CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 73/PUU-XX/2022

Concerning

Presidential and Vice Presidential Nomination Thresholds Percentage *(Presidential Threshold)* by Political Parties and the Association of Political Parties

Petitioners	**:**	**Partai Keadilan Sejahtera (PKS) represented by Ahmad Syaikhu as President of the Central Executive Board of Partai Keadilan Sejahtera and Aboe Bakar as Secretary General of the Central Executive Board of Partai Keadilan Sejahtera, and Salim Segaf Aljufri**
Type of Case	**:**	Judicial review of Law Number 7 of 2017 concerning General Elections (Law 7/2017) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	**:**	Judicial review of Article 222 of Law 7/2017 against Article 1 paragraph (2), Article 27 paragraph (1), and Article 28D paragraph (3) of the 1945 Constitution.
Verdict	**:**	To dismiss the Petitioners' petition entirely
Date of Decision	**:**	Thursday, September 29, 2022

Overview of Decision :

The Petitioners are a political party (PKS) as Petitioner I and individual Indonesian citizen serving as the Chairman of the Shura Council (*Majelis Syura*) as Petitioner II who have the desire to nominate the cadres from their party to be the President in the upcoming Presidential and Vice Presidential General Election.

In relation to the authority of the Court, because the petition of the Petitioners is a review over Article 222 of Law 7/2017 against the 1945 Constitution, the Court has the authority to adjudicate the petition of the Petitioners;

Regarding the legal standing of the Petitioners, each of them basically argued that according to Petitioner I as a political party participating in the 2019 Election, the presidential threshold as stipulated in Article 222 of Law 7/2017 has made and has the potential to make Petitioner I to lose his constitutional rights as stated in Article 6A paragraph
(2) the 1945 Constitution because Petitioner I was unable to nominate his own presidential and vice-presidential candidates for the 2019 elections, which at that time Petitioner I had prepared his internal candidates for the president and vice president nominations. Meanwhile, according to Petitioner II, as an individual Indonesian citizen and one of the presidential candidates nominated by Petitioner I, he feels that the enactment of Article 222 of Law 7/2017 has violated his constitutional rights as granted by Article 6A paragraph (2) of the 1945 Constitution, namely to run in the Presidential and Vice Presidential Election in 2024, because the party supporting Petitioner II (PKS) does

not meet the presidential threshold to nominate the President and Vice President. Regarding the arguments of the Petitioners, the Court is of the opinion that based on the Court Decision Number 74/PUU-XVIII/2020 which declared in a session open to the public on January 14, 2021 and the Court Decision Number 66/PUU-XIX/2021 which was declared in a session open to the public on February 24, 2022, Petitioner I as a political party that has been determined to participate in the Election in the previous year by the General Election Commission (*Komisi Pemilihan Umum*) has been able to specifically describe the existence of a causal relationship that the enactment of the norms of Article 222 of Law 7/2017 is presumed to have harmed the constitutional rights of Petitioner I, therefore Petitioner I can explain the presumption that the loss of his constitutional rights has occurred with the enactment of the norms of the law being petitioned for a review. Therefore, the Court is of the opinion that Petitioner I has the legal standing to act as the Petitioner in the *a quo* petition. As for Petitioner II, as an individual Indonesian citizen who holds the position as Chairman of the Shura Council (Majelis Syura) of Partai Keadilan Sejahtera, he can prove that he has been supported by the political party participating in the election to nominate himself or be nominated as a presidential candidate or to include the supporting political parties to jointly submit the nomination, thus he is also able to specifically describe the existence of a causal relationship (*causal verband*) that the enactment of the norms of Article 222 of Law 7/2017 is presumed to have harmed the constitutional rights of Petitioner II as a citizen who wishes to be nominated as President. Therefore, the Court is of the opinion that Petitioner II also has the legal standing to act as the Petitioner in the *a quo* petition;

In relation to the subject matter of the Petitioners' petition which in principal argues that the existence of certain numbers of Presidential Threshold in Article 222 of Law 7/2017 has present injustices to the Petitioners and has actually created a legal deadlock. This legal deadlock occurred because of the closure of any line of justice to restore injustice and to provide justice for the petitioners. There is no other court forum and neither the legislative nor the executive branches of power are able and willing to become a forum for the efforts of the Petitioners to seek justice. Against the arguments of the Petitioners' petition, in principal the Court considers the following:

a. Whereas the *a quo* petition is sufficiently clear, then the Court is of the opinion that there is no urgency or need to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law.
b. Whereas the *a quo* case is not *ne bis in idem* with the previous case in relation to the review over Article 222 of Law 7/2017 since the basis of the review used in the *a quo* petition, namely Article 1 paragraph (2), Article 27 paragraph (1), and Article 28D paragraph (3) of the 1945 Constitution, some of the legal basis for the review have never been used as a basis for review in any other petition that has been decided by the Court. In addition, there are differences in the reasons for the petition of the Petitioners and the petitions that have been decided by the Court previously, among other things, the difference is because in this *a quo* case, in principal the Petitioners agree with the view of the Court which states that the presidential threshold is open legal policy, however it is necessary to provide a more proportional, rational and implementable limit on the numbers so as not to prejudice the constitutional rights of the Petitioners. Therefore, the Petitioners petition for the Court to narrow down the implementation restrictions of open legal policy through an interval range of threshold numbers, to balance the strengthening of the presidential system and democracy/people's sovereignty, as well as to determine the interval range of threshold numbers based on scientific studies through index calculations of Effective Numbers of Parliamentary Parties (ENPP), which such reason was never addressed in previous petitions. Therefore, the Court is of the opinion that there are differences in the legal basis for the review and the reasons used in the *a quo* petition with such petitions previously decided by the Court as stipulated in Article 60 paragraph (2) of the Constitutional Court Law *juncto* Article 78 paragraph

(2) PMK 2/2021, therefore the *a quo* petition may be re-submitted;

c. Whereas based on the Decision of the Constitutional Court Number 53/PUU- XV/2017 which was declared in a session open to the public on January 11, 2018, the Court has taken a stance regarding the threshold for the nomination of presidential and vice presidential candidates by any political party and coalition of political parties as stipulated in Article 222 of Law 7/2017. Likewise, in the Decision of the Court Number 52/PUU-XX/2022 which was declared in a session open to the public on July 7, 2022, the Court has reaffirmed its stance regarding the provisions of Article 222 of Law 7/2017.

d. Whereas based on the Court's stance regarding the threshold for the nomination of presidential and vice-presidential candidates by any political parties and coalitions of political parties as stipulated in Article 222 of Law 7/2017 contained in the aforementioned Decision, the Court is of the opinion that the provisions of Article 222 of Law 7/2017 which governs the threshold for the nomination of Presidential and Vice Presidential candidates by any political parties and coalitions of political parties, the Court remains in its stance that this is an open legal policy which are within in the authority of legislators. Whereas regarding the differences between the arguments in the *a quo* arguments of the Petitioners and the previous petition, namely those which in principal state that the provisions of presidential threshold must be given a more proportional, rational and implementable limits so as not to harm the constitutional rights of the Petitioners, the Court is of the opinion that this matter is not under the authority of the Court to assess and then to change the threshold numbers. This is because the Petitioners have also emphasized in their petition that the matter is an open legal policy, therefore such matter is under the authority of legislators, namely between the DPR (House of Representatives) and the President to determine further the needs of the legislative process regarding the threshold numbers. Therefore, regarding to the arguments of the Petitioners who petition for the Court to narrow down the implementation restrictions of open legal policy through an interval range of threshold numbers, to balance the strengthening of the presidential system and democracy/people's sovereignty, as well as to determine the interval range of threshold numbers based on scientific studies through index calculations of Effective Numbers of Parliamentary Parties (ENPP), in principal, the Court appreciates any form of scientific study that will be used by legislators in determining the threshold for the nomination of Presidential and Vice Presidential candidates by any political parties and coalitions of political parties. However, this is not within the jurisdiction of the Court to decide. Therefore, based on the aforementioned description of the legal considerations, the Court is of the opinion that the argument of the Petitioners is legally unreasonable, and the Court has passed down a decision which verdict is to dismiss the petition of the Petitioners entirely.

Concurring Opinion

Regarding the *a quo* verdict there were concurring opinions from the two Constitutional Justices, namely Constitutional Justice Suhartoyo and Constitutional Justice Saldi Isra, each of which in principal stated that Constitutional Justice Suhartoyo remained in the stance of the previous decisions that the percentage in presidential threshold is not appropriate. Meanwhile, Constitutional Justice Saldi Isra argued that in the context of being a temporary way out of the deadlock on protecting the citizens' constitutional rights in submitting the presidential and vice-presidential candidates which was hampered due to the high percentage threshold for presidential and vice-presidential nominations in Article 222 of the General Election Law so as to allow for a more diverse the presidential and vice presidential representatives, the percentage of "middle way" chosen by the Petitioners deserves a special appreciation. However, even though it deserves a special appreciation, the percentage interval of 7% (seven percent) to 9% (nine percent) of DPR (House of Representatives) seats as initiated by the Petitioners has several constitutional issues, especially when being correlated with the constitutional

norms, *in casu* norm of Article 6A paragraph (2) of the 1945 Constitution. Whereas the only way to maintain the "spirit" of Article 6A paragraph (2) of the 1945 Constitution is to eliminate or declare the threshold regime unconstitutional for the nomination of presidential and vice-presidential candidates. As long as the norms of the law maintain and use a certain percentage, there shall also be a violation of Article 6A paragraph (2) of the 1945 Constitution. In this case, I feel the need to emphasize, Article 6A paragraph (2) of the 1945 Constitution only recognizes a single limitation, namely political parties participating in general elections and political parties not participating in the general election. As long as a political party passes and is declared as a participant in the general election, there is no other choice, such political party is able nominate a pair of presidential and vice-presidential candidates. Therefore, the percentage interval of 7% (seven percent) to 9% (nine percent) of DPR (House of Representatives) seats as argued by the Petitioners is entirely legally unreasonable.