



Dynamics of Judicial Review of Presidential Candidate Requirements from the Perspective of Citizens' Constitutional Rights

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ABSTRACT

The presidential threshold in Article 222 of Law 7/2017 has triggered long-standing constitutional debates. While previously upheld as an open legal policy, it is often criticized for limiting citizens' rights to be elected and participate equally in elections. This study aims to analyze the shifting dynamics of the Constitutional Court's stance regarding Article 222 from 2017 to 2025, specifically focusing on the transition from rejecting petitions to granting the judicial review in Decision Number 62/PUU-XXII/2024. This research provides a fresh perspective by tracking the judicial evolution leading to the landmark 2024 decision, highlighting a significant departure from previous jurisprudence regarding presidential candidacy thresholds. The study employs a normative juridical method with doctrinal and decisional approaches, analyzing Constitutional Court decisions directly related to the presidential threshold review. The findings reveal a shift from prioritizing lawmakers' discretion to protecting constitutional rights and equality in presidential nominations. While eliminating the threshold expands political participation and strengthens substantive democracy, it simultaneously creates new constitutional challenges regarding the relationship between the Court and lawmakers.

INTRODUCTION

In recent decades, Indonesia has adopted a presidential threshold, namely a threshold for presidential candidacy based on party or coalition support through Election Law No. 7/2017.¹ Officially, this requirement is expected to foster government stability, but in reality, only a handful of elites are able to run. For example, in the 2019 and 2024 general elections, only two pairs of candidates passed the selection process, demonstrating a monopoly on political access.²

In theory, this measure strengthens government formation and ensures candidates have a strong legislative base. However, from a political participation perspective, the threshold excludes the rights of citizens not yet represented by major parties and limits more inclusive political pluralism. Similarly, the minimum age requirement (40 years) and official native citizenship in the

¹ Mochamad Rizky Soeod, "Analysis of Presidential Nomination Threshold Regulation Based on Constitutional Court Decisions in 2022–2023," *Jurnal Konstitusi dan Demokrasi* 3, no. 2 (2023), <https://doi.org/10.7454/jkd.v3i2.1309>.

² Selvi Christina Situmeang and Wirya Dinata, "The Constitutional Court's Inconsistency Regarding Minimum Age Requirements for Presidential and Vice Presidential Candidates," *Jurnal Konstitusi* 21, no. 4 (2024): 609–34, <https://doi.org/10.31078/jk2145>.

1945 Constitution constitute structural barriers based on constitutional rights. This age limit has limited candidates like Gibran Rakabuming Raka, even though his experience as a regional head meets the requirements. This creates a tension between formal legal norms and individual political rights.

Since 2022, the Constitutional Court (MK) has become a contested arena, with Decision 90/PUUXXI/2023 permitting candidates under 40 who have previously served in government and removing the minimum threshold for candidacy. The Constitutional Court viewed this as an intervention to protect citizens' rights to political access.³ However, this discourse has opened up new problems. Legislative elites are now responding with the possibility of legislation overriding the Constitutional Court's ruling, potentially triggering a constitutional crisis and weakening the system of checks and balances. Furthermore, concerns have arisen that the Constitutional Court has overstepped its authority (*ultra petita*) in its ruling by establishing a new type of norm rather than simply declaring one unconstitutional, which some analysts believe reflects a tendency toward judicial activism.

Several previous studies have examined the dynamics of judicial review of presidential candidate requirements from the perspective of citizens' constitutional rights. For example, research by Mega Setya Utami & Agus Riwanto (2023) focused on the democratic political implications of the intersection between the presidential threshold and citizens' voting rights, based on Constitutional Court Decision No. 4/PUUXXI/2023. They concluded that the threshold prevents new and minority parties from participating.⁴ Bagus Surya Prabowo's (2023) research highlights the emergence of judicial activism in threshold decisions, emphasizing that the Constitutional Court uses the principles of morality and substantive justice when rejecting discriminatory norms.⁵ Meanwhile, Denny Indra Sukmawan & Syaugi Pratama (2023) provide a critical and constructive study of the Constitutional Court's decision, questioning its legal basis in the context of legislative authority.⁶

A study by Muhammad Mahesa Rannie et al. (2024) embodies the human rights perspective that this threshold is not suitable for application in a multi-party presidential state like Indonesia.⁷ On the other hand, R. Khan, ARB, and Agustin (2024) highlight the *ultra petita* aspect, with the

³ Orin Sabrina Pane, Ida Bagus, and Mahayoga Raharja, "The Constitutional Court's *Ultra Petita* Decision on the Judicial Review of the Requirements for Presidential and Vice Presidential Candidates (Analysis of Constitutional Court Decision Number 90/PUU-XXI/2023)," *Jurnal Legislasi Indonesia*, no. 2 (2023): 1–14. <https://doi.org/10.54629/jli.v21i1.1376>.

⁴ Mega Setya Utami and Agus Riwanto, "Constitutional Analysis of the President's Threshold Policy to Fulfill Citizens' Voting Rights in the Presidential Election (Study of Constitutional Court Decision Number 4/PUU-XXI/2023)," *RES PUBLICA [Journal of Public Policy Law]* 8, no. 3 (2024): 417–29, <https://doi.org/10.20961/respublica.v8i3.85705>.

⁵ Bagus Surya Prabowo, "Initiating Judicial Activism Against the Presidential Threshold Decision at the Constitutional Court," *Jurnal Konstitusi* 19, no. 1 (2022): 073, <https://doi.org/10.31078/jk1914>.

⁶ Denny Indra Sukmawan and Syaugi Pratama, "A Critical Review of the Constitutional Court Decision on the Presidential Threshold," *Constitutional Journal* 20, no. 4 (2023): 556–75, <https://doi.org/10.31078/jk2041>.

⁷ Mahesa Rannie, Retno Saraswati, and Fifiana Wisnaeni, "Do Parliamentary Reform and the Presidential Threshold Strengthen the Presidential System in Indonesia?," *Sriwijaya Law Review* 8, no. 1 (2024): 133–51, <https://doi.org/10.28946/slrev.Vol8.Iss1.3157.pp133-151>.

Constitutional Court going beyond the applicant's petition.⁸ This study presents a novel approach by integrating three dimensions of candidate requirements: threshold, age, and citizenship, into a comprehensive and sophisticated analytical framework. It examines a series of Constitutional Court decisions through mid-2025, including legislative responses to these decisions, and analyzes their long-term democratic implications. The result is a new normative model of the balance between citizen rights and political system stability that can serve as a reference for regulatory reform.

The objectives of this study are: First, this study aims to analyze the evolution of the Constitutional Court's judicial review decisions from 2022 to 2025 regarding presidential candidate requirements, including the presidential threshold, age limit, and the principle of natural citizenship, with an emphasis on the interpretation of citizens' constitutional rights. Second, this study seeks to evaluate the power dynamics between the Constitutional Court and the legislature, particularly the potential for legislative override and the resulting constitutional implications. Are there adequate mechanisms to protect individual rights amid potential legislative changes in response to Constitutional Court decisions?

This study argues, first, that the Constitutional Court has played a significant role in expanding the space for citizen political participation through its progressive decisions. These decisions, which abolished absolute age requirements and eliminated the threshold for candidacy, not only opened access for candidates but also reflected a sensitivity to individual rights. Second, the study critically argues that legislative intervention following the Constitutional Court's ruling could trigger constitutional instability, disrupt checks and balances if new laws quickly re-impose political access, and thus undermine substantive democracy, which has been fostered through judicial review.⁹ This research is crucial as an evidence base for academics, policymakers, and human rights advocates in formulating a constitutional framework that effectively protects citizens' political rights without compromising the stability of Indonesia's presidential system. These findings could provide a crucial roadmap for future electoral and legislative reforms.

METHODS

This research uses a qualitative method with a normative juridical approach (normative juridical research).¹⁰ This method is used to analyze the legal norms governing the requirements for presidential and vice-presidential nominations, particularly the presidential threshold provisions in Article 222 of Law Number 7 of 2017 concerning General Elections, as well as the dynamics of Constitutional Court decisions in testing these norms. Normative legal research emphasizes the analysis of secondary legal materials, including laws and regulations, court decisions, and academic

⁸ R. Khan, ARB, & Agustin, "The Judicialization of Politics in the Constitutional Court's Judicial Review of the Age Limit for Presidential and Vice Presidential Candidates," *Journal of Law, Politics and Humanities* 4, no. 4 (2024): 984–98, <https://doi.org/https://doi.org/10.38035/jlph.v4i4>.

⁹ Enika Maya Oktavia, Mely Noviyanti, and Dalpin Safari, "A Portrait of Abusive Judicial Review in President Joko Widodo's Administration," *Legislative Journal* 7, no. 2 (2024): 131–51.

¹⁰ Achmad Irwan Hamzani et al., "Legal Research Methods: Theoretical and Implementative Review," *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3610–19, <https://doi.org/10.15379/ijmst.v10i2.3191>.

literature relevant to the issue of the constitutionality of presidential nomination requirements.

The research approach used includes three main approaches. First, the statute approach, which analyzes the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 2017 concerning General Elections, and the Law on the Constitutional Court relating to the mechanism for judicial review. Second, the conceptual approach, which examines theories of constitutional law, the principles of constitutional democracy, citizens' political rights, as well as the doctrines of judicial review and open legal policy. Third, the case approach, namely by analyzing the Constitutional Court decisions that are directly related to the testing of Article 222 of the Election Law from 2017 to 2024, including Decisions Number 44/PUU-XV/2017, 53/PUU-XV/2017, 59/PUU-XV/2017, 70/PUU-XV/2017, 71/PUU-XV/2017, 72/PUU-XV/2017, 49/PUU-XVI/2018, 50/PUU-XVI/2018, 54/PUU-XVI/2018, 58/PUU-XVI/2018, 61/PUU-XVI/2018, 74/PUU-XVIII/2020, 20/PUU-XVIII/2020, and Decision Number 62/PUU-XXII/2024.

In addition to a normative analysis of court decisions, this study also uses limited descriptive data to strengthen its analysis of the implications of presidential nomination threshold regulations in election practice. These data include the number of presidential and vice-presidential candidate pairs in several election cycles, the pattern of political party coalitions in the nomination process, the frequency of applications for judicial review of Article 222 of the Election Law to the Constitutional Court, and the success rate of these applications. This descriptive data is presented concisely in tables or appendices to provide an empirical overview of the relationship between presidential nomination threshold regulations and the level of political competition in presidential elections.

Data analysis was conducted qualitatively by systematically interpreting legal materials to identify patterns of legal argumentation in Constitutional Court decisions. This study explores the changing approach of the Constitutional Court in assessing the constitutionality of the presidential nomination threshold, particularly the shift from an approach that emphasizes the discretion of lawmakers (open legal policy) to one that places greater emphasis on protecting citizens' constitutional rights.

To clarify the normative analytical framework, this study uses three main parameters: the principles of political inclusivity, political competitiveness, and democratic governance. These three parameters are used to evaluate the constitutional implications of the presidential nomination threshold regulation and the direction of the development of Constitutional Court decisions within the context of constitutional democracy in Indonesia.

DISCUSSION

Expert Opinions on Judicial Review of the Presidential Threshold

The presidential and vice-presidential nomination threshold is a controversial element of Indonesia's presidential and vice-presidential electoral system. This provision requires a political party or coalition of parties to hold at least 20% of the seats in the House of Representatives (DPR) or obtain 25% of the valid national vote in the previous legislative election to be eligible to nominate a presidential and vice-presidential candidate pair. In academic discourse and constitutional practice,

the presidential threshold has sparked serious controversy regarding its constitutionality and the principles of democratic justice.

Anja Osei, Hervé Akinochi, and Stephen Mwombela (2020) argue that the presidential threshold is an open legal policy, not a rigid constitutional norm. Therefore, this policy should be subject to judicial review, especially if it is proven unconstitutional.¹¹ A similar thought was also found by Zim Nwokora (2022) who stated that although the presidential threshold can be considered formally legitimate, the concept is not common in presidential systems that adhere to a strict separation of powers, such as in the United States and other democratic countries.¹²

From a democratic perspective, Titon Slamet Kurnia (2024) stated that the presidential threshold limits the basic principle of direct elections. In his view, the people should have the full right to determine presidential candidates without exclusive administrative restrictions. He argued that these restrictions narrow the people's political rights and allow political elites to dominate.¹³ Meanwhile, Enrille Geniosa (2023) supports this view from a human rights perspective. He believes that restricting presidential candidacy through a threshold violates citizens' political rights as guaranteed by various international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR). The presidential threshold serves as a tool of exclusion that indirectly violates the principle of equality.¹⁴

From a critical perspective, Aminuddin and Prasetyawan (2022) view the threshold as a manifestation of oligarchic norms. According to them, this system strengthens political power in the hands of a small elite with access to political and logistical resources, ignoring substantial democratic values that uphold broad and inclusive participation.¹⁵ This perspective provides a strong theoretical basis for assessing the Constitutional Court's position in interpreting or overturning the presidential threshold as a form of judicial activism if it is proven to violate constitutional rights. Personally, the author views the judicial review of the presidential threshold as a crucial step in maintaining the integrity of the principles of constitutional democracy. Amidst oligarchic tendencies in Indonesian politics, the Constitutional Court's role as a bulwark of the constitution is crucial. Judicial review should not be interpreted as a threat to political stability, but rather as a constitutional correction to a potentially discriminatory and exclusionary system.

¹¹ Anja Osei, Hervé Akinochi, and Stephen Mwombela, "Presidential Term Limits and Regime Types: When Do Leaders Respect Constitutional Norms?," *Africa Spectrum* 55, no. 3 (2020): 251–71, <https://doi.org/10.1177/0002039720945720>.

¹² Zim Nwokora, "Constitutional Design for Dynamic Democracies: A Framework for Analysis," *International Journal of Constitutional Law* 20, no. 2 (2022): 580–610, <https://doi.org/10.1093/icon/moac030>.

¹³ Titon Slamet Kurnia, "Presidential Candidacy Threshold and Presidentialism Affirmation in Indonesia," *Padjadjaran Journal Ilmu Hukum* 7, no. 3 (2020): 353–79, <https://doi.org/10.22304/pjih.v7n3.a4>.

¹⁴ EC Geniosa, "Indonesia's Presidential Threshold: Its Relevance Between Democracy, Law and Human Rights: Constitutional Law," *Lontar Merah* 7 (2024), <https://doi.org/10.31002/lm.v7i1.4327>.

¹⁵ W. (Eds.) Aminuddin, MF, & Prasetyawan, *The Ebb and Flow of Democracy: Reflections on Indonesian Politics 1999-2019* (LP3ES, 2022).

The Dynamics of Presidential Nominations in Indonesia within the Framework of the Presidential Threshold Regulation

Since the enactment of Law Number 42 of 2008 concerning the Election of the President and Vice President, which was later maintained in Article 222 of Law Number 7 of 2017 concerning General Elections, the presidential threshold has become one of the main requirements in the mechanism for nominating presidential and vice presidential candidates in Indonesia. This provision stipulates that candidate pairs can only be proposed by political parties or coalitions of political parties that obtained at least 20% of the seats in the House of Representatives or 25% of the valid national vote in the previous general election for members of the House of Representatives.¹⁶ This policy has been effectively implemented since the 2009 presidential election and continued in subsequent elections until the 2024 election, before finally being evaluated by a Constitutional Court ruling. Prior to the introduction of a strict presidential threshold, the presidential candidacy process was relatively open. This was evident in the 2004 presidential election, which saw five candidate pairs, the first direct presidential election in Indonesia.

However, since the implementation of the presidential threshold in the 2009 election, the number of presidential candidates has tended to decline. In the 2009 election, there were only three pairs of candidates, while in the 2014 and 2019 elections, the number of candidate pairs shrank to just two, and in the 2024 election, there were three pairs of candidates. The nomination process remains heavily influenced by the formation of large coalitions between political parties to meet the threshold stipulated by law. This provision tends to encourage political parties to form large coalitions early in the nomination process. These coalitions are often more pragmatic and oriented towards fulfilling administrative requirements than shared ideology or political programs. As a result, political parties are less encouraged to develop a clear ideological identity and policy platform.

Empirically, the presidential threshold restriction on the number of presidential candidates also impacts national political dynamics. When the number of candidates is limited, political competition tends to become more polarized because the public is presented with a narrow range of choices. Furthermore, the presidential threshold is also considered to contribute to limited national leadership regeneration. This contrasts with conditions with a larger number of candidates, where the spectrum of ideas, programs, and leadership visions offered to the public is more diverse.

On the other hand, the debate over the presidential threshold also relates to the effectiveness of the presidential system of government. One argument often put forward in defense of this provision is that the presidential nomination threshold is necessary to ensure government stability through adequate political support in parliament. However, empirical practice in the Indonesian constitutional system shows that the coalition of political parties during the nomination stage is not always identical to the governing coalition after the president is elected.

¹⁶ Arifudin Arifudin, "Democratic Issues Behind Indonesia's Presidential Candidacy," *Pakistan Journal of Life and Social Sciences (PJLSS)* 22, no. 2 (2024): 13276–87, <https://doi.org/10.57239/pjls-2024-22.2.00951>.

Table. Nominating Coalitions Compared to Governing Coalitions

Presidential Term	Nomination Coalition		Coalition Government	
	Political party	%	Political party	%
SBY-JK (2004-2009)	Democrat, PBB, PKPI	12.36%	Democrat, Golkar, PKS, PAN, PKB, PPP, PBB, PKPI	71.96%
SBY-Boediono (2009-2014)	Democrat, PKB, PAN, PKS	56.60%	Democrat, Golkar, PKS, PAN, PPP, PKB	75.53%
Jokowi-JK (2014-2019)	PDIP, Hanura, Nasdem, PKB	36.96%	PDIP, Hanura, Nasdem, PKB + Golkar, PAN, and PPP	69.00%
Jokowi-Maruf Amin (2019-2024)	PDIP, Golkar, PKB, PPP, Nasdem, Hanura	60.36%	PDIP, Golkar, PKB, PPP, Nasdem + Gerindra, PAN, and Democrat.	88.67%
Prabowo-Gibran (2024 - 2029)	Gerindra, Golkar, PAN, Democrat, PBB, Gelora, PSI, Garuda	45.00%	Gerindra, Golkar, PKB, PKS, PAN, Democrat, PSI, Perindo, Gelora.	60.00%

Source: Constitutional Court Decision Number 62/PUU-XXII/2024

The table shows that the level of political party support during the nomination stage does not always determine the level of political support for the government after the president is elected. In many cases, political support for the government actually increases after the presidential election through the formation of a governing coalition. Thus, the effectiveness of government in Indonesia's presidential system is determined more by the configuration of the political coalition after the election than by the level of political party support during the nomination stage. The debate over the presidential threshold has also repeatedly been the subject of constitutional review at the Constitutional Court. In a number of previous decisions, the Court has tended to view the presidential threshold as part of the open legal policy of lawmakers. This doctrine asserts that as long as a policy does not clearly conflict with the constitution, lawmakers have discretion to determine its design.¹⁷

However, in Constitutional Court Decision Number 62/PUU-XXII/2024, the Court emphasized the importance of maintaining a balance between the stability of the government system and the protection of citizens' constitutional rights in the electoral democratic process. In its legal reasoning, the Court reaffirmed that decisions of the Constitutional Court are final and binding, and therefore cannot be formally overridden by the House of Representatives (DPR) through a legislative override. Nevertheless, the legislature may still respond through subsequent amendments to the Election Law, including provisions governing presidential nominations such as Article 222 of Law Number 7 of 2017 on General Elections, provided that such changes remain consistent with the principle of equal political opportunity and do not impose disproportionate restrictions on citizens' political

¹⁷ Arya Anggara Achmad Zuhdi, Serhii Ablamskyi, "Judicial Review of Presidential Threshold Decisions : The Dynamics of Constitutional Injury," *Kosmik Hukum* 25, no. 1 (2025): 48–65, <https://doi.org/10.1177/1532673X13475472>.

participation¹⁸. Any legislative response adopted after the Court's decision remains subject to renewed judicial review by the Constitutional Court. Thus, the dynamics of presidential threshold regulation in Indonesia reflect not only the development of the institutional design of the electoral system, but also an ongoing constitutional dialogue between the legislature and the Constitutional Court in balancing government stability, healthy political competition, and the protection of citizens' constitutional rights in a constitutional democratic system.

Judicial Review of Presidential Candidate Requirements from the Perspective of Citizens' Constitutional Rights

The judicial review of the presidential threshold provisions demonstrates a crucial dynamic in the relationship between the protection of citizens' constitutional rights and the legal policies of lawmakers in Indonesia's democratic system. Within the framework of a democratic state governed by the rule of law, restrictions on citizens' political rights can only be justified if they have a clear constitutional basis and are proportional to the desired objectives.¹⁹

The right to participate in government is explicitly guaranteed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms that every citizen has equal standing before the law and government. In addition, Article 28C paragraph (2) guarantees the right of every citizen to fight for their rights collectively, while Article 28D paragraph (3) guarantees equal opportunities for every citizen in government. In the context of presidential elections, these constitutional guarantees are closely related to the rights of citizens to be elected and to vote freely in the democratic process.

The debate regarding the constitutionality of the presidential threshold is reflected in the numerous requests to test Article 222 of Law Number 7 of 2017 concerning General Elections submitted to the Constitutional Court since 2017.²⁰ That overall from 2017 to 2024, the constitutionality of the provisions of Article 222 of Law Number 7 of 2017 concerning General Elections has been tested 34 times at the Constitutional Court and 33 decisions have been rejected or unacceptable and the last was Constitutional Court Decision Number 62/PUU-XXII/2024. Granted the Petitioners' petition in its entirety.²¹

In its Constitutional Court Decision Number 62/PUU-XXII/2024, the Court deemed that the presidential threshold regulation had exceeded the limits of open legal policy and contradicted the principle of popular sovereignty and the political rights of citizens guaranteed by the constitution. The Court also emphasized that the provision has the potential to create intolerable injustice, as it

¹⁸ Lembaran Negara Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 7 Tahun 2017," no. 182 (2017).

¹⁹ M Ibrahim, "The Judicialization of Discrimination in the Indonesian Constitutional Court," *International Journal of Discrimination and the Law* 22, no. 2 (2022): 125–51, <https://doi.org/10.1177/13582291221094923>.

²⁰ Qurrata Ayuni, *The Conception of Emergency Constitutional Law in the Perspective of the 1945 Constitution*. (University of Indonesia Publisher, 2024).

²¹ "DECISION Number 62/PUU-XXII/2024," 2024, 1–283.

limits equal access for political parties to nominate presidential and vice-presidential candidates and reduces the political choices available to voters.

This ruling marks a significant shift in the Court's stance on presidential nomination thresholds. While the Court had previously tended to leave the issue to lawmakers as an open legal policy, the latest ruling emphasized that such restrictions could actually erode the quality of democracy and hinder the realization of an inclusive electoral system. Thus, the ruling strengthens the protection of citizens' constitutional rights in the democratic process, particularly the right to a wider choice of leadership candidates in presidential elections.

Therefore, increasing inclusivity in presidential nominations needs to be accompanied by institutional mitigation mechanisms. Several steps that could be considered include: First, guaranteeing equitable media access for all presidential and vice-presidential candidate pairs. Regulations regarding media access are crucial to prevent the domination of certain political groups and ensure that voters receive balanced information about alternative national leadership. Second, transparency and accountability in political campaign financing. Regulations regarding campaign funding sources and transparent financial reporting mechanisms can prevent the domination of certain economic forces in the presidential nomination process.

Third, the implementation of the two-round system in Indonesia's presidential election, as stipulated in Article 6A paragraph (3) of the 1945 Constitution, also functions as an instrument of democratic legitimacy. Through this system, the elected president must obtain the support of the majority of voters at the national level, ensuring that the presence of multiple candidates does not necessarily reduce the political legitimacy of the elected president.

From a citizenship perspective, this mechanism is important because it guarantees that every citizen's vote contributes to determining the final outcome of the presidential election, thereby strengthening citizens' political participation and reinforcing the principle of popular sovereignty in a democratic system. In this regard, the electoral system not only regulates the procedural aspects of elections but also reflects the broader commitment of the state to protect citizens' constitutional rights in political participation.

Thus, judicial review of the requirements for presidential candidates demonstrates that the protection of citizens' constitutional rights depends not only on the formulation of legal norms but also on the dynamics of constitutional interpretation carried out by the Constitutional Court. The role of the Court in this context is crucial to ensure that the presidential election system remains consistent with the principles of constitutional democracy, namely providing equal opportunities for citizens to participate in government while maintaining the stability of the national political system.

General Characteristics of a Presidential System of Government

A presidential system is a form of government in which executive power is exercised independently by a president directly elected by the people. The president serves as both head of state and head of government. The main characteristics of this system are a strict separation of powers between the three branches of government (executive, legislative, and judicial), fixed terms

of office, and the president's inability to be removed by parliament through a vote of no confidence. Except through such mechanisms *dethronement* strict.²² Countries that implement a presidential system share similar characteristics: direct presidential election by the people, fixed terms, and a lack of presidential accountability to parliament. However, the implementation of these systems can vary depending on each country's socio-political structure and constitutional culture.

Comparative studies over the past five years show that countries with stable presidential systems tend to avoid rules that restrict candidacy, such as presidential thresholds. These countries emphasize the openness of their electoral systems to ensure political inclusion and fair competition.²³The threshold in a presidential system actually has the potential to cause a delegitimizing effect on democracy because it closes political access for minority groups and alternative candidates. Countries that implement a presidential system:

1) United States: Pillars of Unlimited Presidentialism

The United States is the earliest and most classic example of a presidential system. In this system, the president is elected not by parliament, but by the people through the Electoral College. This electoral mechanism avoids political party dominance in parliament in the presidential nomination process. Political parties in the US conduct an open presidential candidate selection process through primaries, allowing candidates from both major and minor parties to compete in the public arena.²⁴

There is no legislative threshold (a presidential threshold) for nominating candidates. This openness reflects a commitment to the fundamental principles of democracy: equal political opportunity and fair competition. Even independent candidates have a chance to run, although they are not usually electorally dominant. According to a study by Cheibub, J.A., Limongi, F., & Przeworski, A. (2023), the stability of the US presidential system is supported by a constitutional design that balances power between decentralized and participatory institutions and party institutions.²⁵

Furthermore, the US's robust system of checks and balances serves as a key safeguard against the dominance of any one branch of government. The absence of a presidential threshold ensures that presidential elections are not controlled by a legislative oligarchy, but are entirely left to the preferences of the voters.

2) Brazil and Argentina: Political Fragmentation Without a Threshold

Brazil and Argentina are two countries with presidential systems and fragmented party structures. In Brazil, presidential elections are held in two rounds if no candidate receives more

²² Kenneth Lowande and Charles R. Shipan, "Where Is the President's Power? Measuring Presidential Discretion Using Experts," *British Journal of Political Science* 52, no. 4 (2022): 1876–90, <https://doi.org/10.1017/S0007123421000296>.

²³ Izaskun Zuazu, "Electoral Systems and Income Inequality: A Tale of Political Equality," *Empirical Economics* 63, no. 2 (2022): 793–819, <https://doi.org/10.1007/s00181-021-02154-9>.

²⁴ M. D. Maisel, LS, & Brewer, *Parties and Elections in America: The Electoral Process* (Bloomsbury Publishing PLC, 2024).

²⁵ A. Cheibub, J.A., Limongi, F., & Przeworski, "Choosing the President: A Hidden Side of Democratization," *Presidential Studies Quarterly* 53, no. 4 (2023): 476–500, <https://doi.org/10.1111/psq.12846>.

than 50% of the vote in the first round. There is no presidential threshold in the legislative system, as in Indonesia. Presidential candidates can be nominated by both large and small parties, provided they meet the administrative requirements. In practice, even small parties have the opportunity to nominate national figures.

According to Botelho, JCA, & Silva, RR (2021), although the multiparty system creates complexity in policymaking, from an open candidacy perspective, Brazil provides sufficient space for all political forces to participate. This suggests that the open candidacy system increases the legitimacy of election results and strengthens citizen participation.²⁶

Argentina has similar characteristics. A two-round system was adopted to maintain electoral stability. Political parties have the freedom to nominate candidates without having to meet a legislative vote threshold. This fosters healthy competition and prevents the concentration of power among a small political elite in parliament.²⁷

3) The Philippines: A Competitive and Open Presidential System in Asia

The Philippines exhibits a highly competitive form of presidentialism in Southeast Asia. The president and vice president are elected separately by the people, and there is no legislative support threshold. Candidates can be nominated by political parties or run independently, provided they meet administrative requirements (number of signatures of support).²⁸ This system ensures that the entire political spectrum can participate in the election contest.

This system does present challenges in the form of dominance by individual figures and populism, but in terms of access and openness, the Philippines is a shining example of a presidential system without structural exclusion. This demonstrates that party diversity and ease of nomination contribute to long-term stability by encouraging the emergence of new ideas and leaders from diverse backgrounds.

One of the key characteristics of the Philippine presidential system is the absence of a formal electoral threshold for presidential nominations. This allows independent candidates or those backed by smaller parties to compete on equal terms with candidates from established political parties. While this openness can sometimes lead to the emergence of unconventional or less qualified candidates, it also strengthens democratic competition by lowering barriers to entry.

The Philippine electoral system allows for a broad representation of public sentiment, as candidates are often closer to their constituents and campaigns are personalized.

²⁶ João Carlos Amoroso Botelho and Renato Rodrigues Silva, "Presidential Powers in Latin America beyond Constitutions," *Iberoamericana - Nordic Journal of Latin American and Caribbean Studies* 50, no. 1 (2021): 28–39, <https://doi.org/10.16993/iberoamericana.508>.

²⁷ M. Passarelli, G., & Bergman, "Runoff Comebacks in Comparative Perspective: Two-Round Presidential Election Systems," *Political Studies Review* 21, no. 3 (2023): 608–24, <https://doi.org/10.1177/14789299221132441>.

²⁸ Songying Fang and Xiaojun Li, "Southeast Asia under Great-Power Competition: Public Opinion About Hedging in the Philippines," *Journal of East Asian Studies* 22, no. 3 (2022): 481–501, <https://doi.org/10.1017/jea.2022.35>.

Unconventional political figures with innovative platforms have a real chance of reaching the highest executive office. This contrasts with systems where rigid party structures or nomination rules significantly narrow the pool of eligible candidates.

Despite the fluidity and dominance of personality-based politics, this system fosters responsiveness. Candidates must directly appeal to voters, encouraging them to address concrete public issues rather than relying solely on elite party support. This type of accountability, while imperfect, has enabled dynamic political discourse and the emergence of reformist leaders across various periods.

However, the Philippines must balance openness with institutional strengthening. A stronger regulatory framework is needed to prevent abuses of populism and patronage, while maintaining accessibility. A competitive system must be accompanied by transparent election funding, oversight of executive power, and support for grassroots party development to prevent elite capture under the guise of openness.

4) Indonesia: A Presidential System with Parliamentary Nuances

Indonesia adheres to a presidential system as stipulated in the 1945 Constitution, but electoral practice has deviated from this fundamental principle. Since 2004, a presidential threshold has been in place, requiring a party or coalition of parties to hold at least 20% of the seats in the House of Representatives or 25% of the national vote to nominate a presidential and vice-presidential candidate pair.²⁹ These provisions often force the formation of pragmatic coalitions that are not based on ideology. This presidential threshold policy leads to "exclusive presidentialism," which is more akin to parliamentary practice, where legislative dominance determines who can nominate executive leaders. In the long run, this undermines the quality of democracy by reducing opportunities for political alternatives from new parties or independent figures.

This threshold also encourages oligarchic practices, as large parties can control who enters the nomination process. This contradicts the spirit of direct elections guaranteed by the constitution. Judicial review by the Constitutional Court is crucial in reversing the system's direction back to the principles of transparency and equal political rights.

Indonesia's 20% presidential nomination threshold effectively limits the number of candidates, concentrating power in the hands of a few large political parties. This parliamentary-style mechanism, embedded within the presidential system, creates a hybrid structure that blurs the lines between direct democracy and elite negotiation. As a result, political elites become gatekeepers of nominations, often prioritizing internal agreements over public preferences.

This system disadvantages emerging leaders and independents who may have strong public support but lack formal party alliances. It also limits the political marketplace of ideas,

²⁹ Yasinta Dyah Paramitha Hapsari and Retno Saraswati, "The Impact of Implementing the Presidential Threshold in Simultaneous Elections on Democracy in Indonesia," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 70–84, <https://doi.org/10.14710/jphi.v5i1.70-84>.

as alternative voices are filtered out before voters have a chance to choose. Over time, this exclusionary structure undermines the democratic promise of direct presidential elections by cutting them off from broad participation.

The Constitutional Court plays a crucial role in maintaining constitutional balance in Indonesia's electoral system. Several constitutional challenges to the presidential nomination threshold have been submitted, arguing that the requirement undermines voter sovereignty and contradicts the principle of equal political opportunity in a democratic system. In this context, the Court's decisions have significant implications for Indonesia's democratic development, as they shape the institutional framework governing political competition and citizens' access to political participation.

At the same time, debates on the presidential threshold should be situated within a broader scholarly discussion. Studies on political polarization and political communication suggest that expanding candidate access can produce both democratic benefits and potential risks. On the one hand, broader nomination opportunities may increase voter choice and enhance political representation. On the other hand, research on political networks and polarization dynamics indicates that excessive fragmentation of candidates may intensify political polarization and strategic mobilization within electoral competition. Therefore, evaluating the presidential threshold requires careful consideration of how institutional rules interact with patterns of political communication, party competition, and voter alignment.

Moreover, the role of the Constitutional Court should not be framed solely in terms of judicial activism. The literature on judicial path-dependence and legal inertia shows that constitutional courts often operate within established precedents and institutional constraints that shape the direction and pace of constitutional change. From this perspective, judicial review of the presidential threshold reflects an evolving process of constitutional interpretation rather than purely activist intervention.

Finally, proposals to lower or eliminate the presidential threshold should also be assessed in terms of their broader institutional consequences. While reducing the threshold may expand candidate access and strengthen electoral inclusiveness, it may also affect the structure of the party system and the dynamics of political polarization. Alternative nomination designs—such as maintaining a two-round runoff system or introducing reasonable support requirements for candidate nominations—may provide a more balanced approach to expanding democratic participation while preserving political stability and effective governance³⁰.

CLOSING

This study demonstrates that the dynamics of judicial review of presidential candidacy requirements in Indonesia reflect the tension between efforts to expand substantive democracy and the institutional design that has tended to be restrictive. Through a normative juridical approach and

³⁰ Shanto Iyengar et al., "The Origins and Consequences of Affective Polarization in the United States," *Annual Reviews*, 2019, 129–46.

an analysis of various decisions of the Constitutional Court of the Republic of Indonesia, this study finds that changes in the regulation of presidential candidacy requirements are part of the process of adjusting the Indonesian constitutional system to guarantee broader protection of citizens' political rights.

In this context, Constitutional Court Decision No. 62/PUU-XXII/2024 marks a significant development in constitutional enforcement by affirming that restrictions imposed through the presidential threshold are inconsistent with the principles of popular sovereignty and equal political rights of citizens. In this regard, the Constitutional Court plays a strategic role as both guardian of the constitution and protector of citizens' constitutional rights. Nevertheless, such institutional reforms still require careful policy design to avoid creating new risks in the practice of electoral democracy. Based on the research results, several conclusions can be drawn as follows:

1) Presidential Threshold and Restrictions on Political Rights

In practice, the presidential threshold provision has limited political parties' ability to nominate presidential and vice-presidential candidates and narrowed the political choices available to voters. This situation has the potential to strengthen the dominance of large political parties and encourage the formation of transactional coalitions that do not always reflect the political preferences of the broader public.

2) The Role of the Constitutional Court in Expanding Inclusive Democracy

Constitutional Court Decision No. 62/PUU-XXII/2024 marks a significant shift toward a more inclusive democracy by removing the presidential nomination threshold restriction. This ruling broadens opportunities for political competition and opens the door to the emergence of more diverse national leadership alternatives.

3) Comparative Perspective of Presidential Systems

Comparative studies show that many countries with established presidential systems, such as the United States, Brazil, Argentina, and the Philippines, do not implement a presidential nomination threshold based on parliamentary seats. This finding suggests that the existence of a presidential threshold in Indonesia is not an inherent element of the presidential system, but rather a policy choice that could be re-evaluated.

4) Potential Dynamics Between Branches of Power

Legal reform through Constitutional Court decisions also opens up the possibility of dynamics between state institutions, particularly between the Constitutional Court and the legislature. However, these dynamics should not be viewed as a constitutional crisis, but rather as part of a healthy mechanism of checks and balances through dialogue between branches of government and the possibility of constitutional regulatory reform.

5) Policy Recommendations and Mitigation Steps for Electoral Democracy

While eliminating the presidential threshold could broaden democratic inclusivity, the policy still needs to be accompanied by mitigating measures to maintain the quality of political competition. Some steps to consider include:

- a) Ensuring fair media access for all candidate pairs so that political competition is not

dominated by capital power or concentration of media ownership.

- b) Strengthening regulations on transparency and accountability of campaign funding, so that the nomination and campaign process is not controlled by the interests of the political oligarchy.
- c) Maintaining the two-round election mechanism (run-off system) as stipulated in the constitution to ensure that the elected president obtains the majority legitimacy of the voters.

Thus, reform of the presidential nomination system in Indonesia should not only focus on eliminating administrative restrictions, but also be directed at developing an institutional design capable of maintaining a balance between political inclusiveness, government stability, and the protection of citizens' constitutional rights.

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