for public on this day, Tuesday, October 23, 2007, by us, Jimly Asshiddiqie as

Chairperson and concurrent Member, Abdul Mukthie Fadjar, H. Achmad Roestandi, Soedarsono, H.M. Laica Marzuki, H.A.S. Natabaya, Harjono, I Dewa Gede Palguna, and Maruarar Siahaan respectively as Members, assisted by Sunardi as the Substitute Registrar and attended by the Petitioners/their Attorney-in-Fact, the Government or its representative, and the People's Legislative Assembly or its representative.

CHIEF JUSTICE,

**SGD**

Jimly Asshiddiqie

JUSTICES,

**SGD**

Abdul Mukthie Fadjar

**SGD**

H. Achmad Roestandi

**SGD**

Soedarsono

**SGD**

H.M. Laica Marzuki

**SGD**

H.A.S. Natabaya

**SGD**

Harjono

**SGD**

I Dewa Gede Palguna

**SGD**

Maruarar Siahaan

SUBSTITUTE REGISTRAR,

