

## ***Quo Vadis Presidential Threshold: Implications of the Constitutional Court Decision No. 62/Puu-Xxii/2024 on the Election of the President and Vice President of Indonesia***

**Redam Guruh Krismantara,<sup>1\*</sup> Istislam,<sup>2</sup> Shinta Hadiyantina<sup>3</sup>**

Faculty of Law Brawijaya University, Malang, Indonesia

[Redamguruhkrismantara@gmail.com](mailto:Redamguruhkrismantara@gmail.com), [ist@ub.ac.id](mailto:ist@ub.ac.id), [shinta\\_fh@ub.ac.id](mailto:shinta_fh@ub.ac.id)

*\*Corresponding Author : Redamguruhkrismantara@gmail.com*

**DOI :** <http://doi.org/10.29240/negrei.v6i1.15240>

*Submitted: Nov 28, 2025; Reviewed: Oct 08, 2026; Accepted: Oct 13, 2026*

**Abstract:** Leadership succession became one of the reform agendas embodied in the amendments to the constitution. One significant change introduced through the amendments was the direct election of the president and vice president as a single ticket by the people. This direct election mechanism was intended solely to strengthen Indonesia's presidential system. However, the implementation of presidential and vice-presidential elections has given rise to various issues, particularly regarding the presidential threshold requirement that must be met by political parties or coalitions of parties proposing candidates. The presidential threshold regulation in positive law is set out in Article 222 of Law Number 7 of 2017 concerning General Elections. This provision has been repeatedly subjected to judicial review before the Constitutional Court and was consistently rejected until Decision No. 62/PUU-XXII/2024, in which the Court declared the presidential threshold unconstitutional. This research examines the regulation of the presidential threshold and the legal implications following Decision No. 62/PUU-XXII/2024. The method used in this study is normative juridical, employing statutory, conceptual, and comparative approaches. The legal materials used consist of primary, secondary, and tertiary sources collected through library research. The issuance of this decision eliminates the threshold requirement that has long posed challenges in the nomination of presidential and vice-presidential candidate pairs. The Court stated that all political parties participating in elections are entitled to propose their own presidential and vice-presidential candidate pairs to ensure the availability of alternatives, in accordance with the original intent of the constitutional.

**Keywords:** *constitutional court; general election; presidential threshold.*

### **Introduction**

The existence of a state is a necessity, a logical implication of the existence of a political unity in society. A group of people occupying a specific territory with shared goals and aspirations is the essence of the formation of a state. The formation of a state stems from the people's desire

to establish a power, which, according to Miriam Budiarjo, aims to achieve shared goals.<sup>1</sup> The state, as an abstract construct, is concretely defined in the form of state institutions or state organs that exercise power on behalf of the community. According to Jimly Asshiddiqie, state institutions are individuals and/or bodies given the function and authority to create and enforce laws. The implementation of these functions and authorities is to ensure the creation of order in society.<sup>2</sup>

The exercise of power by state institutions is divided into at least three major groups: the executive, legislative, and judicial. The formation of these three power groups is an attempt to limit the creation of absolute power. This division of power is expected to create a mechanism of checks and balances so that state administration does not become centralized in a single branch of government.

The implementation of the Indonesian state system underwent significant changes following the amendments to the 1945 Constitution of the Republic of Indonesia (“UUD NRI 1945”) between 1999 and 2002. The most significant change was the elimination of the supremacy of the People's Consultative Assembly (MPR) as the highest state institution, as previously stated in prior the amendment. However, the MPR still have the authority as the state organ.<sup>3</sup>

According to Jimly Asshiddiqie, the presidential system of government has several main characteristics, namely:<sup>4</sup>

1. The president and vice president have a specific term of office that is limited by law.
2. The president and vice president are directly responsible to the people as constituents.
3. The election of the president and vice president is carried out through a direct general election mechanism.
4. The president is not accountable to parliament.
5. The president is both head of state and head of government.
6. The President has the right to appoint and dismiss his ministers as assistants to the President.

The implementation of the presidential system in Indonesia entered a new phase after the reform era, marked by the direct election of the president and vice president by the people through general elections. Prior to the reform era, the presidential election process was conducted by the People's Consultative Assembly (MPR), thus preventing the people from having a say in who would hold the reins of executive power. The provisions regarding the presidential and vice presidential election mechanism are stipulated in Article 6A of the 1945 Constitution of the Republic of Indonesia.

Referring to the provisions of Article 6A of the 1945 Constitution of the Republic of Indonesia, the presidential and vice-presidential elections are conducted in 1 (one) pair directly.<sup>5</sup>

---

<sup>1</sup>Abdul Majid, Anggun Novita Sari, “Analisis terhadap Presidential Threshold dalam Kepentingan Oligarki”, *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia*, Vol. 5 No. 1, 2023, hlm. 9

<sup>2</sup>Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, hlm. 40 – 41.

<sup>3</sup>Sudirman, *Kedudukan Presiden dalam Sistem Pemerintahan Presidensiil (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-Undang Dasar NRI Tahun 1945)*, 2013, hlm. 2 – 3.

<sup>4</sup>Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945*, Yogyakarta, FH UII Press, 2004, hlm. 59 – 60.

<sup>5</sup>Burmansyatie Darma, “Analysis of the Constitutional Court’s Authority to Change the Age Requirements for Presidential Candidates and Vice Presidential Candidates in the Constitutional Court’s Decision Number 90/PUU-XXI/2023”, *Jurnal Negrei*, Vol. 4 No. 2, 2024, hlm. 276

The presidential and vice-presidential candidate pairs must be proposed by political parties or coalitions of political parties participating in the general election. Further regulations regarding the presidential and vice-presidential elections are regulated in organic laws related to general elections starting from Law Number 23 of 2003 concerning General Elections, Law Number 42 of 2008 concerning the General Election of the President and Vice President, to Law Number 7 of 2017 concerning General Elections.

The proposal of presidential and vice presidential candidate pairs as mandated by the constitution is then specifically embodied in Article 222 of Law Number 7 of 2017 which reads:

"Candidate pairs are proposed by political parties or coalitions of political parties participating in the election who meet the requirements of obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member election."

The provisions of Article 222 regulate further requirements that must be met by political parties or coalitions of political parties to propose presidential and vice-presidential candidates. The mechanism regulated in Article 222 is known as the Presidential Threshold, which means the threshold for submitting presidential and vice-presidential candidates. The existence of the Presidential Threshold has been implemented since the 2004 general election with a percentage limit of 15% (fifteen) percent of the number of seats in the DPR or 20% (twenty percent) of valid votes nationally in the DPR member election.<sup>6</sup> The Presidential Threshold percentage then changed in 2009 and remained in place until the 2024 election.

The Presidential Threshold requirement is based on the desire to ensure that the president and vice president-elect have adequate political party support in parliament. The urgency of securing this support is due to the president's direct involvement with the House of Representatives (DPR). Therefore, to ensure optimal governance, the president should have strong political party support in the DPR, enabling them to support the government's work programs.<sup>7</sup>

However, the implementation of the Presidential Threshold raises issues, particularly regarding restrictions on political parties that do not meet the requirements to nominate presidential and vice-presidential candidates. The Presidential Threshold design is also considered inconsistent with efforts to strengthen the presidential system, as the primary essence of a presidential system is the independence of the executive branch. Therefore, even if the president and vice president do not receive majority support from political parties in parliament, this does not mean that parliament can impeach or remove them.

The Presidential Threshold regulation has been subject to judicial review by the Constitutional Court as stated in the following decisions:

1. Constitutional Court decision on judicial review of Article 9 of Law Number 42 of 2008:
  - a. Decision No. 56/PUU-VI/2008;
  - b. Decision No. 51-52-59/PUU-VI/2008;
  - c. Decision No. 4/PUU-XI/2013;

<sup>6</sup> Puspasari Setyaningrum, *Kilas Balik Aturan Presidential Threshold dari Pilpres 2004 hingga 2019*, Kompas, diakses dari <https://regional.kompas.com/read/2022/01/26/165108978/kilas-balik-aturan-presidential-threshold-dari-pilpres-2004-hingga-2019?page=all> (24 November 2025).

<sup>7</sup> Restiyani, Isharyanto, "Anomali *Presidential Threshold* dalam Sistem Presidensiil di Indonesia", *Res Publica*, Vol. 4 No. 3, 2020, hlm. 305.

- d. Decision No. 14/PUU-XI/2013;
  - e. Decision No. 46/PUU-XI/2013;
  - f. Decision No. 56/PUU-XI/2013; and
  - g. Decision No. 108/PUU-XI/2013.
2. Constitutional Court decision on judicial review of Article 222 of Law Number 7 of 2017:
    - a. Decision No. 53/PUU-XV/2017;
    - b. Decision No. 49/PUU-XVI/2018;
    - c. Decision No. 54/PUU-XVI/2018;
    - d. Decision No. 52/PUU-XX/2022;
    - e. Decision No. 73/PUU-XX/2022; and
    - f. Decision No. 4/PUU-XXI/2023.

The Constitutional Court has consistently rejected judicial review requests for the Presidential Threshold provisions in its decisions. However, in Constitutional Court Decision No. 62/PUU-XXII/2024, the Constitutional Court issued a different decision, granting the judicial review request for the Presidential Threshold provisions. In its decision, the Constitutional Court declared Article 222 of Law Number 7 of 2017 to be inconsistent with the 1945 Constitution of the Republic of Indonesia and not binding.

Decision No. 62/PUU-XXII/2024 certainly has implications for the implementation of future presidential and vice-presidential elections. Based on this, the author wishes to further discuss the implications of this decision. The author will discuss the concept and chronology of the implementation of the Presidential Threshold in Indonesia, as well as the direction of presidential and vice-presidential elections following Constitutional Court Decision No. 62/PUU-XXII/2024

## Research Method

In this study, the author uses a normative legal research method, also known as doctrinal legal research. This research will focus on examining the presidential threshold mechanism following Constitutional Court Decision No. 62/PUU-XXII/2024.<sup>8</sup> The legal materials used in this research consist of primary, secondary, and tertiary legal materials inventoried through literature studies. The approaches used are statutory, conceptual, and comparative approaches.

## Discussion and Analysis

In a democratic country, general elections are a form of citizen's fundamental rights, exercised in the name of popular sovereignty. Elections provide a platform for the people to exercise their sovereignty and determine future leaders. The results of these elections legitimize the elected individuals to exercise power on behalf of the people.

Jimly Asshiddiqie stated that in general there are 4 (four) important points in holding a general election, namely:<sup>9</sup>

1. Conveying the aspirations of the people in determining future leaders.

---

<sup>8</sup> Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta, Raja Grafindo Persada, 2007, hlm. 13 – 14.

<sup>9</sup> Jimly Asshiddiqie, "Partai Politik dan Pemilihan Umum sebagai Instrumen Demokrasi", *Jurnal Konstitusi*, Vol. 3, No. 4, 2006, hlm. 11.

2. The dynamics of social life create an urgency to align shared interests in choosing future leaders.
3. The increase in the population that has different political views from its predecessors.
4. Ensuring the creation of leadership succession in state institutions.

The holding of presidential and vice-presidential elections after the reform era was an effort to improve the general election system in Indonesia. The experiences of the Old and New Order eras gave rise to a shared desire in the reform era to uphold people's sovereignty genuinely and consistently. The provisions of Article 6A of the 1945 Constitution of the Republic of Indonesia, later embodied in organic law, demonstrate the good faith of the legislators in ensuring the creation of an adequate general election system.

Post-reform general election regulations also gave birth to the concept of the Presidential Threshold in the presidential and vice-presidential election regime. The definition of the Presidential Threshold is divided into two, namely:<sup>10</sup>

1. The threshold that must be met by political parties by taking into account the number of seats or votes obtained to determine the political party's right to propose presidential and vice-presidential candidate pairs.
2. The percentage threshold for electing a presidential and vice-presidential candidate pair in a general election.

Based on these two definitions, when linked to the formulation of articles in positive law in Indonesia, the definition of the Presidential Threshold in question is the threshold for political parties to nominate presidential and vice-presidential candidates. This political party threshold began in 2003 and remained in effect until 2017. The formulation of the articles regulating the Presidential Threshold in several laws is as follows:

1. Article 5 of Law Number 23 of 2003 states:

*Presidential and Vice-Presidential Candidate Pairs can only be proposed by political parties or coalitions of political parties that obtain at least 15% (fifteen percent) of the total number of DPR seats or 20% (twenty percent) of the valid national votes in the DPR member elections.*

2. Article 9 of Law Number 42 of 2008 reads:

*Candidate pairs are proposed by political parties or a coalition of political parties participating in the election who fulfill the requirements of 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 DPR member elections before the Presidential and Vice Presidential elections are held.*

3. Article 222 of Law Number 7 of 2017 reads:

*Candidate pairs are proposed by political parties or coalitions of political parties participating in the election who meet the requirements of obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member election.*

---

<sup>10</sup> Abdul Majid, Anggun Novita Sari, *Op.cit.*, hlm. 11

The Presidential Threshold regulation in the presidential and vice presidential election regime is based on at least 4 (four) things, namely:<sup>11</sup>

1. There is an urgency to ensure a presidential system supported by the majority of political parties in parliament to ensure stable support for the government's work programs.
2. Efforts to select presidential and vice-presidential candidates before they are directly elected by the people.
3. Government efficiency through parliamentary support for future executive policies.
4. Implementation of the value of mutual cooperation through inter-party coalitions in nominating presidential and vice-presidential candidate pairs.

However, the issue of determining the Presidential Threshold has sparked controversy and is considered a violation of political party rights and human rights. This threshold provision creates problems for political parties or coalitions of political parties that do not meet the threshold requirements when they wish to nominate presidential and vice-presidential candidates. On the other hand, certain individuals who formally meet the requirements for presidential or vice-presidential candidates, but whose political parties do not meet the threshold, are thus deprived of their constitutional right to run.

The legislators' perspective in formulating the Presidential Threshold provisions emphasized efforts to create an effective and efficient general election system, particularly for the election of the president and vice president. The Presidential Threshold's implementation is also non-discriminatory, as it applies to all political parties without exception.<sup>12</sup> Efforts to revoke the Presidential Threshold provision have been submitted to the Constitutional Court many times, although they have always ended in rejection.

In relation to the Constitutional Court's rejection of the application for judicial review of the Presidential Threshold provisions, this is based on the following matters:<sup>13</sup>

1. The Presidential Threshold provision is an open legal policy, with the authority to regulate the threshold vested in lawmakers. This discretion limits the Constitutional Court's ability to provide a different interpretation than the lawmakers'.
2. The implementation of the Presidential Threshold is a form of state justice towards political parties in exercising their right to nominate presidential and vice-presidential candidates.

The Presidential Threshold policy, classified by the Constitutional Court in its Decision No. 14/PUU-XI/2013 as an open legal policy, can be interpreted as meaning that lawmakers are given the freedom to adopt certain policies as long as they are in line with the constitution. The formulation of regulations that constitute an open legal policy is limited by several factors, namely:<sup>14</sup>

---

<sup>11</sup> Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk kebijakan Hukum Terbuka *Presidential Threshold* dalam Undang-Undang Pemilihan Umum yang Bersumber dari Putusan Mahkamah Konstitusi", *Jurnal Rechtsvinding*, Vol. 11, No. 1, 2022, hlm. 157 – 158.

<sup>12</sup> I Dewa Made Putra Wijaya, "Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun 2008 tetnang Pemilihan Umum Presiden dan Wakil Presiden", *Jurnal IUS*, Vol. II, No. 6, 2014, hlm. 564.

<sup>13</sup> Putra Perdana Ahmad Saifulloh, *Op.cit.*, hlm. 158 – 162.

<sup>14</sup> Tanto Lailam, "Implikasi Presidential Threshold dalam Pemilu Nasional Serentak terhadap Sistem Presidensiil di Indonesia" dalam Ni'matul Huda, *et all., Mewujudkan Daulat Rakyat melalui Pemilu yang Berkualitas*, Yogyakarta, Pustaka Pelajar, 2019, hlm. 92

1. Does not conflict with the 1945 Constitution of the Republic of Indonesia;
2. The legislators do not exceed their authority; and
3. It is not an abuse of authority.

The implementation of the Predential Threshold in a presidential system is an anomaly. The essence of the separation of executive and legislative powers is to ensure the independence of each institution. The president, as the executive, is independent of the legislative branch's political support, and vice versa. The effectiveness of executive policy implementation does not depend on the legislative branch's approval. Therefore, the logic of substituting the requirements for nominating presidential and vice-presidential candidates for office based on the percentage of seats or the number of votes cast by a political party is irrelevant to a presidential system.<sup>15</sup>

Another anomaly in the application of the Presidential Threshold is the percentage of the number of seats or the number of votes obtained by a political party or coalition of political parties in the previous election.<sup>16</sup> Reference to previous election results does not align with the political dynamics at the time of the nomination of presidential and vice-presidential candidates. Therefore, the implementation of the Presidential Threshold is not appropriate for retention in the presidential and vice-presidential election system.

Efforts to overturn the Presidential Threshold provisions following the enactment of Law Number 7 of 2017 through judicial review at the Constitutional Court have been made in numerous applications. The various MK decisions in these reviews are as follows:

**Table 1. Comparison of the Constitutional Court decision on Presidential Threshold**

| No. | Case           | Reason for Application                                                                                                                                                                                                                                                      | Judge's Consideration                                                                                                                        | Decision           |
|-----|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1.  | 44/PUU-XV/2017 | The Presidential Threshold requirement contradicts the logic of the presidential system and negates the President's authority as the holder of executive power. The enactment of Article 222 of the Election Law has opened the door to the emergence of political cartels. | The applicant does not meet the formal requirements and the application is declared premature.                                               | Not acceptable.    |
| 2.  | 53/PUU-XV/2017 | The implementation of the Presidential Threshold is inconsistent with the implementation of simultaneous elections. Furthermore, the policy is discriminatory against new parties. The use of votes from the 2014 election is also irrelevant for the 2019 election.        | The request is legally groundless because the Presidential Threshold is an open legal policy. Furthermore, the policy is not discriminatory. | Partially granted. |

<sup>15</sup> Saldi Isra, *Pergeseran Fungsi Legislasi*, Depok, PT RajaGrafindo Persada, 2018, hlm. 56

<sup>16</sup> Adjie Hari Setiawan, "Politik Hukum Presidential Threshold 20% dalam Undang-Undang Nomor 7 Tahun 2017", *Jurnal APHTN-HLAN*, Vol. 2, No. 1, 2023, hlm. 180

|    |                 |                                                                                                                                                                                                                                                                                                                                                           |                                                                                                 |                 |
|----|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-----------------|
| 3. | 59/PUU-XV/2017  | Article 222 of the Election Law does not guarantee a simplification of Indonesia's political party system. Using the 2014 election results as the basis for nominating presidential and vice-presidential candidates for the 2019 election is irrelevant.                                                                                                 | The Court's considerations in Decision 53/PUU-XV/2017 apply mutatis mutandis to the a quo case. | Rejected.       |
| 4. | 70/PUU-XV/2017  | The Presidential Threshold policy is not an open legal policy because it contradicts rationality, morality, and a sense of justice. The presidential system will be strengthened if the Presidential Threshold is abolished.                                                                                                                              | The Court's considerations in Decision 53/PUU-XV/2017 apply mutatis mutandis to the a quo case. | Not acceptable. |
| 5. | 71/PUU-XV/2017  | The implementation of the Presidential Threshold hinders any political party from nominating presidential and vice-presidential candidates. Using previous election results as a reference also contradicts the concept of simultaneous elections.                                                                                                        | The Court's considerations in Decision 53/PUU-XV/2017 apply mutatis mutandis to the a quo case. | Not acceptable. |
| 6. | 72/PUU-XV/2017  | The implementation of the Presidential Threshold limits citizens' right to elect presidential and vice-presidential candidates by limiting the number of candidate pairs submitted. Furthermore, the vote base that formed the basis of the threshold is no longer relevant.                                                                              | The Court's considerations in Decision 53/PUU-XV/2017 apply mutatis mutandis to the a quo case. | Not acceptable. |
| 7. | 49/PUU-XVI/2018 | The existence of the threshold requirement eliminates the possibility of alternative presidential and vice-presidential candidate pairs. The requirements for proposing presidential and vice-presidential candidate pairs are stipulated in the 1945 Constitution of the Republic of Indonesia, so this provision does not constitute open legal policy. | The Court has no basis to change its position.                                                  | Rejected.       |
| 8. | 50/PUU-XVI/2018 | The provisions of Article 222 limit political parties from proposing presidential and vice-presidential candidate pairs.                                                                                                                                                                                                                                  | The Court's considerations in Decision 53/PUU-                                                  | Not acceptable. |

|     |                   |                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                      |                 |
|-----|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|     |                   |                                                                                                                                                                                                                                                                                                                                          | XV/2017 apply mutatis mutandis to the a quo case.                                                                                                                                                                    |                 |
| 9.  | 54/PUU-XVI/2018   | The use of previous election results violates the principle of honesty in the implementation of elections because constituents do not know that their votes will be used as the basis for nominating presidential and vice-presidential candidates.                                                                                      | The Court is of the view that the implementation of Article 222 does not conflict with the 1945 Constitution of the Republic of Indonesia and does not harm the value of honesty in the implementation of elections. | Rejected.       |
| 10. | 58/PUU-XVI/2018   | <i>Presidential Threshold</i> limiting the opportunity for political parties to nominate alternative presidential and vice-presidential candidate pairs.                                                                                                                                                                                 | The applicant does not have legal standing.                                                                                                                                                                          | Not acceptable. |
| 11. | 61/PUU-XVI/2018   | The application submitted is unclear and has no legal standing.                                                                                                                                                                                                                                                                          | Does not have legal standing.                                                                                                                                                                                        | Not acceptable. |
| 12. | 92/PUU-XVI/2018   | The implementation of the Presidential Threshold eliminates the opportunity for independent presidential and vice-presidential candidate pairs to be nominated.                                                                                                                                                                          | The applicant's application is unclear.                                                                                                                                                                              | Not acceptable. |
| 13. | 74/PUU-XVIII/2020 | Article 222 of the Election Law has had negative impacts on Indonesia's democratic climate, such as candidacy buying. This provision also creates an exclusive mandate for nominating presidential and vice-presidential candidates only to certain groups.                                                                              | Does not have legal standing.                                                                                                                                                                                        | Not acceptable. |
| 14. | 6/PUU-XX/2022     | <i>Presidential Threshold</i> It is illogical to apply it to countries with presidential systems of government. Presidential elections in presidential countries such as the United States, Brazil, Mexico, Afghanistan, Zambia, Sierra Leone, Ghana, Nigeria, Colombia, Ecuador, Chile, and Uruguay do not use a threshold requirement. | Lacking legal standing. Article 222 does not restrict the best sons and daughters of a region from becoming presidential and vice-presidential candidates.                                                           | Not acceptable. |

|     |                 |                                                                                                                                                                                                                                                                                                                                             |                                                                                                             |                 |
|-----|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------|
| 15. | 7/PUU-XX/2022   | <i>Presidential Threshold</i> cannot be categorized as an open legal policy because it is detrimental to society and eliminates citizens' constitutional rights to obtain as many presidential and vice-presidential candidate pairs as possible.                                                                                           | Does not have legal standing.                                                                               | Not acceptable. |
| 16. | 13/PUU-XX/2022  | <i>Presidential Threshold</i> irrelevant because many constituents in the previous election had died due to the pandemic.                                                                                                                                                                                                                   | The applicant does not have legal standing                                                                  | Not acceptable. |
| 17. | 20/PUU-XX/2022  | <i>Presidential Threshold</i> It has no correlation with strengthening the presidential system. The Comprehensive Draft Amendment to the 1945 Constitution does not contain any discussion of the Presidential Threshold.                                                                                                                   | Does not have legal standing.                                                                               | Not acceptable. |
| 18. | 21/PUU-XX/2022  | <i>Presidential Threshold</i> eliminating the constitutional rights of voters by positioning political parties as executors of people's sovereignty.                                                                                                                                                                                        | Does not have legal standing                                                                                | Not acceptable. |
| 19. | 52/PUU-XX/2022  | <i>Presidential Threshold</i> should never have existed because the provisions of Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia constitute a closed legal policy. In addition, the implementation of the Presidential Threshold has the potential to create an election system controlled by an oligarchy. | One of the applicants lacks legal standing. The applicant's request is also legally unfounded.              | Rejected.       |
| 20. | 16/PUU-XXI/2023 | The implementation of Article 222 of the Election Law is exempted for new political parties.                                                                                                                                                                                                                                                | The applicant lacks legal standing. Furthermore, there are no quality assurances for new political parties. | Not acceptable. |

Source: Author Analysis.

A look at the decisions issued by the Constitutional Court since the enactment of Law No. 7 of 2017 demonstrates the Court's consistent adherence to the constitutionality of Article 222 of the law. However, as previously stated, the dynamics of social life and political configuration have led to a change in the Court's view on the Presidential Threshold. This change can be seen in Decision 62/PUU-XXII/2024.

The decision is the result of a judicial review filed by four students against the Presidential Threshold provisions in the Indonesian presidential and vice-presidential election system. In the main point of the petition, the applicants stated that the provisions of Article 222 have violated the limitations of open legal policy, namely morality, rationality, and intolerable injustice. The limits of an open legal policy must not conflict with these limitations as stated in Constitutional Court Decision No. 51-52-59/PUU-VI/2008.

The applicant's petition states that while the essence of establishing the Presidential Threshold is to strengthen the presidential system, the reality is that the function of political parties has been degraded. The existence of this threshold creates structural problems that hinder the people from expressing their aspirations through specific presidential and vice-presidential candidates. The general election, which should be a forum for the people to determine their leaders, is negated by this threshold.

The applicant provides statistics that in countries that implement a presidential system, the concept of a presidential threshold is not recognized as a requirement for nominating presidential and vice-presidential candidates. In countries that do not implement this threshold concept, it does not lead to political instability. This shows that if lawmakers argue that the presidential threshold policy is solely for the sake of achieving political stability, this cannot be fully accepted, considering that the practice of presidential systems in other countries does not recognize this threshold concept.

**Table 2. Comparison of democracy index on countries with presidential system**

| Country                  | Condition of Democracy | Democracy Index (2022) | Ranking (out of 167 countries) |
|--------------------------|------------------------|------------------------|--------------------------------|
| Uruguay                  | Full democracy         | 8.85                   | 13                             |
| Chile                    | Full democracy         | 8.22                   | 19                             |
| Costa Rica               | Full democracy         | 8.07                   | 23                             |
| United States of America | Full democracy         | 7.85                   | 30                             |
| Panama                   | Flawed democracy       | 7.05                   | 46                             |
| Colombia                 | Flawed democracy       | 6.86                   | 47                             |
| Brazil                   | Flawed democracy       | 6.86                   | 47                             |
| Dominican Republic       | Flawed democracy       | 6.72                   | 51                             |

*Source: the constitutional court decision No. 62/PUU-XXII/2024*

According to data from the Economist Intelligence Unit (EIU), Indonesia's Democracy Index score in 2022 was 6.71, which dropped to 6.53 in 2023. Indonesia's ranking in 2023 dropped to 56th out of 167 countries. Indonesia's level of democracy can be classified as flawed.<sup>17</sup> The data

<sup>17</sup> Andhi Ilham, *Angka Indeks Terun Turun, Demokrasi Indonesia masih Cacat*, Dewan Pertimbangan Presiden Republik Indonesia, diakses dari <https://wantimpres.go.id/id/newsflows/auto-draft-16/> (25 November 2025).

released by the EIU shows that statistically, the implementation of democracy in Indonesia is still considered flawed even though the implementation of the presidential system after the reforms has been strengthened through constitutional amendments.

In Decision No. 62/PUU-XXII/2024, the Constitutional Court declared that Article 222 of Law Number 7 of 2017 is inconsistent with the 1945 Constitution of the Republic of Indonesia and has no binding legal force. This decision marks a new milestone after the Constitutional Court had decided to reject and not accept the judicial review application for the Presidential Threshold provision 33 (thirty-three) times. The Constitutional Court's legal considerations that led to a shift in the Court's principles are as follows:

1. That the provisions of Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia and examining the original intent of the amendment to the 1945 Constitution of the Republic of Indonesia, never stipulated a certain percentage requirement for political parties or political coalitions in proposing presidential and vice-presidential candidate pairs.
2. The presidential and vice-presidential elections are held simultaneously with the elections for members of the House of Representatives (DPR). Using the percentage of votes in the previous election as a requirement for nominating presidential and vice-presidential candidates is no longer relevant because there is no guarantee of stability in political parties' vote share between the previous and subsequent elections.
3. The phrase "obtaining at least 20% (twenty percent) of the total number of seats in the DPR or obtaining 25% (twenty five percent) of valid votes nationally in the previous DPR member elections" has closed the constitutional rights for new political parties that have been declared to have passed as participants in the next election to nominate presidential and vice presidential candidate pairs.
4. The formulation of the threshold percentage does not have a strong rational basis.
5. The threshold requirement has reduced the original intent of Article 6A Paragraph (3) of the 1945 Constitution of the Republic of Indonesia which requires there to be more than 2 (two) pairs of presidential and vice presidential candidates.
6. There is an imposition of the logic of the parliamentary system in the Indonesian presidential system which links the acquisition of legislative votes as a requirement for nominating the president and vice president.

The ruling implicates the unconstitutionality of Article 222 of Law Number 7 of 2017 concerning General Elections. Therefore, in the 2029 elections, as long as no amendments are made to the General Elections Law, the Presidential Threshold will be declared unconstitutional, and every political party or coalition of political parties has the right to nominate presidential and vice-presidential candidates regardless of the number of seats or votes won. The Court's shift in deciding the a quo case is a landmark that demonstrates the dynamics of state administration and legal development in Indonesia.

Following this ruling, the question naturally arises as to how to propose presidential and vice-presidential candidates going forward. In the a quo ruling, the Court ordered lawmakers to amend Law Number 7 of 2017 concerning General Elections through constitutional engineering to regulate the following:

1. Giving all political parties participating in the election the right to propose presidential and vice-presidential candidate pairs.
2. Eliminating the requirement for political parties or coalitions of political parties to meet the percentage of seats in the DPR or the number of valid national votes.
3. Making arrangements for the formation of political party coalitions so that domination does not occur, thus limiting the number of presidential and vice-presidential candidate pairs.
4. Imposing sanctions prohibiting participation in the next election if the political party does not propose a presidential and vice presidential candidate pair.
5. Implementing meaningful participation in changes to the General Election Law.

## **Conclusion**

Strengthening the presidential system reflects the spirit of reform to ensure the succession of Indonesian leadership. Direct presidential and vice-presidential elections by the people embody the spirit of democracy and the exercise of popular sovereignty. Article 6A of the 1945 Constitution stipulates that the presidential and vice-presidential elections are conducted as a single, direct ticket. The nomination of the presidential and vice-presidential ticket is made by political parties or coalitions of political parties participating in the general election.

Article 222 of Law Number 7 of 2017 stipulates a Presidential Threshold (threshold) based on the results of the previous DPR election. This threshold provision has raised issues, particularly regarding the potential loss of constitutional rights for political parties or coalitions of political parties that fail to meet the threshold. Judicial review requests for this provision have been submitted repeatedly and have been rejected by the Constitutional Court, ultimately granted in Decision No. 62/PUU-XXII/2024. In the a quo decision, the Court declared the threshold provision unconstitutional and ordered lawmakers to amend the election law. The Court also ordered regulations to be made so that each political party has the right to propose a presidential and vice presidential candidate pair regardless of the number of seats in the DPR or the number of valid national votes.

## **Bibliography**

- Asshiddiqie, Jimly. 2004. *Format Kelembagaan Negara dan Pergeseran Kekuasaan dalam UUD 1945*. Yogyakarta: FH UII Press.
- Asshiddiqie, Jimly. 2006. "Partai Politik dan Pemilihan Umum sebagai Instrumen Demokrasi", *Jurnal Konstitusi*, Vol. 3, No. 4.
- Asshiddiqie, Jimly. *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.
- Darma, Burmansyatie, 2004. "Analysis of the Constitutional Court's Authority to Change the Age Requirements for Presidential Candidates and Vice Presidential Candidates in the Constitutional Court's Decision Number 90/PUU-XXI/2023", *Jurnal Negrei*, Vol. 4 No. 2.

- Ilham, Andhi, *Angka Indeks Terun Turun, Demokrasi Indonesia masih Cacat*, Dewan Pertimbangan Presiden Republik Indonesia, diakses dari <https://wantimpres.go.id/id/newsflows/auto-draft-16/> (25 November 2025).
- Isra, Saldi. 2018. *Pergeseran Fungsi Legislasi*. Depok: PT RajaGrafindo Persada.
- Lailam, Tanto. 2019. "Implikasi Presidential Threshold dalam Pemilu Nasional Serentak terhadap Sistem Presidensiil di Indonesia" dalam Huda, Ni'matul, *et all., Mewujudkan Daulat Rakyat melalui Pemilu yang Berkualitas*. Yogyakarta: Pustaka Pelajar.
- Majid, Abdul, Sari, Anggun Novita. 2023. "Analisis terhadap Presidential Threshold dalam Kepentingan Oligarki", *Jurnal Rechten: Riset Hukum dan Hak Asasi Manusia*, Vol. 5 No. 1.
- Restiyani, Isharyanto. 2020. "Anomali *Presidential Threshold* dalam Sistem Presidensiil di Indonesia", *Res Publica*, Vol. 4 No. 3.
- Saifulloh, Putra Perdana Ahmad. 2022. "Penafsiran Pembentuk Undang-Undang Membentuk kebijakan Hukum Terbuka *Presidential Threshold* dalam Undang-Undang Pemilihan Umum yang Bersumber dari Putusan Mahkamah Konstitusi", *Jurnal Rechtsvinding*, Vol. 11, No. 1.
- Setiawan, Adjie Hari. 2023. "Politik Hukum Presidential Threshold 20% dalam Undang-Undang Nomor 7 Tahun 2017", *Jurnal APHTN-HAN*, Vol. 2, No. 1.
- Setyaningrum, Puspasari. *Kilas Balik Aturan Presidential Threshold dari Pilpres 2004 hingga 2019*, Kompas, diakses dari <https://regional.kompas.com/read/2022/01/26/165108978/kilas-balik-aturan-presidential-threshold-dari-pilpres-2004-hingga-2019?page=all> (24 November 2025).
- Soekanto, Soerjono, Mamudji, Sri. 2007. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Sudirman. 2013. *Kedudukan Presiden dalam Sistem Pemerintahan Presidensiil (Telaah terhadap Kedudukan dan Hubungan Presiden dengan Lembaga Negara yang Lain dalam Undang-Undang Dasar NRI Tahun 1945)*
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Republik Indonesia Nomor 23 Tahun 2003 tentang Pemilihan Umum Presiden dan Wakil Presiden (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 93)
- Undang-Undang Republik Indonesia Nomor 42 Tahun 2008 tentang Pemilihan Umum Presiden dan Wakil Presiden (Lembaran Negara Republik Indonesia Tahun 2008 Nomor 176, Tambahan Lembaga Negara Republik Indonesia Nomor 4924)
- Undang-Undang Republik Indonesia Nomor 7 Tahun 2017 tentang Pemilihan Umum (Lembaran Negara Republik Indonesia Tahun 2017 Nomor 182, Tambahan Lembaran Negara Republik Indonesia Nomor 6109)
- Wijaya, I Dewa Made Putra. 2014 "Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun 2008 tentang Pemilihan Umum Presiden dan Wakil Presiden". *Jurnal IUS*, Vol. II, No. 6