CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION
FOR CASE NUMBER 116/PUU-XXI/2023

Concerning

Conditional Constitutionality of Parliamentary Threshold

Petitioner	:	**The Association for General Elections and Democracy (Perludem) represented by Khoirunnisa Nur Agustyati as the Chairperson of the Perludem Foundation and Irmalidarti as the Treasurer of the Perludem Foundation**
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 414 paragraph (1) of Law 7/2017 is contrary to Article 1 paragraph (2) and paragraph (3), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution.
Verdict	:	**On the Preliminary Injunction:** To dismiss the Petitioner's petition for preliminary injunction **On the Merits:** 1. To grant the Petitioner's petition in part. 2. To declare that the norms of Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is constitutional to the extent that it remains in effect for the 2024 House of Representatives Election and is conditionally constitutional to be in effect for the 2029 House of Representatives Election and subsequent elections to the extent that changes have been made to the norms of parliamentary threshold and the number or percentage of parliamentary threshold guided by the predetermined requirements; 3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate; 4. To dismiss the remainder of the petition of the Petitioner.
Date of Decision	:	Thursday, February 29, 2024
Overview of Decision	:	

The Petitioner is the Association for General Elections and Democracy (Perludem) which is a Non-Governmental Organization or Civil Society Organization (*Lembaga Sosial Masyarakat* or LSM). In this case, it is represented by Khoirunnisa Nur Agustyati as the Chairperson and Irmalidarti as the Treasurer of Perludem. The Petitioner is of the opinion that Article 414 paragraph (1) of Law 7/2017 has, directly and indirectly, prejudiced or at least has the potential to prejudice the Petitioner's constitutional rights as a result of the determination of parliamentary threshold number having no transparent, rational, and open basis of calculation and are not in accordance with the principle of proportional election. The Petitioner believes that the *a quo* Article is not in accordance with the Petitioner's organizational objectives of realizing a fair, democratic, and proportional electoral system, thereby the activities that the Petitioner has carried out to achieve organizational goals become futile.

Regarding the Court's authority, because the Petitioner's petition is a judicial review of Law, *in casu* Article 414 paragraph (1) of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

The Petitioner's legal standing as a private legal entity is based on the 2011 Deed of the Perludem Foundation and the 2020 Deed of Statement of Decision of the Trustees of the Perludem Foundation, in this case, is represented by the Chairperson and the Treasurer. Regarding the constitutional injury, the Petitioner has described specifically his constitutional rights, which in the Petitioner's opinion, have been or at least are potentially injured according to reasonable reasoning due to the enactment of Article 414 paragraph (1) of Law 7/2017. The assumption of injury arises because the Petitioner's organizational goals cannot be achieved due to the obstruction of the democratic process resulting from the large threshold number so that many voters' votes do not convert into parliamentary seats. In addition, a causal relationship (*causal verband*) between the Petitioner's assumptions regarding the constitutional injury and the enactment of the norms of Article 414 paragraph (1) of Law 7/2017 being petitioned for judicial review has been proven. Therefore, if the *a quo* petition is granted by the Court, then the assumptions of such injury do not occur or at least will no longer occur. Thus, regardless of whether or not the unconstitutionality issues of the norms being petitioned for review are proven, there is no doubt for the Court that the Petitioner has the legal standing to act as a Petitioner in the *a quo* petition.

Regarding the petition for preliminary injunction to prioritize the review of the *a quo* petition due to the timeline of the 2024 General Election implementation and the importance of the substance of the petition in minimizing wasted votes in order to maintain the election principle of proportionality, the Court considers that the basis for the petition for preliminary injunction submitted by the Petitioner is related to the merits of the Petitioner's petition, so the use of it as the basis for the preliminary injunction is not appropriate. Therefore, the Petitioner's petition for preliminary injunction must be declared legally unjustifiable.

Before examining the constitutionality of Article 414 paragraph (1) of Law 7/2017, the Court considers that even though the substance of the norms whose constitutionality being reviewed is the same as the previous petitions which have been decided by the Court, namely the same parliamentary threshold and using the same bases of review, namely Article 1 paragraph (2) and paragraph (3), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, however, the reasons in *a quo* petition are different from that in the previous petitions (Constitutional Court Decision Number 3/PUU-VII/2009, Constitutional Court Decision Number 52/PUU-X/2012, Constitutional Court Decision Number 51/PUU-X/2012, and Constitutional Court Decision Number 56 /PUU-XI/2013). The reasons in *a quo* petition in principle question the calculation of parliamentary threshold number or percentage which has no clear theoretical and academic basis, so that the Petitioner believes that the norms of Article 414 paragraph (1) of Law 7/2017 are not constitutionally accountable and do not provide legal certainty. Pursuant to these facts, in the Court's opinion, the *a quo* petition is different from the previous petitions. In addition, there are also differences between the *petitum* formulation of the *a quo* petition and that of the previous petitions. Moreover, regarding the petitions for review of Article 414 paragraph (1) of Law 7/2017 which have been submitted and decided (Constitutional Court Decision Number 20/PUU-XVI/2018 and Constitutional Court Decision Number 48/PUU-XVIII/2020), the Court did not consider the subject matters of the petitions yet. Therefore, regardless of whether the *a quo* petition is substantially proven or not, under the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 PMK 2/2021 formally the *a quo* petition may be re-submitted.

Regarding the constitutionality of the threshold in general elections of House of Representatives members, including the number or percentage, the Court considers as follows:

1. Whereas the implementation of parliamentary threshold is essentially a method for simplifying political parties in the proportional electoral system in which many parties participate (multiparty) because it has long been commonly understood that if political parties are simplified then the Indonesian presidential system will be stronger and run effectively and stably;

2. Whereas as a country that adheres to a multiparty system, Indonesia has implemented a parliamentary threshold since the 2009 General Election. In this case, in the 2009 General Election, the parliamentary threshold number or percentage was at least 2.5% (two and a half percent) of the number of nationally valid votes [*vide* Article 202 paragraph (1) of Law 10/2008]; so that the 2009 General Election resulted in 9 (nine) political parties in the House of Representatives. Subsequently, in the 2014 General Election, the parliamentary threshold number or percentage was at least 3.5% (three and a half percent) of the number of nationally valid votes [*vide* Article 208 of Law 8/2012], which resulted in 10 (ten) political parties in the House of Representatives. Meanwhile, in the 2019 General Election, the parliamentary threshold number or percentage was at least 4% (four percent) of the number of nationally valid votes, resulting in 9 (nine) political parties in the House of Representatives. In accordance with this empirical perspective, it can be said that the increase in the number or percentage of the parliamentary threshold does not significantly reduce the number of political parties in the House of Representatives. Apart from the implementation of the threshold which can be considered ineffective in simplifying the number of political parties in the House of Representatives, the Court finds no adequate basis for methods and arguments in the determination of threshold number or percentage which always changes from election to election in accordance with changes in general elections law since the 2009 General Election until now, including the methods and arguments used in determining the minimum of 4% (four percent) of the number of nationally valid votes as specified in Article 414 paragraph (1) of Law 7/2017. In fact, referring to the statement of the legislators, namely the President and the House of Representatives, regarding the *a quo* petition, the Court finds no basis for rationality that such a number or percentage of at least 4% (four percent) as referred to was determined using clear calculation or rationality methods and arguments.

3. Whereas a parliamentary threshold clearly has an impact on the conversion of valid votes into the number of the House of Representatives seats, which is related to the proportionality of election results. This means that, when placed on the basis of the argument for the proportional electoral system adopted, the number of votes obtained by the political parties participating in a general election should be in line with the seats won in the parliament so that the election results are proportional. For this reason, the proportional election system should minimize wasted votes so that the election results are not categorized as disproportionate or disproportional. In the context of fulfilling the principle of proportionality, for example, in the 2004 General Election, the votes that were wasted or could not be converted into seats amounted to 19,047,481 valid votes or around 18% (eighteen percent) of nationally valid votes. Likewise, in the 2019 General Election, 13,595,842 votes could not be converted into the House of Representatives seats or around 9.7% (nine point seven percent) of nationally valid votes. Even though in the 2014 General Election there were "only" 2,964,975 votes that could not be converted into the House of Representatives seats, or around 2.4% (two point four percent) of nationally valid votes, in fact the number of political parties in the House of Representatives was greater than those of the 2009 General Election and the 2019 General Election results, namely 10 (ten) political parties [*vide* Data Processing Results, "The Counting Result of Valid Votes of Political Parties Participating in the 1955-2019 Legislative Elections", Statistics Indonesia]. This empirical perspective confirms that there has been a disproportion between voters' votes and the number of political parties in the House of Representatives during the implementation of the parliamentary threshold in the House of Representatives members' elections. These facts prove that the constitutional rights of voters that have been exercised by voters in elections are forfeited or not counted for the reason of simplifying political parties in order to create a strong presidential government system supported by effective representative institutions. Even though the principle of democracy places the people as the owners of sovereignty as referred to in Article 1 paragraph (2) of the 1945 Constitution, the parliamentary threshold policy has clearly reduced the people's rights as voters. The

people's rights to be elected are also reduced when they get more votes but do not become the House of Representatives members because their parties do not reach the parliamentary threshold.

4. Whereas, in the Court's opinion, the determination of the number or percentage of parliamentary threshold having no basis of adequate methods and arguments, has clearly led to disproportional election results due to the disproportionate number of seats in the House of Representatives to nationally valid votes. In fact, in accordance with the legal considerations of Constitutional Court Decision Number 3/PUU-VII/2009, as quoted above, the legislators' authority in determining the parliamentary threshold, including the number or percentage, is justifiable to the extent that it does not conflict with political rights, people's sovereignty and rationality. However, in fact, these principles have been violated, resulting in many voters' votes not being able to be converted into seats in the House of Representatives, thus creating a disproportion in the proportional electoral system adopted. Whether this is realized or not, it has directly or indirectly harmed the spirit of popular sovereignty, the principle of electoral justice, and fair legal certainty for all electoral contestants, including voters who exercise their rights to vote.

5. Whereas even though the Court has stated that the Petitioner's argument is basically understandable, the Court still maintains that the parliamentary threshold and/or the number or percentage of the parliamentary threshold are legislators' open legal policies to the extent that the determination uses an adequate basis of methods and arguments, to minimize disproportion between valid votes and the determination of the number of seats in the House of Representatives while strengthening the simplification of political parties. This means that the idea of simplifying political parties in the House of Representatives must not conflict with the need to maintain the principle of proportionality of election results in determining the number of seats in the House of Representatives. Therefore, the Court is of the opinion that the parliamentary threshold as provided by the norms of Article 414 paragraph (1) of Law 7/2017 needs to be revised immediately by paying serious attention to several things, including: (1) designed for sustainable use; (2) changes to such parliamentary threshold norms, including the number or percentage of parliamentary threshold, are made within the framework of maintaining the proportionality of the proportional electoral system, especially preventing a large number of votes that cannot be converted into the House of Representatives seats; (3) changes must be placed in order to realize the simplification of political parties; (4) the changes should have been completed before the start of the implementation stages of the 2029 General Election; and (5) the changes involve all groups who have an interest in the implementation of general elections by applying the principle of meaningful public participation, including involving political parties participating in general elections that do not have representation in the House of Representatives.

6. Whereas even though the Petitioner's arguments can be proven, the Petitioner's *petitum* cannot be granted by the Court because the formulation of the parliamentary threshold, including the determination of the number or percentage of the parliamentary threshold, is part of the legislators' policy. Therefore, the Petitioner's arguments are legally justifiable in part. Nevertheless, the *a quo* norms are still constitutional with respect to the holding of the 2024 House of Representatives general election. So, as a juridical consequence, the norms of Article 414 paragraph (1) of Law 7/2017 must be declared conditionally constitutional to the extent that it is still applied to the results of the 2024 House of Representatives General Election and is not applied to the results of the 2029 House of Representatives General Election and subsequent general elections unless changes have been made to the norms of parliamentary threshold and the number or percentage of parliamentary threshold.

Pursuant to the entire description of the considerations above, the Court considers that the provisions of the norms of Article 414 paragraph (1) of Law 7/2017 are clearly not in line with the principles of popular sovereignty, electoral justice, and legal certainty guaranteed in Article 1 paragraph (2), Article 22E paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution, as argued by the Petitioner. Therefore, the Petitioner's arguments are legally justifiable in part.

Accordingly, the Court subsequently passed down a decision in which the verdicts were as follows:

On the Preliminary Injunction:

To dismiss the Petitioner's petition for preliminary injunction

On the Merits:

1. To grant the Petitioner's petition in part.
2. To declare that the norms of Article 414 paragraph (1) of Law Number 7 of 2017 concerning General Elections (State Gazette of the Republic of Indonesia of 2017 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 6109) is constitutional to the extent that it remains in effect for the 2024 House of Representatives Election and is conditionally constitutional to be in effect for the 2029 House of Representatives Election and subsequent elections to the extent that changes have been made to the norms of parliamentary threshold and the number or percentage of parliamentary threshold guided by the predetermined requirements;
3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the remainder of the petition of the Petitioner.