



**CONSTITUTIONAL COURT  
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
FOR CASE NUMBER 64/PUU-XX/2022**

**Concerning**

**Administrative Verification and Factual Verification of Political Parties**

- Petitioners** : **Partai Solidaritas Indonesia (PSI) represented by Giring Ganesha Djumaryo as General Chairman of PSI and Dea Tunggaesti as Secretary-General of PSI**
- Type of Case** : Judicial review of Law Number 7 of 2017 concerning General Election (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : Judicial review of Article 137 paragraph (1) of Law 7/2017 which has been interpreted based on the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 against Article 27 paragraph (1), Article 28D paragraph (3), and Article 28I paragraph (2) of the 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition entirely
- Date of Decision** : Wednesday, August 31, 2022
- Overview of Decision** :

Whereas the Petitioner is a political party represented by Giring Ganesha Djumaryo who holds the position as General Chairman and Dea Tunggaesti as Secretary General.

Whereas in relation to the authority of the Court, because the Petitioner's petitioned for a review of the constitutionality of the norms of law, *in casu* Article 173 paragraph (1) of Law 7/2017 which has been interpreted by the Constitutional Court through the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 against the 1945 Constitution, the Court has the authority to adjudicate the *a quo* petition.

Whereas regarding the legal standing of the Petitioner, the Court is of the opinion that regardless of whether the Petitioner's *a quo* argument is proven or not regarding the unconstitutionality of the norms of Article 173 paragraph (1) of Law 7/2017 as interpreted by the Court through the Decision of Constitutional Court Number 55/PUU-XVIII/2020, 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 sufficiently clear, the Court is of the opinion that there is no urgency and relevance to request the statements from any party as stated in Article 54 of the Constitutional Court Law.

Whereas before considering the subject matter of the Petitioner's petition any further, the Court shall first examine whether the subject matter of the Petitioner's petition could be submitted for review to the Court based on Article 60 of the Constitutional Court Law and Article 78 PMK 2/2021, because the Court had previously passed down a decision regarding the review over Article 173 paragraph (1) of Law 7 /2017 as interpreted by the Court through the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 namely in the Decision of the Constitutional Court Number 48/PUU-XIX/2021 which was declared in a plenary session open to the public on November 24, 2021, which verdict states to dismiss the petition of the Petitioner

entirely, and the Decision of the Constitutional Court Number 57/PUU-XX/2022 which was declared in a plenary session open to the public on July 7, 2022, which verdict states to dismiss the Petitioner's petition entirely.

Whereas there are differences in the legal basis for reviewing the petition for Case Number 48/PUU-XIX/2021 and Case Number 57/PUU-XX/2022 and the legal basis for reviewing the *a quo* petition, that is, the *a quo* petition is using Article 27 paragraph (1), Article 28D paragraph (3), and Article 28I paragraph (2) of the 1945 Constitution as the legal basis for review which were not used as the legal basis for reviewing the Case Number 48/PUU-XIX/2021 and Case Number 57/PUU-XX/2022. In addition, there are also differences in constitutional reasons in the petition for Case Number 48/PUU-XIX/2021, Case Number 57/PUU-XX/2022 and the constitutional reasons for the *a quo* petition. Therefore, irrespective of whether the Petitioners' petition is legally reasonable or not, based on the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 paragraph (2) PMK 2/2021, the *a quo* petition can be resubmitted.

Whereas in relation to the issue of political parties verification which participate in the Election as stipulated in Article 173 paragraph (1) of Law 7/2017, the Court has taken a stance in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020. In the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, there were 3 (three) Constitutional Justices who submitted dissenting opinions, namely Constitutional Justice Saldi Isra, Constitutional Justice Suhartoyo, and Constitutional Justice Enny Nurbaningsih. Furthermore, the three constitutional justices also submitted dissenting opinions in the *a quo* verdict.

However, despite the existence of such dissenting opinions in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 and the dissenting opinions in the *a quo* verdict, the Court considers that Article 173 paragraph (1) of Law 7/2017 which states "A Political Party that participates in the election is a political party that has passed verification by the KPU (General Election Commission)." is in contrary to the 1945 Constitution and does not have binding legal force as long as it is not interpreted, **"Political parties that have passed the verification for the 2019 election and has passed/fulfilled the Parliamentary Threshold requirement in the 2019 election, still shall be administratively verified but not factually verified, as for political parties that do not pass/do not meet the Parliamentary Threshold requirement, political parties that only have representation at the Provincial/Regency/Municipal DPRD (Regional People's Representative Assembly) level and political parties that do not have representation at the Provincial/Regency/Municipal DPRD level, shall be required to be re-verified administratively and factually, this is the same as the provisions that apply to new political parties"**.

Whereas because the substance being disputed by the Petitioner is essentially the same as what was decided by the Court in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, even though different legal basis for review and constitutional reasons are used, the principal and nature of what is being petitioned for in the *a quo* case is the same as the previous case, namely the question of verification of political parties, both administratively and factually. Therefore, the legal considerations in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020 shall *mutatis mutandis* apply to the legal considerations of the *a quo* petition

Considering whereas based on the entire description of the aforementioned legal considerations, the Court is of the opinion that the Petitioner's petition is legally unreasonable entirely. As for any other matters from the Petitioner's petition which are considered irrelevant, they shall not be considered any further by the Court.

Furthermore, the Court has passed down a decision which verdict states to dismiss the Petitioner's petition entirely.

### **Dissenting Opinion**

Whereas regarding the *a quo* decision of the Constitutional Court, 3 (three) Constitutional Justices, namely Constitutional Justice Saldi Isra, Constitutional Justice Suhartoyo, and Constitutional Justice Enny Nurbaningsih had dissenting opinions.

Whereas due to the legal considerations used to dismiss the *a quo* petition is *mutatis*

*mutandis* with the legal considerations in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, first we will also refer to some of the subject matter of our legal considerations in dissenting opinion section of the *a quo* Decision of Constitutional Court Number 55/PUU-XVIII/2020 with several emphasis, among others, as follows:

Whereas regarding the constitutionality of the provisions of Article 173 paragraph (1) of the General Election Law, based on the Decision of the Constitutional Court No. 53/PUU-XV/2017 it has been declared unconstitutional as long as the phrase "has been stipulated" so that if read in its entirety the norm of Article 173 paragraph (1) of the General Election Law becomes, "A Political Party that participates in the election is a political party that has passed verification by the KPU". The fundamental legal question that needs to be answered, by connecting the basic idea of legal consideration in the Decision of the Constitutional Court No. 53/PUU-XV/2017 to strengthen the design of a presidential government system, is whether the norm "A Political Party that participates in the election is a political party that has passed verification by the KPU" is in contrary to Article 28H paragraph (2) of the 1945 Constitution? In this regard, by referring to the subject matter of the Petitioners' petition, there are two derivative questions that also need to be answered, namely: (1) is it true that the Court's argument is no longer relevant, specifically the legal reason that the existence of the norms of Article 173 paragraph (1) of the General Election Law after the Decision of the Constitutional Court No 53/PUU-XV/2017 was built on the spirit of simplification of political parties in the general elections, namely by learning from the experience of 2019 election? Does a political party that participates in the election which has been verified to become a participant in the general election in one election period shall have the right to receive facilitation and special treatment as referred to in Article 28H paragraph (1) of the 1945 Constitution, so that they do not need to be verified again in the next election period?

Whereas before answering this question, we will first explain regarding the new construction of Article 173 paragraph (1) of the General Election Law that the Petitioner petitioned for. In this case, as set out in the *petitum*, the Petitioner petitioned for the *a quo* provisions to be interpreted as "A party that has passed the 2019 Election verification shall not be verified again for the next election". That means, the norm of Article 173 paragraph (1) of the General Election Law after the Decision of the Constitutional Court Number 53/PUU-XV/2017 states "A Political Party that participates in the election is a political party that has passed verification by the KPU" interpreted (conditionally constitutional) as "A party that has passed verification for the 2019 election shall not be verified again for the next election". By correctly and carefully interpreting the Petitioner's *petitum*, it becomes unclear what kind of political party is desired because it is no longer distinguished between the political parties that have not been registered with the ministry of law and human rights and the political parties that have been registered with the ministry of law and human rights, and the status of the political parties that participate in the election cannot be distinguished from political parties that have not been registered with the ministry of law and human rights as well as political parties that have been registered with the ministry of law and human rights. It means, the new meaning desired by the Petitioners eliminates, or at least obscures the status of political parties participating in elections as the important status of political parties in the 1945 Constitution. In addition, whether or not we realize, the new meaning desired by the Petitioners clearly eliminates the role of the KPU as an institution authorized to conduct verification of the political parties that participate in the election.

Whereas in connection with that, in relation to the provisions of Article 173 paragraph (1) of the General Election Law which requires that the political parties participate in the election are political parties that have passed the verification as election participants by the KPU, whether such political parties that have been verified as election participants shall also have the right to receive facilitation and special treatment not to be re-verified when they want to become election participants in the next election period? This question can be answered by answering a follow-up question, whether by continuing to

participate in the verification process as an election participant as stipulated in Article 173 paragraph (1) of the General Election Law, a political party that has been verified and declared to have passed the verification in the previous election shall lose its chance or was unable to achieve equality with other political parties?

Whereas the verification of the fulfilment of the requirements to become a political party that participates in the election as referred to in Article 173 paragraph (1) of the General Election Law does not at all cause any certain political party to lose their rights to achieve equality with other political parties. This is because all political parties depart and are at the same point when they want to become political parties that participate in the election again in the next election. By being in the same position and at the same point, all the burdens of fulfilling the requirements to participate in the election shall be equally borne by each political party. Thus, when verification of the fulfilment of the requirements is regulated as a condition for becoming a political party that participates in the election, there is absolutely no condition in which political parties that have been verified and passed as election participants lose or do not have the opportunity to get equality in their membership to become participants in the next election. . Therefore, the existence of Article 173 paragraph (1) of the General Election Law is completely irrelevant to be reviewed by using Article 28H paragraph (2) of the 1945 Constitution.

Based on the aforementioned description, in dissenting opinion section of the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, we have conveyed legal opinion regarding a number of legal questions that arose from the Petitioner's petition as follows:

**First**, The Petitioner in his petition argued that the Court's argument regarding the existence of the norms of Article 173 paragraph (1) of the General Election Law built on the spirit of simplification of political parties in elections is no longer relevant. Because, by learning from the experience of the 2019 Election, simplification of political parties has not occurred at all. Whereas the Petitioner's *a quo* arguments in principal wishes to delegitimize the Court's stance in the Decision Number 53/PUU-XV/2017, in which case in such consideration in relation to the norms of Article 173 paragraph (1) of the General Election Law, the Court expressly states as follows:

Whereas therefore, even though in the Decision of the Constitutional Court No. 52/PUU-X/2012, the Court states that verification shall be carried out on all political parties participating in the 2014 Election, but in order to avoid discriminative treatment to political parties participating in the 2019 Election, such considerations are also relevant and must be applied to every political party participating in the 2019 election. In fact, not only for the 2019 election, but also for the election of the members of the DPR and DPRD in the elections for the subsequent periods. Another fundamental reason for maintaining verification is to simplify the number of political parties participating in elections. Within the limits of reasonable reasoning, if in every election there is no verification to be carried out on all political parties participating in elections, then the number of political parties will tend to continue to grow. For example, in the 2019 Election, the political parties that have seats in the DPR are not verified and automatically become the participants in the election, therefore the number of participants in the 2019 Election will be all political parties that have seats in the DPR plus new political parties that have passed the verification. Likewise in the 2024 Election, if in the 2019 Election there are 12 political parties that have seats in the DPR, then the participants in the 2024 Election will be 12 political parties plus new political parties that have passed the verification, finally the number of the political parties participating in the Election will continue to grow and the big idea of simplifying political parties by tightening the requirements to participate in elections, which is a constitutional design of the 1945 Constitution, shall never materialize. This does not mean that the Court dismisses the constitutional right of citizens to form political parties as part of the right to associate and assemble which is guaranteed in the Constitution to participate in elections as long as all requirements are fulfilled and they have been declared to have passed the verification.

With regard to the legal considerations of the *a quo* Decision of the Constitutional Court

Number 52/PUU-X/2012, we have not changed our minds and believe that the consideration to maintain the verification mechanism of political parties participating in the elections for the purpose of simplification of political parties participating in elections has not lost its relevance. Although it was tested with the reality of the number of participants in the 2019 election, where the number of political parties participating in the election is more than the number of political parties participating in the 2014 election. This condition actually further strengthens the truth of the Court's legal opinion in the Decision of the Constitutional Court Number 53/PUU-XV/2017, which among others states that the verification could strengthen the readiness of political parties to become the participants in the election. Regarding the existence of verification of political parties participating in the elections shall guarantee the equal treatment for all political parties, the Court in the Decision of the Constitutional Court Number 53/PUU-XV/2017 Sub-paragraph **[3.13.7]** p. 114 among others consider the following:

...the same treatment between the members of the DPR and DPRD, all terms and conditions for political parties to participate in the election cannot be differentiated, whether due to the reason that such political parties have seats in the DPR or DPRD or because they have received support from the people through elections. Whereas the acquisition of votes and the seats by political parties in an election must be distinguished from the requirements that must be fulfilled by each political party as a participant candidate for the election. In the event that a certain political party wins votes and seats in an election, this does not mean that this is a reason for such political party to be directly declared to be a participant in the next election or to become a participant in the election without having to fulfil the verification requirements as a participant candidate for the election. However, the acquisition of votes and seats is an indicator of people's trust in political parties in an election, while the fulfilment of the requirements to become a participant candidate for election is an indicator that such political party is still eligible to participate in the contest to win the people's trust in the election.

The legal considerations of the *a quo* Decision of the Constitutional Court Number 53/PUU-XV/2017, clearly and unequivocally depart from the spirit: all political parties as participant candidates for the election must be treated equally. All forms of discrimination that may cause unfairness in the election must be eliminated. If a number of political parties receive discriminatory treatments, this would be in contrary to the will of the constitution that desires everyone to be treated equally, including political parties in relation to their participation in the election. Furthermore, in the consideration of dissenting opinion section of the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, we state that:

Therefore, the verification of political parties, both administrative and factual, as referred to in the Decision of the Constitutional Court Number 53/PUU-XV/2017 is part of the design to strengthen the presidential government system. To accept the Petitioner's logic by eliminating the need for verification, both administrative and factual, for all political parties wishing to participate in the election, clearly changes the true meaning of simplification of political parties in a presidential system of the government. On the contrary, in order to strengthen the presidential system of the government, the Court did not remove the verification requirement of all political parties wishing to participate in the election. By justifying that a number of political parties do not need to subject to verification, especially factual verification, as the participants for the election, it can change and move the simplification of political parties towards a different pendulum.

Whereas if we examine carefully and comprehensively the provisions and the legal arguments put forward in the *a quo* petition, for the existence of equal treatment for all political parties participating in the election, in addition to administrative verification, factual verification is a necessity. As argued by the Petitioners, factual verification is necessary because if factual verification is not carried out, the KPU as the administrator of the election will only rely on the truth and accuracy of the documents submitted by the political parties. By referring to empirical facts, for example in the 2019 verification, there is still the possibility of discrepancies between administrative data and the results of factual verification, both regarding the fulfilment of the number of members and regarding the accuracy of management in each region. In addition, the factual verification is necessary due to the division and formation of new regions or areas. In this

case, we agree with the perspective that factual verification is at the heart of the verification of political parties that participate in the election.

Whereas if we read carefully the substance and message of the Decision of the Constitutional Court Number 53/PUU-XV/2017, as one of the political infrastructures explicitly regulated in the 1945 Constitution, the action to abolish or remove any discriminatory treatment in the verification of political parties to become the participants in the election is a manifestation of basic fulfillment, namely "the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law" as set forth in Article 28D paragraph (1) of the 1945 Constitution.

Whereas because some of the arguments put forward by the Petitioner, which in principal, wishes that verification, both administrative and factual, must be applied equally to all political parties that will participate in the election, have objectives that are almost in line with the substance of the Decision of the Constitutional Court Number 53/PUU -XV/2017, such arguments also have the same perspectives as the position of our dissenting opinion in the Decision of the Constitutional Court Number 55/PUU-XVIII/2020, and such arguments are based on the efforts to fulfil the basic rights in Article 28D paragraph (1) of the 1945 Constitution, namely "the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law". Therefore, we remain in the same stance as our previous stance, namely that all political parties must subject to verification, both administratively and factually, to become the participants in the election. Therefore, the Court should have granted the *a quo* petition.