



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 45/PUU-XXII/2024**

Concerning

Parliamentary Thresholds

Petitioner	: Didi Apriadi
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 (3) of Law 7/2017 as interpreted by the Constitutional Court in the Constitutional Court Decision Number 116/PUU-XXI/2023 is contrary to Article 28C paragraph (1) and paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution
Verdict	: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Tuesday, July 30, 2024
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who pays tax and is a Member of the Partai Persatuan Pembangunan (PPP) as stated in the Membership Card Number 3171.01.22041969.01.001 issued by the Central Leadership Council of PPP in the 2024 election where the Petitioner has cast his vote for the PPP, the Petitioner believes that his constitutional rights as guaranteed in Article 19 paragraph (1), Article 28C paragraph (1) and paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution are violated by the enactment of the norms of the article for which the judicial review is being petitioned.

Regarding the Court's authority, because the Petitioner petitions for a judicial review of the constitutionality of statutory norms, *in casu* Article 414 paragraph (1) of Law 7/2017 as interpreted by the Constitutional Court in the Constitutional Court Decision Number 116/PUU-XXI/2023 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Regarding the Legal Standing, according to the Petitioner, the Constitutional Court Decision Number 116/PUU-XXI/2023 which states that Article 414 paragraph (1) of Law 7/2017 is constitutional to the extent that it remains in effect for the 2024 Election of the House of Representatives and is conditionally constitutional to be applied to the 2029 Election of the House of Representatives and the subsequent elections to the extent that amendments have been made to the parliamentary threshold norms and the amount or percentage of the parliamentary threshold in accordance with the requirements as determined, is detrimental to the Petitioner's constitutional rights because the Decision did not apply to the 2024 election. Whereas the Petitioner's alleged constitutional loss is specific (special) and actual since the

norm of Article 414 paragraph (1) of Law 7/2017 applies to the 2024 Election of the House of Representatives, the norm regulates the threshold that a person must obtain at least 4% (four percent) of the total national valid votes to be included in determination of seats as members of the House of Representatives. In the 2024 Election of the House of Representatives. In connection with this, PPP has obtained 5,878,777 (five million eight hundred seventy eight thousand seven hundred seventy-seven) national valid votes from 84 (eight- four) electoral districts or equivalent to 3.87% of the total national valid votes and therefore the enactment of Article 414 paragraph (1) of Law 7/2017 has caused the Petitioner party (*in casu* PPP) to lose the right to obtain a seat as a member of the House of Representatives and also has caused the Petitioner's votes being forfeited and wasted. Therefore, by continuing to enforce the provisions of Article 414 paragraph (1) of Law 7/2017 for the 2024 Election of the House of Representatives, this has caused the Petitioner as an Indonesian citizen to fail in obtaining House of Representatives' seats for his Party (*in casu* PPP) in the 2024 election.

Pursuant to the above description, upon careful examination of the Petitioner's petition in describing his alleged constitutional loss and in linking it to the requirements for the Petitioner's legal standing as described above, and to the written/documentary evidence regarding the Petitioner's ownership of the electronic Resident Identity Card, the Court considers that the Petitioner is able to specifically describe his constitutional rights which he believes to have been violated by the enactment of the norm of Article 414 paragraph (1) of Law 7/2017 as interpreted in the Constitutional Court Decision Number 116/PUU-XXI/2023. the loss is deemed to have occurred because the constitutional rights of the Petitioner in the 2024 Election of the House of Representatives is forfeited and is not counted on the grounds of simplifying the political parties in order to create a strong presidential system of the government supported by effective representative institutions. The said alleged constitutional loss is specific in nature and there is a causal relationship (*causal verband*) between the alleged loss and the norm being petitioned for review, namely the norm of Article 414 paragraph (1) of Law 7/2017 as interpreted in the Constitutional Court Decision Number 116/PUU-XXI/2023, for which a petition is submitted. Therefore, pursuant to the aforementioned description, if the Petitioner's petition is granted, the Petitioner's alleged constitutional loss will no longer occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the a *quo* petition.

Whereas the Petitioner is questioning the determination of the size or percentage of the parliamentary threshold which he believes is not set based on adequate methods and arguments, it has clearly given rise to disproportionality in the election results because the number of seats in the House of Representatives is not proportional to the national valid votes. In this case, the threshold norm violates the principles of political rights, people's sovereignty, and rationality because it results in millions of votes not being able to be converted into seats in the House of Representatives, thus creating disproportionality in the proportional election system as adopted. This is contrary to the principle of democracy which places the people as the owners of sovereignty as referred to in Article 1 paragraph (2) of the 1945 Constitution and it has clearly reduced the people's rights as voters. Therefore, the determination of the acquisition of seats as members of the House of Representatives in the 2024 Election of the House of Representatives should be made in accordance with the number of votes obtained in the electoral district, instead of the parliamentary threshold. According to the Petitioner, the threshold in the norm of Article 414 paragraph (1) of Law 7/2017 violates the sovereignty of the people, the principle of electoral justice, and fair legal certainty for all election contestants, including the Petitioner who uses his right to vote to vote for PPP. Furthermore, by referring to the Constitutional Court Decision Number 3/PUU-VII/2009, the threshold policy is within the authority of the legislators to determine without interference from the Constitutional Court to the extent that it is not contrary to the principles of political rights, people's sovereignty, and rationality. The determination of a minimum percentage of 4% (four percent) has created a

disproportionality between the national valid votes and the number of seats in the House of Representatives for the 2024 election. Likewise, the people's right to be elected is also reduced when they obtain more votes, but they fail to become members of the House of Representatives because their party does not reach the parliamentary threshold in the 2024 election. Therefore, according to the Petitioner, there has never been a simplification of political parties in the House of Representatives, from the 2009 election to the 2014 election there was an addition of 1 (one) political party in the House of Representatives. In fact, the threshold percentage has increased from 2.5% in the 2009 election to 3.5% in the 2014 election. Therefore, it can be said that there is no correlation between the simplification of political parties in the House of Representatives and the determination of the parliamentary threshold. Pursuant to the said arguments, the Petitioner in his *petitum* petitions for the Court to declare norm Article 414 paragraph (1) of Law 7/2017 as interpreted in the Constitutional Court Decision Number 116/PUU-XXI/2023 is contrary to the 1945 Constitution and it does not have binding legal force for the 2024 Election of the House of Representatives.

In relation to the Petitioner's petition regarding the constitutionality of the norm of Article 414 paragraph (1) of Law 7/2017 as interpreted in the Constitutional Court Decision Number 116/PUU-XXI/2023, in principle it has a similar legal basis for argumentation to the one in the *a quo* petition, because they both have the same opinion that the threshold or threshold percentage in the norm of Article 414 paragraph (1) of Law 7/2017 is contrary to the 1945 Constitution. That means, the Petitioner in the *a quo* petition accepts all the Court's considerations regarding the unconstitutionality of the norm of Article 414 paragraph (1) of Law 7/2017. The fundamental difference between the new interpretation of the norm of Article 414 paragraph (1) of Law 7/2017 in the Constitutional Court Decision Number 116/PUU-XXI/2023 and the *a quo* petition is the implementation time of the said new interpretation. Regarding this, the Constitutional Court Decision Number 116/PUU-XXI/2023 shall apply to the 2029 Election of the House of Representatives and the subsequent elections. Meanwhile, in the *a quo* petition, the Petitioner petitions for the Court to grant a new interpretation that the norm of Article 414 paragraph (1) of Law 7/2017 as stipulated in the Constitutional Court Decision Number 116/PUU-XXI/2023 will come into effect starting from the 2024 General Election. Regarding the unconstitutionality review of the norm of Article 414 paragraph (1) of Law 7/2017 as petitioned by the Petitioner, the Court has considered this in Constitutional Court Decision Number 116/PUU-XXI/2023.

Pursuant to the above legal considerations, the petition questions the determination of the size or percentage of the parliamentary threshold which the Petitioner believes is not set based on adequate methods and arguments and has given rise to disproportionality between the election results, *in casu* the total national valid votes and the number of House of Representatives seats, as argued by the Petitioner in the *a quo* petition. For the above legal considerations, the Court has stated that in principle the norm of Article 414 paragraph (1) of Law 7/2017 remains constitutional in completing the stages of organizing the 2024 election of the House of Representatives. However, for the 2029 Election and the subsequent elections, amendments must be made to the said parliamentary threshold norm. Because the subject matter or main issue that is used as the reason for review in the *a quo* petition has been answered and confirmed as quoted above, then the legal considerations of the Constitutional Court Decision Number 116/PUU-XXI/2023 *mutatis mutandis* also apply to the legal consideration of the *a quo* petition.

In addition, regarding the Petitioner's petition for the new interpretation to the Constitutional Court Decision Number 116/PUU-XXI/2023 regarding Article 414 paragraph (1) of Law 7/2017 so that the Decision also applies to the 2024 Election, the Court needs to re-emphasize that the legislators need a comprehensive study using a strong methodological basis and arguments to be able to determine the existence of the intended parliamentary threshold. Therefore, sufficient time is needed to discuss the parliamentary threshold as part of efforts to realize people's sovereignty as stated in the norm of Article 1 paragraph (2) of the

1945 Constitution. Moreover, the Court does not have a strong and fundamental reason to shift and change its stance in the legal considerations of the Constitutional Court Decision Number 116/PUU-XXI/2023. In this case, the Court needs to emphasize that the new interpretation is irrelevant to be linked to the issue of discriminatory treatment as regulated in Article 28I paragraph (2) of the 1945 Constitution. Moreover, if the Court enforces the norm of Article 414 paragraph (1) of Law 7/2017 in accordance with the interpretation of the Constitutional Court Decision Number 116/PUU-XXI/20 to the 2024 Election, then within the limits of reasonable reasoning, this will damage the principle of fair legal certainty in completing the stages of organizing the 2024 Election. Therefore, the argument of the Petitioner is legally unjustifiable.

Pursuant to the entire description of the legal considerations above, it has been proven that the provisions of the norm in Article 414 paragraph (1) of Law 7/2017 as interpreted in the Constitutional Court Decision Number 116/PUU-XXI/2023 do not give rise to legal uncertainty and do not hinder the right to self-development, to advance oneself in fighting for his/her collective rights, and the right to receive protection against discriminatory treatment to build the society, the nation and the state as regulated in Article 28C paragraph (1) and paragraph (2), and Article 28I paragraph (2) of the 1945 Constitution, instead of as argued by the Petitioner. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioner's petition in its entirety.