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Examining the Constitutional Court's Changing Approach to the Presidential Threshold

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Abstrak

Presidential Threshold merupakan isu ketatanegaraan yang terus menjadi perdebatan dalam sistem demokrasi Indonesia karena dianggap mencederai prinsip keadilan elektoral dan mempersempit pilihan rakyat dalam pemilihan presiden. Mahkamah Konstitusi (MK) telah beberapa kali menerima permohonan pengujian terhadap Pasal 222 Undang-Undang Nomor 7 Tahun 2017 tentang Pemilihan Umum. Adapun tujuan penelitian ini adalah untuk menganalisis perubahan arah putusan MK dalam pengujian konstusionalitas Presidential Threshold serta mengidentifikasi Legal Reasoning yang mendasarinya. Penelitian ini menggunakan pendekatan yuridis normatif dengan metode analisis komparatif terhadap putusan-putusan MK tahun 2008 hingga 2024, penelitian ini menemukan bahwa sejumlah argumen dalam permohonan uji materi menganggap Pasal 222 bertentangan dengan hak politik warga negara, asas kedaulatan rakyat, dan prinsip keadilan substansial. Hasil kajian menunjukkan adanya dinamika perubahan yurisprudensi MK serta tantangan menjaga konsistensi penafsiran konstitusi di tengah tekanan politik dan perubahan sosial. Kajian ini berkontribusi dalam memperkaya pemahaman tentang dinamika judicial review dan urgensi konsistensi penafsiran konstitusi dalam sistem ketatanegaraan.

Kata Kunci: Alasan Hukum; Ambang Batas Presiden; Putusan Mahkamah Konstitusi

Abstract

The Presidential Threshold is a constitutional issue that continues to spark debate in Indonesia's democratic system, as it is viewed as undermining electoral justice and limiting citizens' choices in presidential elections. The Constitutional Court (MK) has repeatedly received petitions for judicial review of Article 222 of

Law Number 7 of 2017 on General Elections. This study aims to analyze the Court's shifting stance in reviewing the constitutionality of the Presidential Threshold and to identify the legal reasoning underlying its decisions. Employing a normative juridical approach combined with comparative analysis of Constitutional Court rulings from 2008 to 2024, the study finds that various arguments claim Article 222 contradicts citizens' political rights, the principle of popular sovereignty, and substantive justice. The findings highlight evolving dynamics in the Court's jurisprudence and the ongoing challenge of maintaining consistency in constitutional interpretation amid political pressures and broader social change.

Keywords: Legal Reasoning; Presidential Threshold; Constitutional Court Decision

INTRODUCTION

A democratic general election is a parties or their alliances to propose a manifestation of the principle of popular candidate pair. sovereignty as guaranteed in the 1945 Constitution of the Republic of Indonesia. The Indonesian state administration system has adopted democratic principles. Historically, the idea of democracy has been around since ancient Greece.¹ One important instrument in the conduct of elections is the nomination mechanism for the president and vice president. The Presidential Threshold provision as regulated in Article 222 of Law Number 7 of 2017 concerning General Elections² requires a minimum support of 20% of the seats in the House of Representatives or 25% of valid national votes for political

Several studies have examined the issue of the Presidential Threshold from various perspectives. Research by Denny, entitled "Critical Review of the Constitutional Court's Decision on the Presidential Threshold" discussing the main criticism of the Constitutional Court's ruling on the presidential threshold.³ Research by Ahmad Ghaffar, entitled "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi dan Pengalaman di Negara Lain", discussing explains that this threshold is not commonly applied in other presidential systems such as the United States and Brazil.⁴ Siddiq et al. wrote an article titled "Penghapusan

¹ Al Mas'udah, "The Presidential Threshold As An Open Legal Policy In General Elections In Indonesia," *Prophetic Law Review*, 3 Juli 2020, 39, <https://doi.org/10.20885/PLR.vol2.iss1.art3>.

² Titon Kurnia, "Presidential Candidacy Threshold and Presidentialism Affirmation in Indonesia," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 7, no. 3 (2025): 354, <https://doi.org/10.22304/pjih.v7n3.a4>.

³ Denny Indra Sukmawan dan Syaugi Pratama, "Critical Review of the Constitutional Court's Decision on the Presidential Threshold: Tinjauan Kritis Mengenai Putusan Mahkamah Konstitusi Tentang Ambang Batas Pencalonan Presiden," *Jurnal Konstitusi* 20, no. 4 (2023): 556–75, <https://doi.org/10.31078/jk2041>.

⁴ Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi dan Pengalaman di Negara Lain," *Jurnal Konstitusi* 15, no. 3 (2018): 480–501, <https://doi.org/10.31078/jk1532>.

Presidential Threshold Sebagai Upaya Pemulihan Hak-Hak Konstitusional” which discusses the advantages and disadvantages of abolishing the Presidential Threshold system in Indonesia.⁵ However, previous studies have not deeply examined the dynamics of the changes in the legal reasoning of the Constitutional Court over time. This research offers novelty in the form of a longitudinal analysis of the patterns of the Constitutional Court's legal considerations, including overruling practices and responses to political and social developments.

The urgency of this research lies in the authority of the Constitutional Court as the institution that interprets the constitution in a final and binding manner. The Constitutional Court's decision on the Presidential Threshold issue has a significant impact on the direction of the state system and electoral democracy. However, previous studies have mostly focused on normative aspects and their impact on the political system, without thoroughly examining the dynamics of changes in the legal considerations of the Constitutional Court. In fact, changes in the Constitutional Court's jurisprudence reflect significant transformations in constitutional

interpretation. This research fills that gap by analyzing the shifts in the Constitutional Court's legal considerations within the framework of the theories of overruling, abusive judicial review, and responsive constitutionalism.⁶ Therefore, this research is not only academically important to fill the gap in the literature regarding the dynamics of legal reasoning in the Constitutional Court, but it also has a practical function as input for legislators and civil society in strengthening a constitutional system that is consistent with democratic principles..

The legal issue in this research is how the direction of the legal considerations of the Constitutional Court in testing the constitutionality of the Presidential Threshold, as well as what legal reasoning is used in each of those decisions. This issue is important because it concerns the political rights of citizens, the principle of democratic elections, and the balance within the presidential system.

This research is a legal research⁷, which is analyzed through two approaches, namely the statute approach and the conceptual approach. The statute approach is used to examine the provisions in Law Number 7 of

⁵ Muhammad Siddiq Armia dkk., “Penghapusan Presidential Threshold Sebagai Upaya Pemulihan Hak-Hak Konstitusional,” *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 1, no. 2 (2016): 84–89, <https://doi.org/10.22373/petita.v1i2.83>.

⁶ Umarwan Sutopo dkk., “Presidential Threshold in The 2024 Presidential Elections: Implications for The Benefits of Democracy In Indonesia,” *Justicia Islamica* 21, no. 1 (2024): 166, <https://doi.org/10.21154/justicia.v21i1.7577>.

⁷ Peter Mahmud Marzuki, “The Significance of Desert-Based Distributive Justice to People Well-Being,” *Yuridika* 40, no. 1 (2025): 5, <https://doi.org/10.20473/ydk.v40i1.55437>.

2017 concerning concerning General Elections, especially Article 222 regarding the Presidential Threshold, as well as other relevant regulations, while the conceptual approach is used to understand the principles of constitutional law, electoral democracy, as well as the theory of constitutionalism and judicial review. The data sources used consist of primary legal materials such as laws, namely the Constitution of the Republic of Indonesia and Law Number 7 of 2017 concerning General Elections, and decisions of the Constitutional Court, as well as secondary legal materials such as books, journal articles, and other scientific sources. Data collection techniques were carried out through library research, and data analysis was conducted qualitatively to illustrate the patterns of changes in the legal considerations of the Constitutional Court in decisions related to the Presidential Threshold. In addition, historical and conceptual approaches were also used to understand the normative background and philosophical values that shape the provisions of the Presidential Threshold.

This research aims to analyze the dynamics of changes in the legal considerations of the Constitutional Court (MK) in testing the provisions of the Presidential Threshold. This study explores the pattern of MK jurisprudence that indicates practices of overruling previous decisions. The research also evaluates the direction of

constitutional interpretation taken by the Court within the framework of the theory of abusive judicial review and responsive constitutionalism. Furthermore, this study assesses the juridical and democratic implications of the shift in interpretation on citizens' political rights and the national electoral system. Thus, from a theoretical perspective, this research expands the literature on constitutional law through a historical study of MK's judicial review practices. Practically, the results of this research can serve as evaluation material for stakeholders to assess the urgency of consistency in constitutional interpretation.

In line with this, the aim of this research is to analyze the dynamics of changes in the legal considerations of the Constitutional Court in testing the Presidential Threshold, to identify the patterns of legal reasoning used, and to assess the shifts in constitutional interpretation within the framework of the mentioned theory. Thus, this research is expected to contribute academically and practically to strengthening the role of the Constitutional Court as the guardian of the constitution.

RESULT AND DISCUSSION

Before discussing the provisions of the Presidential Threshold in the national electoral system of Indonesia, it is important to first understand how the concept of the presidential nomination threshold has developed in the constitutional practices of

various countries and how its implementation impacts the principles of democracy and political representation. The Presidential Threshold or the presidential nomination threshold is an instrument in the electoral system aimed at filtering the number of candidates that can be nominated in the presidential and vice-presidential elections. In Indonesia, this mechanism is regulated in Article 222 of Law Number 7 of 2017 concerning General Elections, which stipulates that only political parties or coalitions of political parties with a minimum of 20% of seats in the DPR or 25% of national valid votes can propose a candidate pair.⁸ Theoretically, this threshold is intended to create effective governance, simplify the party system, and prevent excessive political fragmentation at the executive level.⁹

Normatively, the Indonesian presidential system assumes a separation of powers and direct legitimacy from the people to the president. However, with the implementation of a high nomination threshold, a dependency on legislative power and large political coalitions has emerged, thus blurring the

fundamental principles of the presidential system itself. This is reinforced by Mahfud MD's findings, which state that substantive democracy requires broad participation, including in nominations, not just in elections.¹⁰

Furthermore, that electoral regulations that structurally limit candidate choices also narrow the space for democracy.¹¹ She highlighted that these restrictions strengthen political oligarchy and trigger social polarization due to the narrowness of electoral contestation. In this context, the Constitutional Court has a strategic role in maintaining the balance between the interests of the political system and the protection of citizens' constitutional rights. As stated by Fajrul Falaakh, constitutional testing is not merely about assessing formal compliance with the text of the Constitution, but also weighing aspects of substantive justice within it.¹²

Presidential Threshold in Election Practice in Indonesia

Elections are an important instrument in a democratic state, especially those that adopt a

⁸ Dian Fitri Sabrina dan Sukardi, "The Threshold Requirements For Presidential Nomination On The Constitutional Perspective," *Media Iuris* 7, no. 1 (2024): 134, <https://doi.org/10.20473/mi.v7i1.38218>.

⁹ Ahmad Yusril Aziz dkk., "Presidential Threshold Penentuan Calon Presiden Dan Wakil Presiden Dalam Pemilihan Umum Berdasarkan Pasal 222 Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Yurijaya: Jurnal Ilmiah Hukum* 6, no. 1 (2024): 39, <https://doi.org/10.51213/yurijaya.v6i1.128>.

¹⁰ Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi* (Rajawali Press, 2011), 89.

¹¹ Muhammad Mutawalli Mukhlis dkk., "Limitasi Demokrasi Hak Presiden dalam Kampanye Politik Sebagai Penguatan Sistem Pemilihan Umum," *Jurnal Pembangunan Hukum Indonesia* 6, no. 2 (2024): 265, <https://doi.org/10.14710/jphi.v6i2.260-280>.

¹² Fajrul Falaakh, *Konstitusi dan Kekuasaan: Gagasan, Tafsir dan Implementasi dalam Sejarah Politik Indonesia* (FH UGM Press, 2011), 12.

representative system.¹³ Through elections, the people delegate their mandate to their representatives in both legislative and executive bodies, with political parties as the primary actors that recruit candidates, educate the public, and channel the aspirations of society, making political parties a crucial pillar in the modern democratic system.¹⁴

The implementation of a threshold means forcing the integration of two institutional designs, as the presidential/vice-presidential candidates who initially hoped to be independent without being bound by many political parties ultimately have to rely on the coalition of parties that support them. Ultimately, this threshold system gives rise to transactional politics.¹⁵

The formulation of the Presidential Threshold still allows for the survival of authoritarian traits in democracy.¹⁶ This is evident in the process of determining candidates, which is still dominated by the decisions of certain officials within the party, and the public is not given sufficient opportunity to become candidates or to determine who is deemed suitable and worthy

to be proposed as candidates for President and Vice President.

In practice, the presidential nomination threshold can make the elected president unable to be free from the interests of the political parties that successfully met the nomination threshold. Political parties indirectly provide the service of granting nomination tickets to the elected president. This results in the president having to accommodate the interests of the political parties by assigning ministerial posts not based on their expertise in the relevant ministries but because the ministers are members of his supporting political party.

Initially, the implementation of the Presidential Threshold in the elections of 2004, 2009, and 2014 did not raise many issues because the stages of the legislative elections were held first. The results of these legislative elections were then used as a basis to determine the threshold for presidential and vice-presidential nominations.¹⁷ Leading up to the 2019 Presidential Election, the Constitutional Court issued a ruling stating that the Legislative and Presidential elections would be held simultaneously. This means

¹³ Achmad Edi Subiyanto, "Pemilihan Umum Serentak yang Berintegritas sebagai Pembaruan Demokrasi Indonesia," *Jurnal Konstitusi* 17, no. 2 (2020): 359, <https://doi.org/10.31078/jk1726>.

¹⁴ Mahfud MD, *Politik Hukum Di Indonesia* (Rajawali Press, 2017), 62.

¹⁵ Moch Marsa Taufiqurrohman, "Meninjau Penerapan Ambang Batas Pemilihan pada Sistem Pemilihan Umum Proporsional di Indonesia," *Politika: Jurnal Ilmu Politik* 12, no. 1 (2021): 129.

¹⁶ Arifudin Arifudin dan Hamdan Zoelva, "Pembaharuan Sistem Presidential Threshold Di Indonesia Berdasarkan Konsep Prisma Hukum," *Jurnal Hukum Progresif* 10, no. 2 (2022): 135, <https://doi.org/10.14710/jhp.10.2.127-140>.

¹⁷ Asep Wijaya dkk., "Problematisasi Hukum Penerapan Presidential Threshold Dalam Pemilihan Umum Di Indonesia," *Risalah Hukum*, 30 Juni 2020, 48, <https://doi.org/10.30872/risalah.v16i1.316>.

that the benchmark for the 2019 legislative elections will not be used, and instead, the results from the 2014 legislative elections will be used.¹⁸

It will be a problem when the legislative and executive elections are held at the same time, on the same hour, day, month, and year, from where the parties gather the votes to nominate the President and Vice President, as happened in the 2019 elections, with simultaneous implementation, maintaining the Presidential Threshold, it will create issues, because the election of DPR members and the President is conducted simultaneously.¹⁹

This situation is becoming increasingly complex because the multiparty system in Indonesia results in no single party being able to meet the threshold independently. Even large parties must form coalitions to nominate a president. This has led to the emergence of pragmatic coalition practices that are more based on short-term political interests rather than shared vision or ideology. Therefore, the elected President and Vice President will be highly dependent on their supporting political parties. This can certainly reduce the position of the President and Vice President in

exercising governmental power. Thus, the requirement of the Presidential Threshold in Law Number 7 of 2017 can be said to hold the President and Vice President hostage, thereby weakening the power of the President and Vice President as well.²⁰

The implementation of the Presidential Threshold hurts the existence of small political parties, new parties, and non-parliamentary parties, especially in terms of access and participation in presidential election contests. The threshold provisions determined based on the vote results in legislative elections mean that parties with limited electoral strength cannot independently submit presidential candidate pairs. As a result, only large parties or large coalitions can meet these administrative requirements, while small parties are pushed out of the nomination arena. This condition narrows the variety of political choices for the public and hinders the growth and contribution of small parties in a national political system that should be inclusive and competitive.²¹

This also shows that the implementation of the Presidential Threshold in a multiparty system like Indonesia creates a dilemma. The

¹⁸ Yasinta Dyah Paramitha Hapsari dan Retno Saraswati, "Dampak Pelaksanaan Presidential Threshold pada Pemilu Serentak terhadap Demokrasi di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 74, <https://doi.org/10.14710/jphi.v5i1.70-84>.

¹⁹ Wijaya dkk., "Problematisa Hukum Penerapan Presidential Threshold Dalam Pemilihan Umum Di Indonesia," 48.

²⁰ Muhammad Faishal Rizqullah dkk., "Dampak Presidential Thresold Terhadap Pencalonan Presiden Dalam Pemilu Tahun 2024," *Journal Politique* 4, no. 1 (2024): 76, <https://doi.org/10.15642/politique.2024.4.1.61-84>.

²¹ Ari Ariyadi, "Politik Hukum Presidential Threshold Sebagai Bentuk Pembatasan Partai Politik," *Jurnal Kewarganegaraan* 8, no. 1 (2024): 1073, <https://doi.org/10.31316/jk.v8i1.6511>.

provision weakens the position of the president, who should be independent in a presidential system. The president is often burdened by the interests of the coalition parties that support his candidacy, which can hinder policies that favor the people. The coalition that is formed represents a political compromise, not a common ideology.²²

In addition, party coalitions in the Presidential Threshold system are temporary and vulnerable to change as they prioritize the interests of certain groups. This weakens the presidential system because coalitions can easily dissolve or turn into opposition. Strengthening the presidential system requires a solid and stable coalition throughout a government term.²³

The reason for the Presidential Threshold is to create an effective government by the elected President, to simplify the party system, and to select Presidential and Vice Presidential candidates is also not entirely accurate. This is because political parties participating in the election have already been strictly selected by the c, so only the parties that pass the stringent verification as participants in the election can then propose

Presidential and Vice Presidential candidates.²⁴

The addition of the Presidential Threshold rule set by the Constitutional Court certainly creates its own irony, as the intent to strengthen the presidential system instead weakens it. Especially in the simultaneous election process that uses the presidential system, it must be tied to the legislative results. This condition indicates the existence of a presidential practice with a parliamentary flavor.

Furthermore, the application of the Presidential Threshold in simultaneous elections is considered inconsistent with the principles of constitutional democracy. Strengthening the presidential system should begin with reforming the party system, not through restrictions on presidential nominations. Therefore, the existence of the presidential nomination threshold in the 2019 simultaneous elections and beyond is seen as having more negative impacts.²⁵

The application of the presidential threshold effectively creates structural barriers in the presidential nomination process, as only political parties with a

²² Idul Rishan, "Risiko Koalisi Gemuk Dalam Sistem Presidensial Di Indonesia", *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 221, <https://doi.org/10.20885/iustum.vol27.iss2.art1>.

²³ Ivan Ihza Shobari Hasibuan dan Sunny Ummul Firdaus, "Kajian Putusan Mahkamah Konstitusi Terkait Presidential Threshold (Studi Putusan Mahkamah Konstitusi Tahun 2017 -2022)," *Res Publica: Jurnal Hukum Kebijakan Publik* 6, no. 3 (2022): 370, <https://doi.org/10.20961/respublica.v6i3.63202>.

²⁴ Muhammad Saad dkk., "The Political Cartel of Presidential Candidacy through Threshold Brings Up a Single Candidate," *Media Juris* 5, no. 1 (2022): 102, <https://doi.org/10.20473/mi.v5i1.32040>.

²⁵ Mahesa Rannie dkk., "Does the Reform of the Parliamentary and Presidential Threshold Strengthen the Presidential System in Indonesia?," *Sriwijaya Law Review* 8, no. 1 (2024): 132, <https://doi.org/10.28946/slrev.Vol8.Iss1.3157>.pp133-151.

minimum of 20% of DPR seats or 25% of the national valid votes are eligible to nominate candidates. As a consequence, small parties and non-parliamentary parties are eliminated from the nomination arena, thereby reducing healthy electoral competition, narrowing the political choices for the people, and hindering the regeneration of national leadership.

This argument is supported by the opinion of Aditya Andela Pratama, who states that the presidential nomination threshold strengthens political oligarchy and limits democratic space, as only elites from large parties can propose candidates, while public votes in legislative elections may not necessarily reflect public preferences for a specific presidential candidate. Therefore, by eliminating this threshold, the Constitutional Court Decision Number 62/PUU-XXII/2024 serves as a constitutional revitalization that corrects the imbalances caused by the implementation of the previous threshold.²⁶ This description demonstrates the urgency of research to assess how the existence of the Presidential Threshold shapes the dynamics of the electoral system, while also emphasizing the importance of the Constitutional Court's analysis in maintaining the balance between

government effectiveness and the protection of citizens' political rights.

Legal Reasoning of the Constitutional Court regarding the Presidential Threshold

In general, an examination of the legal reasoning of the Constitutional Court shows a blend of normative interpretation and contextual considerations, influenced by the need to maintain constitutional legitimacy while also responding to political realities. In Indonesia, an analysis of the Constitutional Court's decisions, such as in the case of the capital city, shows that judges often prioritize social justice as a main pillar in upholding the purity of the constitution.²⁷

Specifically, in the material test related to the Presidential Threshold, the Constitutional Court applies a formalistic interpretive approach, namely by assessing the conformity of the tested norms with the provisions as stated in Article 6A of the 1945 Constitution of the Republic of Indonesia along with an evaluation of its substantive effects, such as assessing whether the threshold restricts political human rights and undermines electoral justice.²⁸

One important starting point in understanding the issue of the Presidential

²⁶ Aditya Andela Pratama dkk., "Revitalisasi Konstitusional Berbasis Pancasila Dalam Penghapusan Presidential Threshold," *Pancasila: Jurnal Keindonesiaan* 5, no. 1 (2025): 79, <https://doi.org/10.52738/pjk.v5i1.725>.

²⁷ Achmad Miftah Farid Farid dan Nanik Prasetyoningsih Nanik, "Legal Reasoning of the Constitutional Court Verdict Number 25/PUU-XX/2022 on the State Capital Law According to Social Justice Value," *Jurnal Jurisprudence*, 2022, 223, <https://doi.org/10.23917/jurisprudence.v12i2.1285>.

²⁸ Amzar Ardiyansyah dkk., "Kewenangan Penetapan Bakal Calon Legislatif Untuk Suatu Daerah Pemilihan Di Aceh," *Jurnal IUS Kajian Hukum dan Keadilan* 8, no. 2 (2020): 269, <https://doi.org/10.29303/ius.v8i2.715>.

Threshold is the position of the Constitutional Court (MK), which in several of its rulings, states that the provision falls within the realm of open legal policy. Open legal policy is formed by considering political needs, public interest, and public order. The judges of the Constitutional Court do not have the authority to accommodate these matters, therefore they are better off not intervening in norms that belong to open legal policy.²⁹ This means that the regulation of the presidential nomination threshold is the authority of the lawmakers, namely the legislative body. As long as the provision does not explicitly contradict the 1945 Constitution of the Republic of Indonesia, lawmakers are given the flexibility to establish it according to national political needs.

Although it falls within the realm of open policy, the Constitutional Court, in its latest ruling acknowledges that this threshold has caused a violation of morality in democratic life. This system encourages the aggregation of power in the hands of large parties, while simultaneously diminishing the role of parties as channels of public aspirations. In that framework, political parties serve as a means for civil society to participate in national development through the expression of

aspirations, ideas, and concepts that reflect the collective will of the citizens.³⁰

The moral value in democracy demands that public participation in elections be carried out openly and inclusively. However, the nomination threshold provisions actually restrict access structurally, allowing only certain parties the opportunity to advance. These restrictions are often justified as a form of 'initial political support capital', 'efforts to build government stability', and 'strengthening the presidential system'. However, these arguments are less relevant when viewed from the principle of direct elections adopted by the 1945 Constitution of the Republic of Indonesia. Article 6A paragraph (3) states that the selected pairs of Presidential and Vice Presidential candidates are those who obtain more than 50 percent of the votes with a distribution of votes across more than half of the provinces in Indonesia. This provision, by itself, has provided a mechanism for a strong, fair, and representative political selection. This means that the constitution has established national political validation through the people directly, not through administrative restrictions in the form of nomination thresholds.

²⁹ Mega Setya Utami dan Agus Riwanto, "Analisis Konstitusionalitas Kebijakan Presidential Threshold Guna Memenuhi Hak Pilih Warga Negara Dalam Pilpres (Studi Putusan Mahkamah Konstitusi Nomor 4/PUU-XXI/2023)," *Res Publica: Jurnal Hukum Kebijakan Publik* 8, no. 3 (2024): 427, <https://doi.org/10.20961/respublica.v8i3.85705>.

³⁰ Abdul Kodiman dan Siti Fatimah, "Urgensi Dan Peran Partai Politik Dalam Pembangunan Masyarakat Madani Di Indonesia," *Jurnal Tana Mana* 4, no. 1 (2023): 88, <https://doi.org/10.33648/jtm.v4i1.287>.

Thus, the Presidential Threshold is actually no longer necessary as an administrative requirement. Instead, its existence has the potential to undermine the meaning of people's sovereignty, diminish the quality of competition in elections, and contradict the principles of substantive democracy that ensure equal access and fair competition for all participants in the electoral system.

In the framework of a presidential system, the president is not included in the legislative structure. The president, as the head of the executive, and the House of Representatives, as the legislative body, are two separate entities, each gaining a direct mandate from the people through elections. Therefore, the nomination and election of the president should not depend on political support from the legislative body. This separation of powers is the distinctive characteristic of a presidential system.³¹ This inconsistency is the main argument for those who oppose the nomination threshold as a form of imbalance in the representative democratic system.

The threshold provision of 20% is considered too high, thereby limiting the space for new parties to compete in the presidential election. In Indonesia's political configuration, which tends to be dominated by

large parties, new parties face difficulties in garnering adequate support to meet this requirement. As a consequence, the presidential election contest tends to be dominated by figures from the same large parties, thus narrowing the possibility of alternative candidates emerging with fresh and innovative ideas for national development.

In several countries that adopt a presidential system such as the United States, Brazil, Peru, Mexico, Colombia, and Kyrgyzstan, there are no provisions regarding the threshold for presidential nominations. They implement an open nomination system without requiring certain support from political parties. Nevertheless, the government systems in these countries still demonstrate stability, as evidenced by the constitutional practices in the United States.³² The experience of the Indonesian presidential election in 2004 shows a similar pattern. The pair of Soesilo Bambang Yudhoyono and Jusuf Kalla, supported by small parties such as the Democratic Party, the Crescent Star Party, and PKPI, actually received strong backing from voters, defeating other pairs supported by larger parties.³³ This fact indicates that voters are more concerned about the personal quality and integrity of the

³¹ Salsi Isra, *Pergeseran Fungsi Legislasi* (PT Raja Grafindo Persada, 2018), 96.

³² Isra, *Pergeseran Fungsi Legislasi*, 96.

³³ Bawono Kumoro, "Menakar Kualitas Institusionalisasi Partai Politik dalam Sistem multipartai Di Indonesia – Jaringan Survei Inisiatif," 1 September 2025, <https://jsinisiatif.id/2013/12/18/menakar-kualitas-institusionalisasi-partai-politik-dalam-sistem-multipartai-di-indonesia/>.

candidates rather than the affiliation of their supporting parties. Thus, having more presidential candidates proposed will actually broaden the electorate's options and increase the chances of emerging competent leaders. Conversely, a limited number of candidates in elections may hinder the emergence of an ideal leader for the nation.

Supporters of the Presidential Threshold argue that the implementation of this threshold will strengthen the presidential system because it will create an effective government with parliamentary support in decision-making by the president, through a coalition of majority parties supporting the government.

Parties that do not meet the 20% threshold of seats in the House of Representatives are forced to form coalitions as there are no other options. This practice opens up opportunities for transactional politics, where parties negotiate interests such as ministerial allocations or positions within the executive circle. The removal of the Presidential Threshold will mean that political parties no longer have to form a coalition to nominate a single presidential candidate. Consequently, transactional politics, which leads to transactions and position allocation, can be avoided.³⁴

If the Presidential Threshold is linked to the presidential system, then this policy is actually contradictory because the executive and legislative institutions have separate legitimacy. Nominating a president based on the acquisition of seats in the House is incorrect, because under the principle of checks and balances, the president and parliament are independent institutions that do not rely on each other.

The implementation of the presidential nomination threshold is indeed based on the idea of strengthening the presidential system and simplifying the number of candidates. In practice, the formation of a large coalition does not necessarily guarantee the creation of a stable or effective government. Instead, the effectiveness of the presidential system is more determined by the presence of a strong yet democratic presidential figure, considering that this system places the president as the sole holder of the highest executive authority (single chief executive).³⁵

The provisions in Article 222 of the Election Law actually create serious injustice, as they limit the people to only vote for pairs of presidential and vice presidential candidates put forward by political parties that have met a certain support threshold in the previous election. In this context, the Constitutional Court should act as a protector

³⁴ gusti.grehenson, "Pakar UGM: Penghapusan Presidential Threshold jadi Langkah Maju Menuju Pemilu Demokratis," *Universitas Gadjah Mada*, 14 Januari 2025, <https://ugm.ac.id/id/berita/pakar-ugm-penghapusan-presidential-threshold-jadi-langkah-maju-menuju-pemilu-demokratis/>.

³⁵ Saldi Isra, *Hubungan Presiden dan DPR* (Rajawali Press, 2013), 412.

of the constitutional rights of citizens, particularly the voters' right to have a more diverse choice of candidates in the national contest.

The provisions in Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia indeed mention political parties as the supporters of presidential and vice-presidential candidates, but this should not be interpreted as an absolute limitation that justifies uniformity or reduction in the number of candidates. When the public loses the right to vote freely and broadly, it reflects a violation of the principles of democratic justice. The right to vote is an essential part of human rights and is a primary instrument for public participation in the political process. Therefore, ideally, every individual should have equal access to express their political preferences, including in electing national leaders who represent their aspirations. Furthermore, the implementation of the Presidential Threshold in the 2019 elections also targeted first-time voters who did not participate in previous elections.. This means that their political rights are indirectly diminished because the choices of candidates available are limited based on past election results.³⁶ This underscores the need for an in-

depth evaluation of the sustainability of the Presidential Threshold norm from the perspective of constitutional justice. The analysis of this legal reasoning pattern addresses the research objective to comprehensively identify the legal reasoning of the Constitutional Court, so that it can be understood whether the Court is consistent with the principle of popular sovereignty or rather reaffirms the Presidential Threshold as an open legal policy.

The Change of Direction of the Constitutional Court's Decision on the Presidential Threshold

Article 222 of the Election Law, based on the results of the survey, has been tested 33 (thirty-three) times since it was enacted in 2017. However, only 5 (five) petitions were decided by the Constitutional Court with a decision of 'Rejected.' It is through these 5 (five) decisions that the consistency of the Constitutional Court in examining the Presidential Threshold can be measured. This is because the petitions that were rejected have gone through a substantive examination of the case, which is different from decisions that are inadmissible and have not entered into the substance of the case.

Table 1: Comparison of the Constitutional Court's decisions in testing the Presidential Threshold

³⁶ Asep Wijaya, "Problematisa Hukum Penerapan Presidential Threshold Dalam Pemilihan Umum di Indonesia," *Risalah Hukum* 16, no. 1 (Juni 2020): 27–28, <https://doi.org/10.30872/risalah.v16i1.316>

No. Decision	Petitioner's Request	Constitutional Court's Decision and Considerations	Justification for Change / Constitutional Court's Position
73/PUU-XX/2022	Request to change the phrases of 20% and 25% in Article 222 of the Election Law to a range of 7%-9%.	The Constitutional Court rejects the petition. It states that there are no new norms and no violation of constitutional rights. The Court is considered an open legal policy.	The political situation is stable; the Court is consistent with previous rulings, reluctant to intervene in legislative policies.
54/PUU-XVI/2018	Requesting that Article 222 of the Election Law be declared entirely contrary to the 1945 Constitution of the Republic of Indonesia.	The Constitutional Court rejected this. It stated that the Election Law does not conflict with the Constitution as it guarantees government stability and the efficiency of the presidential system.	The Constitutional Court prioritizes stability and the effectiveness of presidentialism, upholding open legal policy.
49/PUU-XVI/2018	Requesting the provisions of 20% and 25% in Article 222 of the Election Law to be declared unconstitutional.	The Constitutional Court rejected it because there was no violation of constitutional rights. The application was deemed to lack a strong basis.	The Constitutional Court assessed that the applicant had no legal standing, and the arguments were baseless constitutionally.
59/PUU-XV/2017	Requesting Article 222 of the General Election Law to be declared contrary to the 1945 Constitution of the Republic of Indonesia.	The Constitutional Court rejected and asserted that PT serves as a means of government effectiveness, avoiding political friction.	The Constitutional Court strengthens the argument for simplifying the party system in an extreme multiparty system.
53/PUU-XV/2017	Requesting Article 222 of the Election Law to be declared contrary to the 1945 Constitution of the Republic of Indonesia.	The Constitutional Court rejected it and stated that PT is a valid open legal policy according to the constitution.	The Constitutional Court is cautious and does not want to take a legislative role, demonstrating consistency in judicial restraint.

Source: Results of the analysis from the Constitutional Court's decision

There are several theories that can be used to read the direction of a judge's thinking in their rulings. First, there is the term judicial activism vs judicial restraints. Then there is also what is called judicial heroes, which is written in a dissertation by Father Stefanus. In short, judicial heroes are judges who sometimes want to perform a rescue or want to build what is called heroic action to save democracy and justice.³⁷

Has the Constitutional Court just realized that the norms and practices of the Presidential Threshold contradict the constitution after being challenged 33 times? Of course not. It is not only legal considerations that can change the views and positions of the judges, but there must certainly be non-legal considerations as well. These non-legal considerations are actually what is interesting to study more in-depth, starting from the composition of judges

³⁷ Muhammad Kholis Mujaibiyin Ahda Harahap, "Berubahnya Pendirian Hakim Mahkamah Konstitusi Tentang Presidential Threshold", *Jurnal Buletin Konstitusi* 5, no 2, (November 2024): 100, <https://doi.org/10.30596/konstitusi.v5i2.23306>.

who have changed to the differing schools of thought of the judges who have different criteria.

Previously, the majority of judges adhered strictly to judicial restraint, arguing that the Presidential Threshold is an open legal policy (a legal policy that is open to interpretation by lawmakers). This has shifted to judicial activism, suggesting that allowing or maintaining the minimum threshold percentage for proposing pairs of presidential and vice-presidential candidates as stipulated in Article 222 of Law Number 7 of 2017 could hinder the direct conduct of elections by the people by providing numerous candidate options. If this occurs, the essential meaning of Article 6A paragraph (1) of the 1945 Constitution of the Republic of Indonesia will either be lost or at least diverted from one of the goals intended by the constitutional amendments, namely to refine the fundamental rules regarding the guarantee of people's sovereignty and to expand public participation in accordance with the developments in democracy.³⁸

According to Saldi, this shift in stance not only concerns the magnitude or percentage of the threshold, but what is far more fundamental is that the regime of the threshold

for proposing pairs of presidential and vice-presidential candidates (Presidential Threshold), regardless of the magnitude or percentage, is contrary to Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia.³⁹

The 20% presidential threshold of DPR seats or 25% of actual national votes clearly narrows the contest and reduces political pluralism. Even in the dissenting opinion of Decision 74/PUU-XVIII/2020, the constitutional judges emphasized that this contradicts the guarantee of the right to vote and the right to be elected of citizens. This situation is further exacerbated by the high threshold outlined in Article 222 of Law Number 7 of 2017, which causes many potential cadres with capable leadership to be unable to run for office simply because they do not meet these administrative requirements. This is clearly not in line with the democratic principle that upholds the principle of equality before the law, including the right to equal opportunity in governance.⁴⁰

Then, by maintaining the Presidential Threshold, the Constitutional Court actually supports policies that disadvantage open political competition. The dominance of large parties is reinforced, while candidates from

³⁸ Muhammad Kholis Harahap, "Berubahnya Pendirian Hakim Mahkamah Konstitusi Tentang Presidential Threshold," *Buletin Konstitusi* 5, no. 2 (2024): 100, <https://doi.org/10.30596/konstitusi.v5i2.23306>.

³⁹ Iman Nugraha, et al "Implikasi Hukum Penghapusan Presidential Threshold 20% Dalam Pencalonan Presiden Dan Wakil Presiden Oleh Mahkamah Konstitusi", *Pakuan Justice Journal of Law* 6, no 1 (2025): 15, <https://doi.org/10.33751/pajoul.v6i1.11941>.

⁴⁰ Virginia Gertruda Tangke Alla, et al "Kajian Ambang Batas Suara Pencalonan Presiden Dan Wakil Presiden Berdasarkan Peraturan Perundang-Undangan", *Jurnal Lex Privatum* 13, no 5, (Juli 2024)

small parties or independents face difficulties in advancing. The number of presidential and vice-presidential candidates becomes limited. This creates an oligarchy where only certain party elites can determine candidates.⁴¹ In this context, alternative approaches need to be considered to assess the role of the Constitutional Court more constructively.

The opposite of abusive judicial review is responsive judicial review, which is an approach that places the court as a proactive actor in responding to the dynamics and needs of a democratic society. In this approach, court decisions are not solely based on legal texts, but also take into account public aspirations, democratic values, and principles of substantive justice. The goal is to maintain a balance between the independence of the judiciary and sensitivity to the evolving social, political, and economic contexts. Thus, the court is expected to play an important role in maintaining the quality of democracy, including in the conduct of electoral democracy. One concrete mechanism that can reflect this approach is the practice of overruling.

The Constitutional Court (MK) is a judicial institution that has the legitimate authority to perform overruling as a commitment to upholding the supremacy of

the constitution, especially in the context of the need to interpret the 1945 Constitution of the Republic of Indonesia accurately. The Constitutional Court ability to correct previous decisions aligns with its function as the guardian of the Constitution, tasked with preserving the integrity of the Constitution as the highest norm in the national legal system.

In carrying out this duty, constitutional judges are granted the freedom to interpret and actualize the values contained in the 1945 Constitution of the Republic of Indonesia.⁴²

Overruling is a judicial mechanism where the court decides to deviate from or replace a previous decision that is considered no longer in line with the development of law, social conditions, or more progressive principles of justice. This step aims to evaluate whether the basis of previous legal considerations is still relevant or needs to be abandoned. If deemed no longer contextual, the Constitutional Court has the authority to abandon prior views and formulate new legal arguments to update the constitutional understanding of a norm in its future implementation.

The constitution in a country can be understood from two perspectives, namely formal and substantive. In a formal sense, the constitution is viewed as the highest legal document officially referred to as the Basic

⁴¹ Enika Maya Oktavia, Mely Noviyanti dan Dalpin Safari, "Potret Abusive Judicial Review di Masa Pemerintahan Presiden Joko Widodo," *Jurnal Legislatif* 7, no. 2 (Juni 2024): 142–143, <https://doi.org/10.20956/jl.v7i2.35506>

⁴² Uumbu Rauta dan Ninon Melatyugra, "Hukum Internasional Sebagai Alat Interpretasi Dalam Pengujian Undang-Undang," *Jurnal Konstitusi* 15, no. 1 (2018): 83, <https://doi.org/10.31078/jk1514>.

Law. Meanwhile, in a substantive understanding, the constitution includes all rules that directly or indirectly affect the distribution and implementation of power within a country. The Constitutional Court

Constitutional Court has constitutional authority to carry out the function of constitutional adjudication as regulated in Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. As an institution that carries out this function, the Constitutional Court also has the space to perform overruling as part of efforts to uphold and enforce the supremacy of the constitution.

The principle of constitutional supremacy in the practice of constitutional adjudication implies that errors in the interpretation of the Constitution need to be corrected through a more accurate interpretation process. Therefore, corrective measures such as overruling can be justified as part of the process to discover and uphold constitutional truth. As a guardian of democracy, the role of the Constitutional Court in this context must also be directed to ensure electoral justice.

Democracy can be understood as a system of government based on the sovereignty of the people. This means that all processes of state management originate from, by, and for the people. In this system, citizens have an equal right to choose their leaders,

both in the executive and legislative branches. The people hold the highest authority in forming the government and hope that the chosen leaders will work for the common good.⁴³

According to the thoughts of philosopher Jean-Jacques Rousseau, democracy is not a condition achieved instantly, but rather a process that must be undertaken to realize the common good. Lucky Marendra quotes Hans Kelsen as adding that democracy is a structural process that continues to evolve toward perfection. He places the concept of freedom as a core element of democracy, which is not understood as freedom from ties, but rather freedom based on one's own will. This view forms the basis of his thinking about democracy as a system that respects individual will within a legal framework.⁴⁴

Elections are the primary means in modern democracy that allow the people to choose their representatives who will carry out legislative and executive functions. Through elections, the people not only determine the direction of national leadership but also participate in the law-making process. Therefore, elections are closely related to the principles of the rule of law, as they create space for the fulfillment of citizens' basic rights, including equality before the law and governance.⁴⁵

⁴³ Suyatno Wibawa, *Mengelola Negara* (Penerbit Gaya Media, 2012), 40–41.

⁴⁴ Lucky Marendra, *Buku Pintar Pemilu dan Demokrasi* (Komisi Pemilihan Umum Kota Bogor, 2020), 62–63.

⁴⁵ MD, *Perdebatan Hukum Tata Negara Pasca Amandemen Konstitusi*, 55.

In this context, the Constitutional Court has the responsibility to take a more active role in strengthening the foundation of democracy and ensuring the protection of civil rights. This task includes efforts to protect minority groups, ensure that the government operates accountably, and make corrections to policies that could undermine the integrity of elections. However, in practice, the Constitutional Court is often seen as not supporting the protection of citizens' constitutional rights. For example, the implementation of the Presidential Threshold provisions has limited the participation of potential candidates in the presidential and vice-presidential contests.

As a result, only those with the backing of political elites and high popularity have the opportunity to advance, while the rights of other citizens to be elected are neglected. This section illustrates how the Constitutional Court moves from a judicial restraint approach towards judicial activism, which in the theoretical framework can be understood through the practices of overruling as well as the transition from abusive judicial review to responsive judicial review, thus directly relating to the research objective of explaining the transformation of constitutional interpretation.

CONCLUSION

The establishment of the Presidential Threshold falls within the realm of open legal policy, as Article 6A paragraph (2) and Article

22E paragraph (6) of the 1945 Constitution do not explicitly regulate who is entitled to run for president or vice president; thus, the constitution allows for interpretation by lawmakers. Although it has been tested repeatedly, the issue of the Presidential Threshold has always failed at the Constitutional Court. The Constitutional Court has consistently rejected the substance of the Presidential Threshold for various legal reasons. However, this Presidential Threshold clearly violates morality and rationality, and also presents intolerable injustice. The reason the Constitutional Court reversed its stance in Decision 62/PUU-XXII/2024 is, first, the transformation of judicial review from abusive to responsive, where the Court is more active in responding to societal dynamics by considering public aspirations, democratic values, and substantive justice.

Second, the practice of overruling allows the Court to correct previous decisions. This action can be justified as part of the search for constitutional meaning that is more in line with the times. If the legal considerations in earlier decisions are deemed no longer relevant, then the Court has the authority to change or abandon them. Third, the principle of democratic elections serves as a benchmark for evaluating the Court's stance, as the sovereignty of the people is exercised through the right to vote and be elected. However, the Presidential Threshold instead limits the

constitutional rights of citizens to run for president or vice president.

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