

## **Presidential Elections Without a Threshold in Indonesia: Strengthening Citizens' Political Rights After the 2025 Constitutional Court Decision**

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### **Abstract**

The presidential threshold in Indonesia, requiring political parties or coalitions to secure at least 20% of parliamentary seats or 25% of valid votes to nominate presidential candidates, has long sparked debate over the constitution. Critics contend that this requirement operates as a structural barrier that limits citizens' political rights and consolidates oligarchic dominance. This study examines the abolition of the presidential threshold following the Constitutional Court's Decision No. 62/PUU-XXII/2024, which annulled Article 222 of the 2017 Election Law. Employing a normative juridical and comparative approach, the research analyzes constitutional principles, judicial reasoning, and electoral practices in selected democracies, including France and the United States. The analysis demonstrates that removing the presidential threshold broadens political participation, enhances inclusivity, and fosters fairer democratic competition by reducing the dominance of major parties. Although the absence of a threshold may increase the number of candidates and the likelihood of run-off elections, such consequences can be mitigated through appropriate institutional design. Normatively, this study concludes that abolishing the presidential threshold is constitutionally justified and necessary to fully realize citizens' political rights and democratic sovereignty in Indonesia.

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### **Keywords**

Presidential Threshold; Political Rights; Constitutional Democracy; Constitutional Court; Judicial Review

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### **1. INTRODUCTION**

Indonesia's democratic system has undergone a fundamental transformation since the Reformasi era, particularly with the introduction of direct presidential elections in 2004. This reform was designed to strengthen popular sovereignty as mandated by Article 1 paragraph (2) of the 1945 Constitution, which states that "sovereignty is in the hands of the people and implemented according to the Constitution" (Ambardi, 2018) (Republik Indonesia, 1945, p. 3) (Negara, 2001). Nevertheless, the subsequent adoption of the presidential threshold requiring political parties or coalitions to obtain at



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least 20% of seats in the House of Representatives or 25% of the national vote to nominate presidential candidates has generated persistent constitutional and democratic debate. (Republik Indonesia, 2017) (Ambardi, 2018)

Critics argue that the presidential threshold narrows political choice and weakens citizens' political rights by limiting access to candidacy (Blais, 2006). From a constitutional perspective, this requirement has been criticized for contradicting the principles of equality and popular sovereignty, as smaller parties and their voters are effectively excluded from meaningful participation. Asshiddiqie (2020) contends that "the presidential threshold limits the political rights of smaller parties and indirectly discriminates against voters who support them" (Asshiddiqie, 2020)(p 87), while Mahfud (2019) argues that "equality before the law is undermined when legally recognized parties are denied the opportunity to nominate candidates" (p. 112). Comparative democratic theory similarly suggests that restrictive nomination mechanisms reduce electoral competition and public trust in democratic institutions. (Norris et al., 2014)

Judicial interpretations of the presidential threshold in Indonesia reveal a significant jurisprudential evolution. (Boix, 1999) In Decision No. 53/PUU-XV/2017, the Constitutional Court upheld the threshold as an open legal policy within the legislature's discretion (Mahkamah Konstitusi RI, 2017). However, this position was fundamentally revised in Decision No. 62/PUU-XXII/2024, where the Court declared Article 222 of Law No. 7/2017 unconstitutional, reasoning that the presidential threshold had become a structural barrier to citizens' (*Decision No. 53/PUU-XV/2017*, 2017)equal political participation (Carey & Hix, 2011) (Mahkamah Konstitusi RI, 2025). This landmark ruling marks a critical shift in Indonesia's constitutional approach to electoral design. (Shugart & Carey, 1992) (Les Parrainages à l'élection Présidentielle, n.d.)

While existing scholarship has extensively discussed the political consequences and constitutional debates surrounding electoral thresholds, most studies examine these dimensions separately. Few analyses integrate Colomer's (2005) principles of equality, judicial reasoning, and comparative electoral practices into a single framework. As Suroso et al. (2022) observe, "the literature has yet to provide a comprehensive approach th The logic of pre-electoral coalition form t combines normative, (Hicken, 2009) jurisprudential, and comparative methods in studying the threshold" (p. 370). (*Decision No. 62/PUU-XXII/2024*, 2025) This study addresses that gap by offering an integrated analysis of the abolition of the presidential threshold.

The urgency of this research is reinforced by the Constitutional Court's 2025 decision, which opens new possibilities for redesigning Indonesia's electoral system. (Dalton, 2008) Comparative experiences demonstrate that democratic presidential systems can function without parliamentary thresholds, as seen in France's administrative sponsorship model and the United States' primary election and ballot

access mechanisms (Fish, 2006) (Conseil Constitutionnel, n.d.; Federal Election Commission, n.d.). These examples provide valuable insights for rethinking Indonesia's post-threshold electoral framework. (Golder, 2006)

Research Questions, grounded in the foregoing discussion, this study seeks to address several interrelated research questions concerning the constitutionality and democratic implications of the presidential threshold in Indonesia. Specifically, it examines whether the presidential threshold is compatible with constitutional guarantees of equality before the law and the protection of citizens' political rights. Furthermore, the study explores the legal reasoning that underpins the Constitutional Court's jurisprudential shift leading to the abolition of the presidential threshold. In addition, it investigates the extent to which comparative electoral practices in other democratic systems may provide relevant insights or lessons for the development of Indonesia's electoral framework.

**Objectives of the Study:** The primary objective of this study is to critically assess the compatibility of the presidential threshold with fundamental constitutional principles, particularly those relating to equality and political rights. In pursuing this objective, the study also aims to analyze the Constitutional Court's shift in jurisprudence regarding the presidential threshold, with a focus on its constitutional interpretation and normative reasoning. Finally, the study seeks to formulate informed recommendations for the future design of Indonesia's electoral system by drawing upon comparative experiences from other democratic jurisdictions. (Laakso & Taagepera, 1979)

In a constitutional democracy, electoral design is not merely a technical mechanism for selecting leaders, but a normative instrument that determines the extent to which citizens can meaningfully exercise their political rights. The principles of popular sovereignty and equality before the law require that electoral rules ensure fair access to political competition and equal opportunity for participation, both for political actors and for voters (*Electing Presidents in Presidential and Semi-Presidential Democracies*, 2019) (Fish, 2006). When nomination requirements disproportionately privilege certain parties or political elites, electoral systems risk transforming from instruments of representation into mechanisms of exclusion. Therefore, assessing the constitutionality of electoral thresholds must go beyond considerations of political stability and include a rigorous evaluation of their impact on citizens' fundamental rights and democratic legitimacy. (A. J. Horowitz, 1991)

## 2. METHOD

This study employs a normative juridical research method (doctrinal legal research) combined with a comparative constitutional approach. (Yusran et al., 2018) Normative juridical research examines law as a system of norms by analyzing statutory provisions, constitutional principles, and judicial interpretations to assess their consistency with democratic values ((Mawaddah & Haris, 2022);

(Marzuki, 2017)). This method is particularly appropriate for constitutional law research, as it enables a systematic evaluation of the legitimacy of legal norms without relying on empirical field data. (Katz & Mair, 1995)

The research design is descriptive-analytical and comparative. Descriptively, the study outlines the legal framework governing presidential elections in Indonesia, particularly the presidential threshold. Analytically, (Kitschelt, 2000) evaluates the constitutionality of the threshold in light of principles of equality and popular sovereignty. The comparative dimension complements this analysis by examining presidential nomination mechanisms in France and the United States, which do not apply parliamentary seats. (Laakso & Taagepera, 1979) thresholds (Kitschelt, 2000) ((Norris et al., 2014); International IDEA, 2019)

The course of the research was conducted chronologically through the following procedural stages (research algorithm): (Lijphart, 1990)

- a. Identification of the legal issue, namely the presidential threshold as regulated in Article 222 of Law No. 7 of 2017 and its implications for citizens' political rights;
- b. Inventory and classification of legal materials, including constitutional provisions, election laws, and Constitutional Court decisions;
- c. Interpretative analysis of legal norms, focusing on the principles of equality before the law and popular sovereignty enshrined in the 1945 Constitution (Laakso & Taagepera, 1979)
- d. Jurisprudential analysis of Constitutional Court decisions, tracing the shift in judicial reasoning from considering the threshold an "open legal policy" to declaring it unconstitutional; and
- e. Comparative constitutional analysis, examining electoral practices in France and the United States to formulate normative recommendations for Indonesia's post-threshold electoral design ((Samuels & Shugart, 2010a); (Carey & Hix, 2011b)). (Laakso & Taagepera, 1979)

Data acquisition was conducted entirely through library research. (Katz & Mair, 1995) The data sources consist of primary legal materials (the 1945 Constitution, Election Laws of 2003, 2008, and 2017, and Constitutional Court Decisions No. 14/PUU-XI/2013, No. 53/PUU-XV/2017, and No. 62/PUU-XXII/2024), secondary legal materials (books, peer-reviewed journal articles, and scholarly reports on constitutional law and democracy), and tertiary materials (legal dictionaries, official government publications, and reputable online databases). The selection of materials was based on relevance, authority, and scientific credibility. (Marzuki, 2017)

The data analysis follows a qualitative juridical technique. Legal interpretation was applied to examine the consistency of statutory norms with constitutional principles, while case analysis was used to evaluate judicial reasoning in Constitutional Court decisions. Comparative analysis was employed to identify similarities and differences between Indonesia's electoral framework and those of other

democratic presidential systems, thereby supporting the formulation of normative recommendations. (Waldner & Lust, 2018)

This research does not involve fieldwork; therefore, no specific time or place for empirical research is specified. The study was conducted through desk-based legal analysis over the course of the research period using publicly accessible legal documents and academic sources.

This article does not formulate a hypothesis in the positivistic sense. Instead, it advances a normative legal argument that the abolition of the presidential threshold strengthens constitutional guarantees of equality and citizens political rights, which is assessed through doctrinal and comparative analysis, consistent with the nature of normative juridical research. (D. L. Horowitz, 1991) (Mawaddah & Haris, 2022) (Marzuki, 2017)

By systematically applying normative, juridical, and comparative constitutional methods, this research provides a structured, scientifically grounded framework for analyzing the abolition of the presidential threshold in Indonesia. By integrating constitutional interpretation, jurisprudential analysis, and comparative perspectives, the methodological approach ensures that the findings are not only legally coherent but also relevant to broader democratic theory and practice. This comprehensive design enables the study to critically assess the compatibility of electoral regulations with constitutional principles of equality and popular sovereignty, while offering normative recommendations that are both doctrinally sound and contextually informed. (Valenzuela, 2004)

### 3. FINDINGS AND DISCUSSION

#### 3.1. Presidential Threshold as a Constitutional Structural Barrier

The findings demonstrate that the presidential threshold constituted a structural barrier within Indonesia's electoral system rather than a neutral technical regulation. Article 222 of Law No. 7 of 2017 required political parties or coalitions to control at least 20% of DPR seats or 25% of the national valid vote to nominate presidential candidates. While formally framed as a nomination requirement, this rule substantively excluded smaller and newly established parties from exercising an equal constitutional right to nominate candidates, despite their lawful status as election participants. (Tsebelis, 1995)

From a constitutional standpoint, this exclusion conflicted directly with the principles of popular sovereignty and political equality enshrined in Articles 1(2), 27(1), and 28D(3) of the 1945 Constitution. Rather than allowing competition to be determined by voters, the threshold pre-emptively restricted participation through legal design. Asshiddiqie (2020) conceptualizes such arrangements as *institutionalized inequality*, in which access to political competition is filtered through legislative power rather than democratic legitimacy. Mahfud (2019) similarly argues that nomination thresholds transform equality before the law into a conditional privilege reserved for dominant parties. (Taagepera,

n.d.)

Empirically, the threshold generated three interrelated effects. First, it eliminated the nomination rights of smaller parties, consolidating control over candidacy among a limited set of political elites. Second, it reduced voter choice, as citizens could only select candidates emerging from large coalitions, regardless of societal preferences. Third, it reinforced oligarchic dominance by centralizing nomination authority within party elites who controlled parliamentary resources. Comparative electoral research consistently shows that such restrictive nomination devices weaken democratic inclusivity and public trust. (Carey & Hix, 2011b; Norris et al., 2014)

In this sense, the presidential threshold functioned not as a stabilizing mechanism derived from electoral competition but as a structural restriction imposed prior to competition, distorting the constitutional promise of equal political participation.

### **3.2. Jurisprudential Shift: From Open Legal Policy to Unconstitutionality**

A central contribution of this study lies in tracing the Constitutional Court's jurisprudential evolution. In Decision No. 53/PUU-XV/2017, the Court upheld the threshold under the doctrine of *open legal policy*, deferring to legislative discretion in electoral design. Stability, governability, and coalition-building were cited as legitimate objectives. At that stage, constitutional equality was interpreted procedurally rather than substantively.

However, this position was decisively reversed in Decision No. 62/PUU-XXII/2024. The Court held that the presidential threshold had evolved into a structural obstacle to citizens' constitutional rights, emphasizing that legislative discretion cannot justify systemic exclusion from political participation. The Court explicitly recognized that prolonged application of the threshold produced cumulative discriminatory effects incompatible with popular sovereignty and equal opportunity in government.

This shift reflects a broader constitutional trend toward substantive constitutionalism, in which the real-world impact of electoral rules becomes central to constitutional review. By abandoning the open legal policy doctrine in this context, the Court affirmed that electoral engineering must remain subordinate to constitutional guarantees.

### **3.3. Reassessing the Stability Argument**

Historically, the presidential threshold was justified as a mechanism to prevent excessive fragmentation in Indonesia's multiparty system. Introduced in Law No. 23 of 2003 and expanded in subsequent legislation, the threshold was intended to filter candidates and ensure governability. However, comparative constitutional theory casts doubt on the assumption that stability requires exclusion. (Taagepera, 2002)

Lijphart (2012) demonstrates that democratic stability is more effectively achieved through inclusive competition combined with institutional safeguards, such as proportional representation and run-off systems. Similarly, show that presidential systems worldwide rely on post-electoral mechanisms, rather than nomination barriers, to secure governability. The Indonesian case illustrates how stability-through-restriction can gradually transform into rights deprivation when detached from constitutional limits. (Samuels & Shugart, 2010a)

### **3.4. Comparative Perspective: Beyond Western Democracies**

Comparative analysis confirms that legislative thresholds are not a global democratic norm. In France, presidential candidates qualify through sponsorships from 500 elected officials across diverse territories, ensuring seriousness without linking eligibility to parliamentary strength. In the United States, nominations depend on primaries and state-level ballot access rules rather than congressional seat shares. (Suroso et al., 2022)

Importantly, non-Western presidential democracies exhibit similar inclusivity. In Brazil, Argentina, and Mexico, candidacy depends on party endorsement or citizen signatures, complemented by two-round electoral systems. These cases demonstrate that fragmentation concerns are managed through run-off mechanisms, not pre-emptive exclusion. Indonesia's post-threshold framework, therefore, aligns with both Western and Global South democratic practices. (Sukmawan & Pratama, 2023)

### **3.5. Discussion**

The findings confirm that the presidential threshold represented a form of constitutional exclusion embedded in electoral law. Its persistence reflected elite-driven political engineering aimed at consolidating control over presidential nominations. This supports prior studies arguing that thresholds disproportionately serve dominant party interests rather than democratic principles. (Abi Suroso et al., 2022; R. Yusran, 2018)

The abolition of the threshold marks a democratic realignment. Inclusivity is expanded, voter choice restored, and oligarchic dominance reduced. While increased candidacy may lead to more frequent second-round elections, comparative evidence indicates that run-off systems effectively balance inclusivity and legitimacy (International IDEA, 2019). Democratic resilience, as Norris (2014) emphasizes, emerges not from restriction but from fair competition under robust institutions.

This study advances the literature by integrating constitutional jurisprudence, democratic theory, and comparative analysis, demonstrating that Indonesia's post-threshold model is neither exceptional nor risky, but constitutionally and democratically coherent.

### 3.6. Policy Implications

To consolidate democracy after threshold abolition, several measures are recommended:

- a. Maintain a zero-threshold nomination framework.
- b. Strengthen administrative verification to prevent frivolous candidacies.
- c. Enhance campaign finance regulation and media equality.
- d. Preserve the two-round electoral system to ensure majority legitimacy.

The findings of this study demonstrate that the presidential threshold set out in Article 222 of Law No. 7 of 2017 served as a structural barrier within Indonesia's electoral and constitutional framework. Rather than merely serving as a technical requirement for presidential nomination, the threshold systematically restricted access to political competition by conditioning candidacy on parliamentary seat share or prior electoral performance. This mechanism excluded smaller and newly established political parties from nominating presidential candidates, despite their formal recognition as election participants. (March & Olsen, 1984) Consequently, political competition at the presidential level was narrowed even before voters could exercise their constitutional right to choose among alternatives. (Stepan & Skach, 1993)

From a constitutional perspective, this restriction conflicted with the foundational principles of Indonesia's 1945 Constitution, particularly the principles of popular sovereignty and equality before the law (Samuels & Shugart, 2010a). By privileging parties with substantial parliamentary representation, the threshold transformed political equality into a differentiated right, dependent on legislative power rather than citizenship (Mainwaring, 1993). As a result, voters were indirectly deprived of meaningful choice, since presidential candidates emerged almost exclusively from large party coalitions. This finding supports constitutional scholarship that views such nomination thresholds as institutionalized forms of inequality that undermine democratic participation. (Asshiddiqie, 2010; mahfud Mahfud, 2019)

The discussion further reveals that the threshold reinforced oligarchic patterns within Indonesia's party system. (McCoy et al., 2018) Concentrating nomination authority in the hands of dominant parties strengthened elite control over candidate selection and marginalized alternative political forces. This dynamic aligns with broader comparative findings that restrictive nomination rules tend to entrench established elites and weaken electoral competitiveness (Norris, 2014). In practice, the presidential threshold did not merely filter candidates based on seriousness or viability; it structurally favored actors with existing ace (Przeworski et al., n.d.)ss to power, thereby limiting democratic renewal. (Mahfud, 2019) (The 1945 Constitution of the Republic of Indonesia, 1945)

A significant jurisprudential development addressed in this study is the Constitutional Court's shift in interpretation. In Decision No. 53/PUU-XV/2017, the Court upheld the threshold as part of the legislature's "open legal policy," emphasizing political stability and governability. At that stage, the

Court adopted a deferential approach, prioritizing legislative discretion over substantive equality. However, this position changed fundamentally (Mainwaring, 1993). In Decision No. 62/PUU-XXII/2024. The Court recognized that the prolonged application of the threshold had produced cumulative effects that violated citizens' constitutional rights (O'Donnell, 1994). By declaring Article 222 unconstitutional, the Court reframed the threshold as a structural obstacle to equal political participation rather than a permissible policy choice. (Lindberg, 2006)

This jurisprudential shift reflects a broader move toward substantive constitutionalism, in which the real impact of electoral rules becomes central to constitutional review. The Court's reasoning underscores that stability cannot justify systematic exclusion and that electoral engineering must remain consistent with constitutional guarantees. In this sense, the decision represents not only a legal correction but also a democratic realignment, restoring the primacy of popular sovereignty in presidential elections (Lijphart, 1990). (Law No. 23 of 2003 on the Election of the President and Vice President, 2003)

Comparative analysis strengthens these findings. Most presidential and semi-presidential democracies do not rely on legislative thresholds to regulate candidacy (Lijphart, 2012). In France, presidential candidates qualify through sponsorships from elected officials across multiple regions, ensuring national support without linking eligibility to parliamentary dominance. In the United States, candidacy is determined through party primaries (Riker, 1982) and state-level ballot access requirements rather than congressional seat shares. (Reynolds et al., 2005) Similarly, many Latin American presidential systems rely on party endorsements or citizen signatures combined with two-round electoral systems to manage fragmentation. These comparative practices demonstrate that inclusivity and governability are not mutually exclusive but can be balanced through procedural safeguards rather than exclusionary thresholds (Lijphart, 2012; (Samuels & Shugart, 2010a)).

The discussion also addresses the long-standing justification for thresholds: that they are necessary to prevent excessive fragmentation. While concerns about governability are not unfounded, comparative democratic theory suggests that fragmentation is better managed through post-electoral mechanisms, such as run-off elections, coalition bargaining, and legislative checks and balances. Indonesia's two-round presidential system already provides a mechanism to ensure majority legitimacy, reducing the need for restrictive nomination rules. Thus, the stability-through-restriction rationale underlying the presidential threshold appears normatively weak and empirically unsupported. (Law No. 7 of 2017 on General Elections, 2017)

Overall, the findings and discussion indicate that the presidential threshold undermined constitutional equality, constrained democratic choice, and reinforced elite dominance, while offering only limited stability benefits. Its abolition by the Constitutional Court aligns Indonesia's electoral

system more closely with constitutional principles and comparative democratic practices. At the same time, the transition to a threshold-free system requires complementary institutional reforms, particularly in administrative verification, campaign finance regulation, and media access, to ensure that inclusivity translates into fair and effective competition. In this respect, the abolition of the threshold should be understood not as the endpoint of reform, but as a critical step toward deepening Indonesia's constitutional democracy. (Law No. 42 of 2008 on the Election of the President and Vice President, 2008)

#### 4. CONCLUSION

This study concludes that the presidential threshold stipulated in Article 222 of Law No. 7 of 2017 constituted a structural violation of political equality within Indonesia's constitutional democracy. By conditioning the right to nominate presidential candidates on parliamentary seat share or prior electoral performance, the threshold excluded many legally recognized political parties from meaningful participation in the electoral process.

As a result, it narrowed voter choice and reinforced oligarchic control over presidential nominations, contradicting the constitutional principles of popular sovereignty and equal opportunity in government. The Constitutional Court's Decision No. 62/PUU-XXII/2024 represents a decisive correction of this constitutional distortion. By declaring the presidential threshold unconstitutional, the Court reaffirmed that electoral competition must be grounded in the sovereignty of the people rather than filtered through legislative power. This ruling signifies an important jurisprudential shift from deference to legislative "open legal policy" toward substantive protection of citizens' political rights, emphasizing that electoral stability cannot be achieved at the expense of constitutional equality.

From a comparative perspective, the Indonesian experience confirms broader democratic patterns. Presidential systems in countries such as France and the United States operate without legislative nomination thresholds, relying instead on administrative verification, sponsorship requirements, primaries, and two-round electoral systems to balance inclusivity and governability. These comparative practices demonstrate that political stability and democratic legitimacy can be maintained without pre-emptive exclusion of political actors, supporting theoretical arguments that inclusivity strengthens, rather than weakens, democratic resilience.

Conceptually, this study contributes to the field of constitutional and electoral law by reframing the presidential threshold as a barrier to democratic participation rather than a safeguard of political stability. Methodologically, it highlights the value of integrating normative constitutional analysis with comparative electoral design to assess the real-world impact of electoral rules. The findings suggest that legitimacy in presidential elections is better secured through institutional mechanisms, such as the two-

round system and fair administrative regulation, rather than restrictive nomination thresholds.

Nevertheless, this study has limitations. Its normative and doctrinal focus means that it does not empirically assess voter behavior, party strategies, or electoral outcomes following the abolition of the threshold. Future research should therefore examine how a threshold-free system affects candidate diversity, voter preferences, coalition formation, campaign financing, and governance effectiveness. Such empirical inquiry will be essential to understanding how Indonesia can consolidate a more inclusive democracy while fully respecting constitutional principles of equality and popular sovereignty.

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