CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA

SUMMARY OF DECISION FOR CASE NUMBER 62/PUU-XXII/2024

Concerning

Threshold for Nominating Pairs of Candidates for President and Vice President (Presidential Threshold)

Petitioners	:	**Enika Maya Oktavia, 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 222 of Law 7/2017 is contrary to Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution
Verdict	:	1. To grant the Petitioners' petition entirely 2. To declare that Article 222 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force 3. To order the Publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate
Date of Decision	:	Thursday, January 2, 2025
Overview of Decision	:	

Whereas the Petitioners are individual Indonesian citizens who were registered in the Permanent Voter List (DPT) in the previous general election and are currently active students who consider that the norm of Article 222 of Law 7/2017 violates the Petitioners' constitutional rights as voters because they have lost the opportunity to have a more diverse range of potential candidates for president in the election.

Whereas regarding the Court's authority, because the Petitioners' petition is a review of the constitutionality of statutory norms, *in casu* Article 222 of Law 7/2017 against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Whereas, regarding legal standing, the Court is of the opinion that the Petitioners have described their constitutional rights as having been violated by the enactment of the norm of Article 222 of Law 7/2017, which is being petitioned for review. The Petitioners' alleged constitutional loss is actual and specific, because the Petitioners' constitutional rights to vote in the Presidential and Vice Presidential Election has been limited by the norm of Article 222 of Law 7/2017, namely the limited alternative of pairs of candidates for President and Vice President offered to the Petitioners as voters registered in the DPT in the 2024 Presidential and Vice Presidential Election. In this regard, the Petitioners have demonstrated a causal relationship (*causal verband*) between the Petitioners' alleged constitutional loss and the enactment of the norm of Article 222 of Law 7/2017. Moreover, the right to vote and the right to be a candidate are fundamental constitutional rights for citizens. Suppose the right to vote is limited, *in casu* the limited pairs of candidates for president and vice president, due to restrictions on political parties to nominate pairs of candidates for president and vice president. Moreover, in fact, in the last few presidential and vice presidential elections, several political parties have dominated the nomination of pairs of candidates for president and vice president, resulting in limited choices for voters and limiting their constitutional rights. This is the basis for the Court to reconsider its stance in examining the Petitioners' legal standing in the petition *a quo*, compared to previous petitions. Therefore, if the Court grants the Petitioners' petition *a quo*, the alleged constitutional loss will not or at least will no longer occur. Thus, regardless of whether the unconstitutionality of the norm being petitioned for review is proven or not, the Court does not hesitate to declare that the Petitioners have the legal standing to act as Petitioners in the petition *a quo*.

Whereas even though the substance of the norm whose constitutionality is being reviewed is the same, namely the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) and the basis for review is also the same, namely Article 27 paragraph (1), Article 28C paragraph (2), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution, however, the reason underlying the petition *a quo* differ from those underlying the previous petitions. The reasons underlying the previous petition, as the Court understands and formulates, essentially consist of: (i) the reason underlying the petition that candidates for president and vice president be independent; (ii) the reason underlying the petition to provide each political party with equal opportunities in nominating pairs of candidates for president and vice president; (iii) the reason underlying the petition regarding simultaneous holding of elections; (iv) the reason underlying the petition to prevent a single pair of candidates for president and vice president; (v) the reason underlying the petition to agree with a presidential threshold, while questioning the presidential threshold percentage. The reason underlying the petition *a quo*, in essence, is the implementation of a minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) that is beyond the limit of open legal policy, which has violated morality, rationality, and injustice intolerable, and made it difficult for small parties to realize their aspirations directly in the presidential election, even though they have quality cadres. The nomination threshold provision has, structurally, created exclusivity in the nomination process and alienated voters from the democratic party itself. In addition, according to the Petitioners in the petition *a quo*, the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) was not intended by the constitutional framers and lacked firm academic grounding, given that elections were held simultaneously. With these facts, in the Court's opinion, the petition *a quo* differs from the previous petitions. Moreover, the *petitum* formulation in the petition *a quo* differs from those in the earlier petitions. In the petition *a quo*, the Petitioners petition the Court to declare that Article 222 of Law 7/2017 is contrary to the 1945 Constitution and has no binding legal force. Therefore, regardless of whether the petition *a quo* is proven or not, under the provisions of Article 60 of the Constitutional Court Law and Article 78 of Constitutional Court Regulation 2/2021, formally, the petition *a quo* may be resubmitted.

Whereas the regulation regarding the presidential threshold has been in place since the 2004 election, which allowed the people to directly elect the president and vice president. In this regard, the presidential threshold was previously regulated by Law 23/2003 and Law 42/2008, and is currently regulated by Law 7/2017, which is now in effect. However, to understand the presidential threshold, one should consider the reasons behind the amendments to the 1945 Constitution aimed at maintaining and purifying the presidential system. Regarding the framers' intention ("original intent") of Article 6 and Article 6A of the 1945 Constitution, through carefully examining the minutes of the deliberation on the amendments, the following points can be put forward:

First, there is a desire among the majority of those amending the 1945 Constitution to change the presidential and vice presidential elections system from indirect elections to direct presidential and vice presidential elections by the people without any intermediary institution. In this regard, the people directly elect a president and vice president on a single ticket.

Second, pairs of candidates for president and vice president are nominated by political parties or coalitions of political parties participating in elections. However, there was no further explanation regarding the definition of political parties participating in elections. Moreover, there are no views or opinions indicating that the phrase political parties participating in the election in question means political parties that participated in the previous election period or the period before the holding of presidential and vice presidential elections.

Third, there has never been any discussion about the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold), both the number of seats in the DPR (House of Representatives) and the valid national votes in the elections for DPR members, as a requirement that must be met by political parties or coalitions of political parties participating in elections to be able to nominate pairs of candidates for president and vice president. The only limiting provision discussed and agreed upon in the amendments to the 1945 Constitution was the eligibility requirement for the president and vice president, as stipulated in Article 6A paragraph (3) of the 1945 Constitution.

Fourth, provisions regarding delegation to be further regulated in laws apply only to the procedures for holding presidential and vice presidential elections, not to the requirements for nominating the president and vice president by political parties or coalitions of political parties participating in elections.

Fifth, different from the personal requirements for candidates for president and vice president as referred to in Article 6 paragraph (2) of the 1945 Constitution, which are indeed left for lawmakers to regulate in statutory provisions so that they can keep up with current developments.

Whereas the regulation on the presidential threshold in a Law, *in casu* Law 23/2003, is a government initiative proposal. The government proposed implementing a threshold for nominating the president and vice president because of a psychological interpretation that candidates for president and vice president should obtain significant support, indicating the people's power base, namely, the parties chosen or desired by the people. Therefore, the support projection of 20% of the power base is quite reasonable, expecting that around 5 (five) pairs of candidates will contest in the Presidential and Vice Presidential Election. In addition, given the stringent requirements for being elected as president and vice president as formulated in Article 6A paragraph (3) of the 1945 Constitution, the government believed that it would be very challenging and inefficient if the candidate support requirements were not in place at all. Furthermore, the minimum percentage threshold for nominating pairs of candidates for president and vice president (the presidential threshold) was an issue discussed during the formation of Law 7/2017. In this regard, the factions in the DPR were split into two (2) blocs. The first bloc, comprising the Democratic Party, PAN, Hanura Party, and Gerindra Party, sought to remove the

minimum percentage threshold for nominating pairs of candidates for president and vice president (the presidential threshold). Meanwhile, PDI-P, Golkar Party, Nasdem Party, PKS, PPP, and PKB proposed retaining the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold). However, the government's draft was ultimately adopted into Law 7/2017, namely 20% of the number of seats in the DPR or 25% of the national election votes.

Furthermore, the regulation on the presidential threshold in Article 222 of Law 7/2017 has been reviewed and examined for constitutionality 33 times by the Constitutional Court. Previously, the presidential threshold stipulated in Article 9 of Law 42/2008, through Constitutional Court Decision Number 51-52-59/PUU-VI/2008 dated February 18, 2009, was declared not to be contrary to the 1945 Constitution because it is an open policy mandated by Article 6A paragraph (5) and Article 22E paragraph (6) of the 1945 Constitution. Likewise, in Constitutional Court Decision Number 14/PUU-XI/2013 and Constitutional Court Decision Number 108/PUU-XI/2013, the Court reiterated that the norm of Article 9 of Law 42/2008 is an open legal policy, or an open delegation of authority that can be determined by the lawmakers or open legal policy. In the judicial review of Article 222 of Law 7/2017, the same stance was reinforced in the legal considerations of Constitutional Court Decision Number 49/PUU-XVI/2018 and the subsequent Court decisions.

Whereas because the practice of the Indonesian presidential system of government also uses a multi-party system, the Court needs to understand the practices of several countries that use a presidential system of government with a multi-party system, such as the United States, Brazil, Kyrgyzstan, Colombia, Mexico, Peru, and Uruguay. After studying the presidential systems in these countries, it was found that, even though they adopt a multi-party presidential system, they do not use a minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold). The threshold applied is only the minimum eligibility requirement for candidate pairs, which, in Indonesia, is set out in Article 6A, paragraph (3), of the 1945 Constitution. Meanwhile, the candidate requirements regarding the minimum percentage required to nominate a candidate are not found. The requirements are around personal requirements of presidential candidates, for example, regarding citizenship, domicile, or other individual requirements, that, in Indonesia, have been stipulated and delegated by Article 6 of the 1945 Constitution. This further confirms that the provision on the threshold for nominating the president is additional, in accordance with the lawmakers' interpretation and the political considerations agreed upon by the DPR and the Government.

Whereas after reading the reasons underlying the Petitioners' petition and observing developments since the enactment of the norm regarding the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold), which was last provided in the norm of Article 222 of Law 7/2017, the issue that the Court must consider: whether there is a strong reason for the Court to shift from its previous stance in examining the unconstitutionality of the norm of Article 222 of Law 7/2017, where the Court was of the opinion that the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) is a legal policy lawmakers. Moreover, in several previous decisions, the Court has held that the constitutionality of lawmakers' legal policies cannot be examined or reviewed unless the products of such legal policies clearly violate morality, rationality, and give rise to intolerable injustice, are contrary to the political rights and sovereignty of the people, exceed the lawmakers' authority and constitute an abuse of authority, and are clearly contrary to the 1945 Constitution. If this matter is related to the petition *a quo*, even though the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) was once regulated in Law 23/2003, Law 42/2008, and is currently regulated in Law 7/2017, and there are also several Court decisions stating that the

threshold is constitutional, the existence of the threshold, in fact, remains one of the central issues in the holding of presidential and vice presidential elections, which has never stopped being challenged by political parties, voters, politicians, and community groups concerned on the holding of democratic elections. It is recorded that 33 Court decisions have reviewed and examined the constitutionality of the norm of Article 222 of Law 7/2017, thereby, within certain limits, this fact can be interpreted as a depiction of the aspirations of voters, community groups, politicians and political parties that persistently and continuously challenge and review the validity of the constitutionality of the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) in the holding of presidential and vice presidential elections. This means that, regarding the threshold issue, if there is one of the reasons to make an exception, the Court may review the constitutionality of a legal policy, and this may also be the case if the Court wishes to shift from its previous stance.

Whereas by carefully reading the norm of Article 6A paragraph (2) of the 1945 Constitution textually, there are several phrases relevant to the petition *a quo*, namely the phrase "nominated by a political party or a coalition of political parties participating in elections," and the phrase "before the holding of the general election." Regarding the phrase "nominated by a political party or a coalition of political parties participating in elections," in the deliberation on the amendments to the 1945 Constitution, there was never any discussion about the requirement for political parties or coalitions of political parties participating in elections intending to nominate pairs of candidates for president and vice president to meet a certain percentage of the results of DPR members elections. Since there has been no discussion of such a percentage, it is clear there is no agreement on the threshold. Moreover, in the minutes of the deliberation on the amendments to the 1945 Constitution, there is the fact that the mention of "political parties or coalitions of political parties" is to anticipate the emergence of independent or individual candidates [*vide* Minutes of the BP MPR Meeting, Book Two, 2001, p. 342]. This means that, in the Court's opinion, the phrase "political parties or coalitions of political parties" may be considered a "middle way" between the desire to allow individuals to become candidates for president or vice president, and the desire that pairs of candidates for president and vice president be nominated only by the political parties that have the first and second most votes in the elections for DPR members. Thus, the nomination of pairs of candidates for president and vice president must be understood, interpreted, and positioned as a constitutional right of political parties participating in elections. In addition, according to the minutes of the deliberation on the amendments to the 1945 Constitution, there was no discussion of what was actually meant by "political parties participating in elections." In this regard, after the amendment to the 1945 Constitution, the meaning of political parties participating in elections is regulated by Law Number 12 of 2003 concerning General Elections for Members of the DPR, DPD, and DPRD (Law 12/2003). In this regard, Article 1 point 10 of Law 12/2003 states, "Political Parties Participating in Elections are political parties that have fulfilled the requirements as Election participants." Finally, the provision that is still in effect today, namely Article 1 point 29 of Law 7/2017 states, "Political Parties Participating in Elections are political parties that have fulfilled the requirements as Participants in Elections for DPR members, provincial DPRD members, and regent/municipal DPRD members." With this understanding, it can be seen that the choice to use the term "political parties participating in elections" are intended to make a difference from political parties that are not participating in elections. Meanwhile, regarding the phrase "before the holding of the general election," in the minutes of the deliberation on the amendments to the 1945 Constitution, no discussion was found regarding the phrase "before the holding of the general election." Because there has never been any discussion regarding the phrase "before the holding of the general election," it can be said that there is no substance that explains the meaning of the phrase in question. Moreover, in the deliberation on Article 6A paragraph (2) of the

1945 Constitution, no indication was found that the phrase in question was intended to refer to the results of the previous election for DPR members.

Whereas if the two phrases above are correlated to the rationality of the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) and the application of the results of the elections for DPR members as part of efforts to strengthen the presidential system of government, such an argument is open to review or reconsideration by the Court. Moreover, the latest fact is that the presidential and vice presidential elections will be held simultaneously with the elections for DPR members. Given this, the results of the DPR members' votes will coincide with those of the presidential and vice presidential elections. Likewise, suppose we use the results of the previous election for DPR members as the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold). In that case, a problem arises over how to ensure that political parties participating in the previous election for DPR members are still able to have seats or valid national votes at least equal to the number of seats or valid national votes in the election period in question, or when the election is held. The next issue is, what if the number of seats or valid national votes obtained during the election period in question or when the election is held is lower than the results of the previous election, or what if there is a fact that political parties that nominate the pairs of candidates for president and vice president using the results of the previous election for DPR members do not obtain any seats in the DPR in the election period in question or when the election is held. In fact, within the limits of reasonable reasoning, by using the results of the previous election for DPR members, it is still possible that the political parties nominating the pairs of candidates for president and vice president are no longer able to participate in the elections in the relevant period or when the election is held. All of these problems are likely to occur because the political dynamics from one election period to another may change drastically. Therefore, it is difficult to maintain the rationality of using the results of the previous elections for DPR members as a basis for nominating pairs of candidates for president and vice president for the relevant period or when the election is held. This means, in simple terms, for example, in the context of the 2029 General Election, how to maintain the validity of the rationality of using the results of the 2024 elections for DPR members to nominate pairs of candidates for president and vice president in the 2029 General Election. Moreover, in fact, it has been proven that the existence of the norm of a minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) is not directly correlated with efforts to reduce the number of political parties participating in elections.

Whereas furthermore, by referring to the minutes of the deliberation on Article 6A paragraph (2) of the 1945 Constitution, the nomination of pairs of candidates for president and vice president by political parties or coalitions of political parties participating in elections is the constitutional right of the political parties concerned. In that context, the idea of simplifying political parties by using the results of the previous election for DPR members as the basis for determining the right of political parties or coalitions to nominate pairs of candidates for president and vice president constitutes a form of injustice. In addition, by using the results of the previous election for DPR members, whether realized or not, new political parties that are declared election participants would automatically lose their constitutional right to nominate pairs of candidates for president and vice president. Pursuant to these legal facts, if read carefully, the phrase "obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of the valid national votes in the previous DPR member election" in Article 222 of Law 7/2017, within the limits of reasonable reasoning, hinders and eliminates the constitutional rights of political parties participating in elections that do not have a percentage of valid national votes or a percentage of the number of seats in the DPR in the previous election to nominate pairs of candidates for president and vice president.

Whereas, regardless of the application of the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold), which has been proven ineffective in simplifying the number of political parties participating in elections, in the Court's opinion, the threshold number or percentage is not determined using clear calculations and strong rationality. One thing that the Court can understand is that such a number or percentage is more advantageous to large political parties, or at least provides an advantage to political parties participating in elections that have seats in the DPR. In that context, it is difficult to conclude that political parties that formulate the threshold number or percentage do not have a conflict of interest.

Whereas in the context of the substance/material of the formulation of Article 6A of the 1945 Constitution, whether realized or not, the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) has the potential to neglect the spirit of constitutional engineering as stated in Article 6A paragraph (3) of the 1945 Constitution, which implicitly opens up space for more than 2 (two) pairs of candidates for president and vice president. Within the limits of reasonable reasoning, the spirit of Article 6A paragraph (3) of the 1945 Constitution is to obtain a president and vice president who reflect and, at the same time, represent Indonesia's diversity. Besides, this tendency will lead to the loss of political rights and the sovereignty of the people due to restrictions on the right to vote in the presidential and vice presidential elections, stemming from the insufficient number of candidate pairs offered to voters. Therefore, the Court needs to place and, at the same time, give priority to guaranteeing the fulfillment of the constitutional rights of citizens (voters) to obtain more diverse candidates for president and vice president through a fair and open contestation, nominated by political parties or coalitions of political parties participating in elections as referred to in Article 6A paragraph (2) of the 1945 Constitution. As the protector of citizens' constitutional rights, the Court is of the opinion that the fulfillment of citizens' political rights, *in casu* the right to vote and the right to be a candidate, is far more important than the desire to simplify political parties in order to support the strengthening of the presidential system. This fulfillment becomes the Court's obligation in the context of protecting citizens' constitutional rights. Besides, providing a more diverse range of alternative pairs of candidates for president and vice president can be understood as part of efforts to realize the sovereignty of the people as stipulated in Article 1 paragraph (2) of the 1945 Constitution. In that context, any regulation that prevents the people from fulfilling their political rights, including the right to have a diverse range of pairs of candidates for president and vice president, can be considered inconsistent with the efforts to fulfill the principle of popular sovereignty as guaranteed in Article 1 paragraph (2) of the 1945 Constitution.

Whereas furthermore, by maintaining the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) and after carefully studying the direction of Indonesia's current political movements, it is clear that there is a tendency always to try to ensure that in every presidential and vice presidential elections there are only 2 (two) pairs of candidates for president and vice president. In fact, experience since the holding of direct presidential and vice presidential elections has shown that, with only 2 (two) pairs of candidates for president and vice president, society can easily become trapped in polarization (a divided society) that, if not anticipated, will threaten the integrity of Indonesia's diversity. In fact, if this regulation continues to be allowed, it is possible that the presidential and vice presidential elections will be stuck with a single candidate. At least, this tendency can be seen in the phenomenon of regional head elections, which, from time to time, are increasingly moving towards single-candidate or blank-vote elections. Therefore, allowing or maintaining the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) as regulated in Article 222 of Law 7/2017 opens the possibility or has the potential to hinder the implementation of direct presidential and vice presidential elections by the

people with many choices of pairs of candidates for president and vice president. If that happens, the true meaning of Article 6A paragraph (1) of the 1945 Constitution will be lost or at least shift from one of the aims to be achieved from constitutional changes, namely, perfecting the basic rules regarding guarantees for the implementation of people's sovereignty and expanding people's participation to be in line with the development of democracy.

Whereas, in addition to the considerations above, by referring to the theory and practice of the relationship between executive power holders and legislative power, the validity of the perspective that the legislative institution's support will strengthen the practice of the presidential system cannot always be proven. It is commonly understood that, in a presidential system, the legislative and executive institutions are 2 (two) separate institutions due to their naturally different mandates from voters or their different elections. In that context, even though the elections for legislative members and the president are held simultaneously, the people's mandate, or voters' mandate, is actually given to the two institutions separately. In contrast to the presidential system, elections in a parliamentary system are only intended to elect members of parliament. Because voters elect legislative or parliamentary members, the results of parliamentary elections determine the formation of the executive. Therefore, applying the minimum percentage threshold for nominating pairs of candidates for president and vice president (the presidential threshold) on the basis of vote or DPR seat acquisition actually forces the logic of the parliamentary system into the practice of the Indonesian presidential system. In the context of one of the major ideas of the amendments to the 1945 Constitution, namely, in order to purify the presidential system, this viewpoint is not in line with the initial spirit of the amendments to the 1945 Constitution. At least, this spirit is not in line with the aim of the amendments to the 1945 Constitution, namely, to perfect the basis for administering the state in a democratic and modern manner, including through a more assertive division of power, a system of mutual supervision and checks and balances. Not only in theory, but comparative studies also show that countries implementing a multi-party presidential system, like Indonesia, do not use a minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold). This is reinforced by studies in, for example, Latin American countries, most of which adopt a presidential system with a pluralistic party model, and do not apply a minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold). Not only that, the United States, a country often used as a reference and considered the most established in the practice of the presidential system, does not apply a minimum percentage threshold for nominating pairs of candidates for president and vice president (the presidential threshold).

Whereas the existence of Article 6A paragraph (2) of the 1945 Constitution cannot be separated from Article 6A paragraph (5) of the 1945 Constitution. Textually, Article 6A paragraph (5) of the 1945 Constitution provides that delegation is to be further regulated in laws. This means that, even if delegation is granted, the regulations made under the delegation in question must still be subject to the limitations required by the basic norm that grants the delegation to the law. In this regard, if we examine the minutes of deliberation on Article 6A of the 1945 Constitution, the delegation in question is intended only to regulate further procedures for holding the presidential and vice presidential elections, not the requirements for nominating pairs of candidates for president and vice president. Even if it is necessary to regulate requirements, the substance of these regulations must not be contrary to the requirements stipulated in the 1945 Constitution. In this regard, the provision of Article 6A paragraph (2) of the 1945 Constitution states *expressis verbis* that pairs of candidates for president and vice president are nominated by political parties or coalitions of political parties before the holding of the general election. This means that, to the extent that a political party has been declared a participant in the general election during the relevant period or when the election is held, the political party in question has the constitutional right to nominate a pair of candidates for president and vice president. In this

regard, the Court needs to emphasize that, even though the nomination of pairs of candidates for president and vice president is the right of political parties participating in elections, because this right concerns the interests of fulfilling the constitutional rights of citizens/voters (right to vote and right to be a candidate), then the constitutional rights of political parties participating in elections also contain obligations that must be implemented. Moreover, in fact, after 5 (five) direct presidential and vice presidential elections since 2004, it is sufficient for the Court to maintain the stance that the threshold for nominating pairs of candidates for president and vice president (presidential threshold) is an open legal policy of lawmakers. Moreover, there is another fact that is no less important, that several presidential and vice presidential elections show the dominance of certain political parties participating in elections in the nomination of pairs of candidates for president and vice president, which has an impact on restricting voters' constitutional rights to obtain adequate alternative pairs of candidates for president and vice president. Therefore, after carefully observing the dynamics and needs of state administration, the Court considers that this is the right time to shift from its previous stance.

Whereas in the Court's opinion, it has been proven that the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) as stipulated in Article 222 of Law 7/2017 is not only contrary to the political rights and sovereignty of the people but also violates morality, rationality and intolerable injustice, and is clearly contrary to the 1945 Constitution. In this regard, the Court has strong and fundamental reasons to shift from its stance in previous decisions. This shift in stance does not only concern the number or percentage of the threshold, but what is far more fundamental is that the threshold regime for nominating pairs of candidates for president and vice president (presidential threshold), whatever the number or percentage is, is contrary to Article 6A paragraph (2) of the 1945 Constitution. Thus, the Petitioners' argument stating that the minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) in Article 222 of Law 7/2017 is contrary to the 1945 Constitution and has no binding legal force, is legally justifiable.

Whereas even though the norm of minimum percentage threshold for nominating pairs of candidates for president and vice president (presidential threshold) in Article 222 of Law 7/2017 it has been declared to be contrary to the 1945 Constitution and has no binding legal force, in the country with a presidential system that, in practice, has grown within the framework of a pluralistic party model (multi-party system), it must still be taken into account that the potential number of pairs of candidates for president and vice president could be equal to the number of political parties participating in elections. In this regard, for example, if 30 political parties participate in an election, there is also the potential for 30 pairs of candidates for president and vice president to be nominated by those parties. Although the Court, in the decision *a quo*, has emphasized in the legal considerations above that the nomination of pairs of candidates for president and vice president is a constitutional right all political parties that have been declared as election participants in the relevant period or when the election is held, in the revision of Law 7/2017, the lawmakers can regulate so that there are not too many pairs of candidates for president and vice president because this could potentially damage the essence of the holding of direct presidential and vice presidential elections by the people. Even though constitutionally there is a provision in Article 6A paragraph (4) of the 1945 Constitution, which in essence anticipates the possibility of a second round of presidential and vice presidential elections, an excessive number of pairs of candidates for president and vice president does not guarantee a positive impact on the development and sustainability of the process and practice of Indonesian presidential democracy. Therefore, in the revision of Law 7/2017, lawmakers may carry out constitutional engineering by paying attention to the following matters:

1) All political parties participating in elections have the right to nominate pairs of candidates for president and vice president;

2) The nomination of pairs of candidates for president and vice president by political parties or coalitions of political parties participating in elections is not determined by the percentage of the number of seats in the DPR or the valid national votes obtained;

3) In nominating pairs of candidates for president and vice president, political parties participating in elections may form a coalition to the extent that the coalition of political parties participating in the election does not result in the dominance of political parties or coalitions of political parties, thus producing a limited number of pairs of candidates for president and vice president and limited choices for voters;

4) Political parties participating in elections that do not nominate pairs of candidates for president and vice president will be subject to sanctions in the form of a ban on participating in the next election period; and

5) The formulation of the intended constitutional engineering, including the amendment to Law 7/2017, involves the participation of all parties concerned in the holding of elections, including political parties that do not obtain seats in the DPR, in accordance with the principle of meaningful public participation.

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

1. To grant the Petitioners' petition entirely.
2. To declare that Article 222 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 contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force.
3. To order the Publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate.

Dissenting Opinion

Against the Court's Decision *a quo*, there are dissenting opinions from 2 (two) constitutional justices, namely Constitutional Justice Anwar Usman and Constitutional Justice Daniel Yusmic P. Foekh, who in principle state as follows:

Regarding the review of the norm of Article 222 of Law 7/2017, which has been petitioned for review 33 times, the Court in its previous decisions, in principle, emphasized that parties that had the legal standing to submit a petition for review of the norm *a quo* are: (i) political parties or coalitions of political parties participating in elections; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participating in elections to nominate themselves or be nominated as a pair of candidates for President and Vice President or to include supporting political parties to submit a petition jointly. Therefore, on this occasion, once again, we would like to emphasize our position and stance as constitutional justices that the norm of Article 222 of Law 7/2017 may be petitioned for review only by the parties as mentioned above. Thus, we are of the opinion that the Court should declare that the Petitioners do not have legal standing, and therefore the Petitioners' petition is inadmissible (*niet ontvankelijke verklaard*).