CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 114/PUU-XX/2022

Concerning

Constitutionality of the Open Proportional Electoral System

Petitioners	:	**Riyanto et al.**
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	:	Article 168 paragraph (2), Article 342 paragraph (2), Article 353 paragraph (1) letter b, Article 386 paragraph (2) letter b, Article 420 letter c and letter d, Article 422, and Article 426 paragraph (3) of Law 7/2017 are contrary to Article 1 paragraph (1), Article 18 paragraph (3), Article 19 paragraph (1), Article 22E paragraph (3), Article 28D paragraph (1) of the 1945 Constitution
Verdict	:	**On Preliminary Injunction:** To dismiss the Petitioners' petition for preliminary injunction **On the Merits:** To dismiss the Petitioners' petition entirely
Date of Decision	:	Thursday, June 15, 2023
Overview of Decision	:	

The Petitioners are citizens who are active voters in general elections and have interests in the presence of the public representatives who genuinely care about the public when elected as members of the House of Representatives (DPR) and the Regional Legislative Council (DPRD). In the Petitioners' opinion, the norms of Article 168 paragraph (2) of Law 7/2017, which in essence provides the system of general election for the DPR and the DPRD members using the open list proportional system, are contrary to the 1945 Constitution. This is because the open list proportional system has endangered the Unitary State of the Republic of Indonesia (NKRI) and damaged the state ideology of Pancasila, distorted the role of political parties, created candidates for the DPR/DPRD members who are pragmatic and do not represent political parties and even undermined the consolidation of political parties. In addition, the system has expanded money politics practices and criminal acts of corruption, made it difficult for women to be elected and represented in legislative bodies, created complications for

administrators and elections, and significantly increased the state budget. For this reason, the constitutional system of general election for the DPR and the DPRD members is a closed-list proportional election system. As for the norms of Article 342 paragraph (2), Article 353 paragraph (1) letter b, Article 386 paragraph (2) letter b, Article 420 letter c and letter d, Article 422, and Article 426 paragraph (3) of Law 7/2017, because they are logical consequences of Article 168 paragraph (2) of Law 7/2017, in the Petitioners' opinion, also are contrary to the 1945 Constitution.

Regarding the authority of the Court, because what is petitioned for by the Petitioners is a review of Law *in casu* Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Petitioners' legal standing as citizens who have constitutional rights guaranteed in Article 28D paragraph (1) of the 1945 Constitution, their constitutional rights have been potentially harmed because the open list proportional system creates unhealthy competition which focuses on aspects of popularity and capital power in the general election process. In addition, the norms in the *a quo* article have also harmed the Petitioners' constitutional rights because they have given rise to the individualism of politicians, caused internal conflicts and cannibalism within internal political parties as well as the loss of the role of political parties in describing political education to the public. In accordance with these explanations, the Petitioners have outlined the presumed potential loss of their constitutional rights. Thus, the Petitioners have been able to describe the existence of a causal relationship between the presumed loss of the Petitioners' constitutional rights and the enactment of the norms being petitioned for review so that if the petition is granted, such loss will not occur. In accordance with these considerations, regardless of whether the arguments in the Petitioners' petition regarding the unconstitutionality of the norms of the law being petitioned for review are proven or not, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Regarding the petition for preliminary injunction to prioritize the examination process and decide on the *a quo* petition, regardless of whether the *a quo* petition is granted and whether there is a petition for preliminary injunction from the Petitioners, the Court has automatically passed down a decision on the *a quo* petition before the stage of candidacy for the DPR and the DPRD members has completed. Thus, the Petitioners' petition for preliminary injunction is irrelevant for further consideration and therefore is legally unjustifiable.

Regarding the Petitioners' subject matter of the petition, before considering it further, the Court will first consider the following matters:

1. Whereas the DPR statements are actually statements given by the representative body as a unitary institutional view, not the view of factions. Because, fundamentally, the materials of DPR statements relate to the DPR's agreement when forming a law, including the materials contained in paragraphs, articles, and/or parts of the law which in the future are petitioned for review to the Court, so there should be no difference of views. In accordance to this, to the extent that the differences in views from the Indonesian Democratic Party of Struggle Faction (F-PDIP) in the DPR statements are internal problems of the DPR institution, the Court will consider the DPR institutional statements.
2. Whereas regarding the objection from several Relevant Parties about the indications of differences in signatures on the Petitioners' petition and its revision, the Court considers that the objection should have been submitted early in the Relevant Parties' statements because this matter is part of the

petition which may be responded to by the Relevant Parties. Thus, because the issue was not submitted with the statement on the Petitioners' petition, in the Court's opinion, it should be resolved by the advocate's organization of the Petitioners' attorney. Moreover, pursuant to the Court's scrutiny, no evidence can convince the Court regarding the said differences in signatures.

Whereas after the Court carefully reads and examines the Petitioners' petition along with the letters/writings and experts evidence, as well as the submitted conclusions, the DPR statements, the President statements and the submitted conclusions, each Related Party's statements along with the letters/writings and experts evidence as well as the submitted conclusions, the subject matter of the Petitioners' petition rests on the norms of Article 168 paragraph (2) of Law 7/2017. The other norms are an elaboration of logical consequences and a further elaboration of the norms provided in Article 168 paragraph (2) of Law 7/2017. Therefore, by assessing and considering the constitutionality of the *a quo* norms of Article 168 paragraph (2), either directly or indirectly, the Court is at the same time evaluating and considering the norms of Article 342 paragraph (2), Article 353 paragraph (1) letter b, Article 386 paragraph (2) letter b, Article 420 letter c and letter d, Article 422, as well as Article 426 paragraph (3) of Law 7/2017 petitioned by the Petitioners.

Whereas before further considering the Petitioners' arguments, the Court will first outline the development of the provisions of general elections in all of the Indonesian Constitutions since the beginning of independence until the amendments to the 1945 Constitution made by the People's Consultative Assembly of the Republic of Indonesia from 1999 to 2002 as follows:

1) Whereas although there was no discussion regarding general elections and general election systems, in its development, the desire to carry out general elections emerged sometime after Indonesia's independence. However, the general election agenda under the government's political manifesto issued on 1 November 1945 as a follow-up to Vice President's Ruling Number X dated 16 October 1945 and the Government's ruling for all the people to establish political parties and at the same time confirm the time for holding the general election in January 1946, could not be realized because the option of defending the independence from all kinds of threats was much more critical.
2) Whereas even though Articles 35 and 57 of the 1949 RIS Constitution stipulated that there should be general elections, because the 1949 RIS Constitution did not last long, where it was only valid from 19 December 1949 to 17 August 1950, general elections were never held.
3) Whereas the 1950 Provisional Constitution (*Undang-Undang Dasar Sementara* or UUDS) also regulated general elections. During the Natsir Cabinet (1950-1951) and the Wilopo Cabinet (1952-1953), general elections could not be held due to the unstable political climate. Finally, after being planned since the beginning of independence, the first general election after Indonesia's independence could eventually be held during the Burhanuddin Harahap Cabinet in 1955. Not once, general elections were held twice to elect two different institutions, namely on 29 September 1955 to elect the DPR members and on 15 December 1955 to elect the Constituent Assembly members.
4) Whereas after the holding of the 1955 General Election, through the Decree dated 5 July 1959, President Soekarno dissolved the Constituent Assembly

and declared re-enactment of the 1945 Constitution. The re-enactment of the 1945 Constitution meant that the Constitution not regulating general elections was re-enacted. Pursuant to the empirical facts, general elections had not taken place since the return to the 1945 Constitution until the end of President Soekarno's reign (Old Order).

5) Whereas under the 1945 Constitution, general elections were held in 1971 and held periodically every five years starting in 1977, 1982, 1987, 1992, 1997, and except in 1999. General elections were held under Law Number 15 of 1969 concerning General Elections of Consultative/People's Representatives Body Members.
6) Whereas in the reform era, the 1999 General Election was held under MPR Decree Number XIV/MPR/1998 concerning Amendments and Additions to People's Consultative Assembly of the Republic of Indonesia Decree Number III/MPR/1988 concerning General Elections (MPR Decree XIV/MPR/1998), in which 48 (forty-eight) political parties participated.
7) Whereas provisions concerning general elections in the amended 1945 Constitution can be found in Article 2 paragraph (1), Article 6A, Article 18 paragraph (3), Article 19 paragraph (1), Article 22E. In addition, they can be read in Article 8 paragraph (3) and Article 24C paragraph (1) of the 1945 Constitution. Regarding general elections, the provisions in the 1945 Constitution are regulated more broadly and comprehensively than the 1949 RIS Constitution and the 1950 Provisional Constitution (*Undang-Undang Dasar Sementara* or UUDS).

Whereas thus, the 1949 RIS Constitution, the 1950 Provisional Constitution, and the amended 1945 Constitution do not determine the general election system for electing the DPR and the DPRD members. Regarding these facts, the following points should be considered:

a) Whereas as systems, the open list proportional system and the closed list proportional system have their respective advantages/strengths and disadvantages/weaknesses. The advantages and disadvantages of each system are almost always closely related to its implications and application in holding general elections. This means that whatever type of system is chosen, the strengths and weaknesses of each system will always accompany it.
b) Whereas the original intent of the formulation of Article 22E paragraph (3) of the 1945 Constitution regulating that participants in the general election that elect the DPR and the DPRD members are political parties, in essence, is as follows. First, there was a desire of the majority of the legislators amending the 1945 Constitution to change the general election system from the closed list proportional system that was used in electing the DPR/DPRD members prior to the amendment to the 1945 Constitution, including in the 1955 General Election and the 1999 General Election. Second, the general election system that was often proposed by the legislators amending the 1945 Constitution was a system that was considered capable of placing the people/voters to elect candidates for the DPR/DPRD members directly. After reading the debates and discussions on amendments to the 1945 Constitution, the proposal for a system often put forward by some of the legislators amending the 1945 Constitution was the district system or plurality/majority system. If they must remain to stick with a proportional

system, most legislators amending the 1945 Constitution wanted an open-list proportional system. The idea or opinion to continue using the closed list proportional system appeared only once, which was meant to be temporary. Third, despite repeatedly being proposed to change the general election system, especially the proposal to use a district system and open list proportional system, the legislators amending the 1945 Constitution, in general, agreed that the general election system for the legislature legislative members, *in casu* the election of the DPR and the DPRD members is not stated or provided explicitly in the 1945 Constitution.

Whereas subsequently, the Court will consider the development of general election systems after the amendment to the 1945 Constitution, as follows.

a. Whereas provisions of general election in the laws after the amendment to the 1945 Constitution (1999-2002) include Law Number 12 of 2003 concerning General Elections of the House of Representatives, the Regional Representatives Council, and the Regional Legislative Council Members (Law 12/2003), Law Number 10 of 2008 concerning General Elections of the House of Representatives, Regional Representatives Council and Regional Legislative Council Members (Law 10/2008), and Law 7/2017.
b. Whereas Law 12/2003 became the legal basis for holding the general election for the DPR/DPRD members in the 2004 General Election. Although under Article 6 paragraph (1) of Law 12/2003, in the holding of the 2004 General Election, for the first time, the proportional system was practiced with an open list of candidates in determining the elected candidates under Article 107 paragraph (2) of Law 12/2003, the number of electoral divisors (BPP) must be achieved. Thus, due to the difficulty in achieving the BPP number, in the 2004 General Election, more than 99% of the elected candidates were determined in accordance with the “candidates order number” carried by political parties.
c. Whereas subsequently, in the holding of the 2009 General Election, Law 12/2003 was replaced with Law 10/2008. The general election system for the DPR/DPRD members was the same as the 2004 General Election, namely by using open candidates list proportional system [vide Article 5 paragraph (1) of Law 8/2010]. There was a slight difference in determining the elected candidates. Namely, they must obtain at least 30% of the BPP [vide Article 214 of Law 10/2008]. However, the provisions of Article 214 of Law 10/2008 had not been implemented because, through the Decision of the Constitutional Court Number 22-24/PUU-VI/2008 dated 23 December 2008, the Court annulled the norms in Article 214 of Law 10/2008, so that the determination of the elected candidates was no longer using a double standard, namely using the order number and vote acquisition of each candidate, but only in accordance with the most votes.
d. Whereas Article 5 paragraph (1) of Law Number 8 of 2012 concerning the General Elections of the House of Representatives, the Regional Representatives Council, and the Regional Legislative Council Members (Law 8/2012) as the legal basis for the general election for the DPR/DPRD Members in the 2014 General Election determined the use of proportional general election system with the open list of candidates. Likewise, in the 2019 General Election, the general election for the DPR/DPRD members also used an open list proportional system [vide Article 168 paragraph (2) of Law 7/2017];

e. Whereas the Decision of the Constitutional Court Number 22-24/PUU-VI/2008 only strengthens and reinforces the choice of the open list proportional general election system, namely by eliminating the requirement to obtain the BPP in determining the elected candidates. This means that the Court has yet to assess the constitutionality of the general election system provided in the law against the 1945 Constitution, including the general election system provided in Law 7/2017.

Whereas in accordance with the above considerations, the Court will then consider the Petitioners' subject matter, which in essence, consider that the open list proportional general election system is contrary to the 1945 Constitution, as follows:

That the Unitary State of the Republic of Indonesia is a form of government structure that is the state's goal and, at the same time, the ideals agreed upon by the founding fathers of the state since the formulation of the idea and plan for an independent Indonesia as explicitly stated in the Youth Pledge on 28 October 1928, the Second Paragraph of the Preamble of the 1945 Constitution, and after that reinforced in Article 1 paragraph (1) of the 1945 Constitution. The position of the Unitary State of the Republic of Indonesia is increasingly strengthened and made as a norm or article in the 1945 Constitution, which cannot be changed (unamendable article), as formulated in Article 37 paragraph (5) of the 1945 Constitution. Meanwhile, regarding the state ideology, as long as the general election system is fenced off with principles that can limit political actors so as not to undermine the state ideology, *in casu* the ideology of Pancasila, then it is not worried that such an election system will endanger the existence as well as the sustainability of the state ideology. Normatively, several laws have anticipated political actors not to threaten the existence as well as the continuity of the state ideology, for instance, the prohibition for political parties to adhere to principles that are contrary to the Pancasila and the 1945 Constitution [vide Article 9 of Law 2/2008], the requirements for candidates for the DPR/DPRD members to be loyal to the Pancasila, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and the Bhinneka Tunggal Ika [vide Article 241 paragraph (7) of Law 7/2017], and the Government's reason for submitting a petition for the dissolution of a political party to the Constitutional Court on the basis that it adheres to and develops teachings or understandings that are contrary to the *Pancasila*, the 1945 Constitution, the Unitary State of the Republic of Indonesia, and the Bhinneka Tunggal Ika [vide Article 40 paragraph (5) and Article 48 paragraph (7) of Law 2/2008]. With these anticipatory provisions, the choice of general election systems determined by the legislators will be able to anticipate all possibilities that could threaten the existence and the sustainability of the ideology of Pancasila and the Unitary State of the Republic of Indonesia. This means that whatever the choice of the general electoral system is, all political parties must have an ideology that aligns with the Pancasila and the 1945 Constitution.

Whereas under the provisions of Article 22E paragraph (3) of the 1945 Constitution, which positions political parties as participants in the general election for the DPR/DPRD members, within the limits of reasonable reasoning, the Petitioners' arguments which essentially state that general elections held in the open list proportional system have distorted the role of political parties, are something excessive. Because so far, political parties have and remain to have central roles with full authority in selecting and determining prospective candidates, including determining the order number of candidates for legislative members [vide Article 241, Article 243, and Article 246 of Law 7/2017]. Furthermore, the facts show that since the holding of general elections after the amendment to the 1945 Constitution, political

parties have become the only entry points for citizens who meet the requirements to be nominated as candidates for the DPR/DPRD members. The central roles of political parties can also be traced to managing the performance of elected DPR/DPRD members. In this case, political parties have the authority to at any time evaluate their members sitting in the DPR/DPRD through the interim replacement mechanism (PAW) or recall [vide Article 240 paragraph (1) and Article 356 paragraph (1) of Law 17/2014]. Not only in the PAW process but the central roles of political parties are also strengthened by the formation of factions for each political party that has seats in the DPR [vide Article 82 paragraph (3) of Law 17/2014] and factions in the DPRD in accordance with statutory provisions. Even empirically in accordance with the results of the general elections for the DPR members in 2009, 2014, and 2019, the open list proportional system remains to provide more significant opportunities for candidate number 1 and candidate number 2, whose determination of order number is the full authority of political parties. For this reason, in order for political parties to not lose their central roles, political parties should try to strengthen their institutional functions, primarily to channel the aspirations and interests of the community, including conducting political education, cadre systems, strengthening the internal cohesiveness of political parties, and recruiting quality members of political parties. Through these steps, political parties will eventually be able to produce political party cadres, candidates for the DPR/DPRD members, qualified candidates for leaders, and strengthen political party institutions. By doing this, political parties will gain recognition and appreciation from the public. This means that holding general elections using any system without maximum efforts to do these things will result in the existence of political parties remain to be questioned. Thus, the existence of political parties is not solely determined by the choice of general election systems.

Whereas if there are candidates for the DPR/DPRD members who are considered pragmatic and do not represent political parties, even damaging the consolidation of political parties as argued by the Petitioners due to the open list proportional system, political parties should not nominate them as candidates for the DPR/DPRD members. Even if they have already been nominated as prospective candidates, political parties can review or reconsider their candidacy before being set on the final list. In this context, as long as political parties make selections in accordance to their interests, ideology, vision-mission, and aspirations, there is no good reason to say that candidates for the DPR/DPRD members are trapped in pragmatism and do not represent political parties, even undermine the consolidation of political parties [vide Article 241 paragraph (1) of Law 7/2017]. Political parties can prevent this by ensuring that nominated candidates have track records of the capability to understand political parties' ideology, vision-mission, and ideals. Empirical facts so far have shown that many political parties are trapped more in considering figures' electability in determining candidates to win voters' votes than in considering the candidates' understanding of political parties' ideology, vision and mission, and aspirations. This means that the attitude of pragmatism, as argued by the Petitioners, is not only candidates' pragmatism but also triggered by some political parties' pragmatism. In such a position, regardless of which general election system is used, as long as political parties do not commit to elect candidates in accordance with the candidates' understanding of political parties' ideology, vision and mission, and aspirations, the potential pragmatism of candidates for members is difficult to prevent. Therefore, when nominating candidates for the DPR/DPRD members, political parties can use preliminary election mechanisms or other mechanisms carried out transparently and accountable to evaluate prospective candidates on their

understanding of political parties' ideology, vision-mission, and aspirations. Pre-election or other mechanisms can also determine candidates' order numbers on the candidate list. Besides that, those who may be nominated as candidates for the DPR members are those who have experience as political party administrators or have been registered and active as cadres for a certain period, for example, 3 (three) years before the start of the general election stage. Meanwhile, to be submitted as a candidate for DPRD members, one has to be registered and active as a cadre for a specific time, for example, 2 (two) years before the start of the general election stage. Implementing these conditions depends not only on political parties' awareness but also to be considered when in the future legislators schedule a revision of Law 7/2017, that these requirements will be included in one of the amended materials.

Whereas the choice of any general election system brings the same possibility of money politics practices, not only in general elections with the open list proportional system as argued by the Petitioners. In order to eliminate or at least minimize money politics practices in general elections, 3 (three) concrete steps should be taken simultaneously. First, political parties and candidates for the DPR/DPRD members must improve and strengthen their commitment to stay away from and even not to use and be trapped in money politics practices at every stage of general elections. Second, law enforcement must be carried out against every general election violation, especially violations related to money politics practices, regardless of the background of general election organizers and participants. Specifically, candidates for the DPR/DPRD members proven to be involved in money politics practices must be cancelled as candidates and processed legally under applicable statutory regulations. In fact, for a deterrent effect, the spread of money politics practices proven to be allowed by political parties can be used as a reason by the Government to apply for the dissolution of the political parties. Third, society needs to be given political awareness and education of not accepting and tolerating money politics practices because such practices clearly undermine democratic elections principles. Raising awareness is the responsibility of the government, the state, and general election organizers and a collective responsibility of political parties, civil society, and voters. Regarding legislators proven later to have committed criminal acts of corruption, these cases are not necessarily caused by the choice of general election systems, including the open list proportional system, but are also strongly influenced by the level of integrity of each legislative member. Thus money politics and corruption problems are more due to their structural nature, not merely caused by the choice of general election systems. This means that money politics practices in the holding of general elections and criminal acts of corruption cannot be used as a basis for directing accusations toward a particular electoral system.

Whereas the Petitioners' argument that the open list proportional system causes women legislative candidates to acquire fewer seats is different from the facts in the general election results in several general elections held after the amendment to the 1945 Constitution. Even though the minimum quota of 30% has yet to be reached, at least since the general elections use the open list proportional system, women DPR members tend to increase. Statistically, since the era of the open list proportional system, there were 101 women (18%) in the 2009 General Election, 97 women (17.3%) in the 2014 General Election, and 120 women (20.8%) in the 2019 General Election. However, regarding these percentages, the Court is aware that the proportional election system using an open or closed list is not the only factor determining women's electability. The electability is also influenced by other factors, for instance, political parties' internal recruitment patterns, political parties' awareness

of the importance of women's representation, and political education.

Whereas regarding the argument that the open list proportional system creates complications for administrators and voters, the Court is of the opinion that technical matters in the holding of general elections that may be improved and perfected should not set aside substantive and fundamental matters in fulfilling the principles of democratic general elections, especially in fulfilling the principle of the people's sovereignty contained in Article 1 paragraph (2) of the 1945 Constitution. While regarding the national budget, the significant increase in the use of it is not merely due to the choice of general election systems. An important note that needs to be paid attention to is how to “manage” the number of political parties participating in general elections and the efforts to increase the budget efficiency for holding general elections. In addition, legislators may consider voting methods in accordance with technological developments, for example, by e-voting, because the voting method using ballot papers is impractical and requires a long counting time and increasing budget.

Whereas regarding the meaning of Article 22E paragraph (3) of the 1945 Constitution, which is often interpreted as the closed list proportional system, systematic interpretation can also be used instead of using the original intent. In this case, at least in giving meaning to Article 22E paragraph (3) of the 1945 Constitution, the norms contained in Article 1 paragraph (2) of the 1945 Constitution must be linked. The Court's stance in linking Article 22E paragraph (3) of the 1945 Constitution with Article 1 paragraph (2) of the 1945 Constitution must be considered systematically because in discussions on general elections and general election systems when the 1945 Constitution was amended, the principle of the people's sovereignty is almost always an integral part of the discussion of general elections. This means that if Article 22E paragraph (3) of the 1945 Constitution in determining the general election system is interpreted as preventing voters from being able to make their choices so that the election of candidates is determined entirely by political parties, then this would deny the meaning of the people's sovereignty in Article 1 paragraph (2) of the 1945 Constitution. Conversely, suppose voters fully determine the electability of candidates. In that case, this will deny the roles of political parties as general election participants with the authority to nominate candidates for the DPR and the DPRD members. Thus the open list proportional general election system is closer to the general election system desired by the 1945 Constitution. However, conceptually and practically, whatever electoral system legislators choose, whether an open list or closed list proportional system or even a district system, it remains to have its advantages and disadvantages. Therefore, as a choice for legislators, it remains open to adapting to the dynamics and needs of holding general elections. In this case, if in the future improvements are to be made to the current system, legislators must consider several things, among others, namely: (1) not to make changes too often, so that certainty and stability can be established on the choice of a general election system; (2) the possibility to make changes should remain to be placed in order to perfect the ongoing general election system, primarily to cover the weaknesses found in the holding of the general election; (3) the possibility of changes should be made earlier before the beginning stage of the holding of general elections, so that there is enough time to perform simulations before the changes are effectively implemented; (4) the possibility of constant change must maintain balance and continuity between the role of political parties as stipulated in Article 22E paragraph (3) of the 1945 Constitution and the principle of the people's sovereignty as stipulated in Article 1 paragraph (2) of the 1945 Constitution; and (5) when changes are made, all parties that have an interest in the holding of general elections are involved by the implementation of meaningful public

participation principle.

Whereas in accordance with the considerations of the implications and implementation of the open list proportional general election system as well as the original intent and the constitutional interpretation of general elections and general election systems as thoroughly described above, the Petitioners' arguments, which essentially state that the open list proportional system as specified in the norms of Article 168 paragraph (2) of Law 7/2017 is contrary to the 1945 Constitution, are entirely legally unjustifiable. Therefore, regarding the constitutionality of the norms in Article 342 paragraph (2), Article 353 paragraph (1) letter b, Article 386 paragraph (2) letter b, Article 420 letter c and letter d, Article 422, Article 426 paragraph (3) of Law 7/2017 which is a logical consequence and a further elaboration of the norms stipulated in Article 168 paragraph (2) of Law 7/2017, has automatically been answered so that it becomes irrelevant for further consideration.

Accordingly, the Court subsequently passes down a decision in which the verdict is as follows:

On Preliminary Injunction:

To dismiss the Petitioners' petition for preliminary injunction.

On the Merits

To dismiss the Petitioners' petition entirely.

DISSENTING OPINION

Whereas regarding the *a quo* Decision of the Constitutional Court, Constitutional Justice Arief Hidayat expressed a dissenting opinion with the following considerations:

Regarding changes in the Court's position and stance in the **Decision Number 22- 24/PUU-VI/2008**, despite the *a quo* case only relates to a partial matter in the General Elections Law, specifically the determination of elected legislative candidates, in my opinion, it is essential to describe the changes in the Court's position and stance in several previous cases, namely:

1. **In the case of Simultaneous Elections** (Decision Number 14/PUU-XI/2013, which states that Legislative General Elections and Presidential General Elections are held simultaneously, has changed the Court's position and stance in Decision Number 51-52- 59/PUU-VI/2008 which states that the holding of Legislative General Elections and Presidential General Elections severally is a constitutional convention and therefore is considered constitutional).
2. **In the case of Political Parties verification** (Decision Number 55/PUU-XVIII/2020, which states that Political Parties passing the Parliamentary Threshold and having representatives in the DPR RI do not need factual verification, has changed the Court's position and stance in Decision Number 53/PUU-XV/2017 which states that all political parties must undergo administrative and factual verification).
3. **In the case of quick count calculations** (Decision Number 24/PUU-XVII/2019, which considers that the criminal provisions for parties announcing the results of a quick count during the quiet period is not contrary to the 1945

Constitution has changed the Court's position and stance in Decision Number 24/PUU-XII/2014 which annulled the article regarding criminal provisions for anyone who announces the results quick count during the quiet period).

The changes in the Court's position and stance do not indicate the Court's inconsistency with its own decisions. However, **such changes are attempts by the Court so that the law can meet human needs, and the 1945 Constitution is realized as the living constitution adaptive and sensitive to the times and changes in society**. Moreover, Indonesia does not adhere to legal traditions of common law subject to the doctrine of *stare decicis* or the binding force precedent. Even countries that adhere to the doctrine of *stare decicis*, like America and England, do not apply this doctrine absolutely. For example, the Supreme Court of the United States of America was originally of the opinion that the separation of schools in accordance with skin colour is not contrary to the Constitution as long as it was carried out in accordance with the principle of separate but equal, as decided in the case *Plessy v. Ferguson (1896)*. It changed its opinion by stating that the separation of schools in accordance with skin colour is contrary to the Constitution, as stated in its decision in *Brown v. Board of Education (1954)*. Likewise, when the United States Supreme Court changed its stance on the issue of the right to be accompanied by legal attorney for someone charged with committing a crime during the trial process in *Betts v. Brady (1942)*, the Supreme Court of the United States had held that the refusal of state courts to provide legal attorney for poor defendants was not unconstitutional. However, the Supreme Court changed its stance through its decision in *Gideon v. Wainwright (1963)*. It held the opposite opinion, namely that charging someone poor with committing a crime without being accompanied by a legal attorney is contrary to the Constitution. Therefore, Indonesia, as a country that adheres to legal traditions of civil law, and is not strictly bound by the principle precedence or stare decisis, certainly has no doctrinal or practical obstacles to changing its stances. As in the United States Supreme Court decisions, the most important thing is to describe why the changes in its stance must be made (**vide Decision Number 24/PUU-XVII/2019**).

In order to ensure that the 2024 Election stages, which have already been beginning, are not disrupted and to prepare adequate regulatory instruments, the election with **a limited open proportional system** will be implemented in the 2029 elections. Considering the entire description of the legal considerations above, I am of the opinion that **the petitioner's petition is partly legally justifiable and, therefore, must be granted in part**.