

Constitutional Implications of the Elimination of the Presidential Threshold on Indonesia's Multiparty System: Constitutional Court Decision No. 62/PUU-XXII/2024

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Abstract: This article analyzes Constitutional Court Decision No. 62/PUU-XXII/2024, which repealed the presidential threshold provision as stipulated in Article 222 of Law No. 7 of 2017 on General Elections. The Constitutional Court ruled that the presidential nomination threshold requirement of 20% of seats in the House of Representatives or 25% of valid national votes is inconsistent with the 1945 Constitution. This historic decision was rendered with 7 (seven) votes in favor and 2 (two) dissenting opinions. This study examines the constitutional basis of the ruling, the Constitutional Court's line of reasoning, its impact on Indonesia's multiparty system, and projections of its effects on the dynamics of future presidential elections. This ruling fundamentally reshapes Indonesia's political landscape by opening the door for all political parties participating in elections to nominate presidential and vice-presidential candidates.

Keywords: presidential threshold; multiparty system; Constitutional Court Decision No. 62/PUU-XXII/2024; Article 222 of the Election Law; constitutional rights.

I. Introduction

The presidential threshold is one of the most controversial provisions in Indonesia's election law. Article 222 of Law No. 7 of 2017 on General Elections stipulates that presidential and vice-presidential candidate pairs may only be nominated by a political party or a coalition of political parties that holds at least 20% of the seats in the House of Representatives (DPR) or obtained at least 25% of the valid national votes in the previous legislative election. The constitutionality of this provision has been repeatedly challenged before the Constitutional Court (MK). However, for more than a decade, the MK has consistently rejected these petitions, stating that the presidential threshold constitutes an "open legal policy" that is entirely left to the discretion of the legislature. This paradigm underwent a drastic shift when the Constitutional Court issued Decision No. 62/PUU-XXII/2024.

In this historic decision, the MK ruled that Article 222 of the Election Law conflicts with the 1945 Constitution and no longer has binding legal force. The decision was issued by 7 (seven) constitutional justices, while 2 (two) justices issued dissenting opinions. The implications of this decision are far-reaching: all political parties participating in elections can now nominate presidential and vice-presidential candidates without relying on the number of seats or votes held by other parties. This article aims to conduct an in-depth examination of the constitutional basis for Constitutional Court Decision No. 62/PUU-XXII/2024, analyze the legal arguments presented by the Constitutional Court, scrutinize the substance of the dissenting opinions, and project the impact of this decision on Indonesia's multiparty system and electoral democracy.

II. The Presidential Threshold in Indonesia's Constitutional System

A. History of Presidential Threshold Regulations

The presidential threshold was first introduced into Indonesia's electoral system through Law No. 23 of 2003 on the Election of the President and Vice President, with an initial threshold set at 15% of DPR seats or 20% of valid national votes. This provision subsequently underwent several amendments, until Law No. 7 of 2017 raised the threshold to 20% of DPR seats or 25% of valid national votes. The main arguments in favor of the presidential threshold rest on two premises: first, that the threshold is

necessary to ensure the president has strong political support in parliament so that the government can function effectively; second, that in a multiparty presidential system, the threshold is seen as a mechanism to encourage coalition consolidation and reduce political fragmentation. Conversely, opponents argue that the presidential threshold fundamentally limits the people's sovereignty in electing their leaders, creates an oligarchy of major parties, and has the potential to result in a single candidate, thereby diminishing the significance of general elections as a festival of democracy.

B. History of Challenges Before the Constitutional Court

Prior to Decision No. 62/PUU-XXII/2024, the presidential threshold provision had been challenged multiple times before the Constitutional Court. In a series of previous decisions, the Constitutional Court consistently rejected such petitions by classifying the presidential threshold as part of the legislature's open legal policy, based on the premise that the Constitution does not explicitly stipulate the threshold's magnitude. Some relevant previous Constitutional Court decisions include:

Decision 51–52–59/PUU-VI/2008	The Constitutional Court declared the presidential threshold constitutional; it falls within the realm of open legal policy.
Decision No. 26/PUU-VII/2009	The Constitutional Court rejected the petition; it reaffirmed its previous position.
Decision 53/PUU-XV/2017	The Constitutional Court again rejected the petition; declared the 20/25 threshold constitutional.
Decision 62/PUU-XXII/2024	The Constitutional Court reversed its position; declared Article 222 of the Election Law unconstitutional.

The Constitutional Court's change of position in Decision 62/PUU-XXII/2024 marks one of the most significant jurisprudential turning points in the history of Indonesia's constitutional judiciary, given that the Court explicitly departed from a precedent it had upheld for more than a decade.

III. Constitutional Court Decision No. 62/PUU-XXII/2024

A. Case Profile

Case Number	62/PUU-XXII/2024
Provision Under Review	Article 222 of Law No. 7 of 2017 on General Elections
Testing Standard	Article 6A of the 1945 Constitution; Article 27(1); Article 28D(1) and (3)
Voting Results	7 (seven) justices concurred – 2 (two) justices dissented
Ruling	Article 222 of the Election Law is declared to be inconsistent with the 1945 Constitution and has no binding legal force
Direct Impact	All political parties participating in the election may nominate a presidential and vice-presidential candidate pair

B. Legal Rationale of the Constitutional Court

1. Interpretation of Article 6A of the 1945 Constitution

The Constitutional Court affirmed that Article 6A, paragraph (2) of the 1945 Constitution explicitly states that presidential and vice-presidential candidate pairs must be nominated by political parties or coalitions of political parties participating in the general election prior to the election. This phrase, according to the Constitutional Court, does not contain any quantitative threshold requirements. The legislature does not have the authority to add requirements not specified in the text of the Constitution, especially if such additional requirements actually restrict the constitutional rights of citizens. The Constitutional Court concluded that by introducing the requirement of 20% of seats in the House of Representatives or 25% of valid national votes, Article 222 of the Election Law has exceeded the limits set by the Constitution and is therefore contrary to the 1945 Constitution.

2. Constitutional Rights of Political Parties

The Constitutional Court affirmed that every political party that has met the requirements to participate in general elections has an equal constitutional right to nominate a presidential and vice-presidential candidate pair. This right is inherent in the party's status as an election participant and cannot be

diminished by requirements regarding the number of votes or seats obtained. The Constitutional Court ruled that the restrictions set forth in Article 222 of the Election Law create constitutional discrimination between large parties that meet the threshold and small parties that do not, even though all of these parties have equally met the requirements to be valid election participants.

3. People's Sovereignty and the Democratization of the Presidential Election

The Constitutional Court emphasized that one of the essential elements of a democratic presidential system is to provide the people with the broadest possible scope to choose among the available candidates. Limiting the number of candidates through a presidential threshold has the potential to undermine the principle of popular sovereignty because it constrains voters' choices within a framework predetermined by the power dynamics of major parties. Furthermore, the Constitutional Court considers that a high presidential threshold structurally encourages the formation of a single candidate pair, which diminishes substantive competition in the presidential election. This phenomenon is inconsistent with the spirit of constitutional democracy, which views general elections as the primary mechanism for the expression of the people's will.

C. Dissenting Opinion

1. The Significance of Dissenting Opinions in Constitutional Court Procedural Law

Of the 9 (nine) constitutional justices sitting on the panel, 7 (seven) justices concurred with the ruling declaring Article 222 of the Election Law unconstitutional. Meanwhile, 2 (two) constitutional justices issued a dissenting opinion, asserting a different view regarding the constitutionality of that provision. In this context, the dissenting opinion holds significant academic and jurisprudential value. First, it reflects a substantive debate among the constitutional justices regarding the limits of the Constitutional Court's authority in assessing the legislature's open legal policy. Second, this minority opinion serves as an intellectual reference that may be considered in future reviews of similar legal norms.

2. Key Issues in the Dissenting Opinion

Although the full substance of the dissenting opinion requires a review of the official ruling text, in general, differences of opinion in cases regarding the presidential threshold often center on several key issues:

- 1) Whether the threshold for presidential candidacy constitutes an "open legal policy" that is entirely left to the legislature, or whether it has entered a realm that is constitutionally off-limits.
- 2) To what extent does the Constitutional Court have the authority to depart from its own jurisprudential position, which it has consistently upheld for years (departure from precedent)?
- 3) Does the abolition of the presidential threshold actually have the potential to destabilize Indonesia's multiparty presidential system?

IV. Impact on the Multiparty System

A. Transformation of the Political Landscape of the Presidential Election

Constitutional Court Decision No. 62/PUU-XXII/2024 has brought about fundamental structural changes to the political landscape of Indonesia's presidential elections. With the elimination of the electoral threshold requirement, all political parties participating in the election now have equal rights to nominate a presidential and vice-presidential ticket. This situation directly implies a potential increase in the number of candidates in the upcoming presidential election.

Before the Ruling (Article 222 was in effect)	After the Ruling (Article 222 Repealed)
A minimum of 20% of DPR seats is required	All political parties participating in the election can nominate candidates
Only major parties or major coalitions could nominate	Candidate fragmentation is more likely
Tends to result in 2–3 pairs of candidates	The potential for more than 3 pairs of candidates increases significantly
Small parties depend on coalitions with major parties	Small parties have full autonomy

The potential for a single candidate is greater	Substantial competition is more open
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B. Implications for the Multiparty Presidential System

Indonesia operates a presidential system of government built upon a highly fragmented multiparty system. This combination theoretically presents its own challenges, as the elected president does not always have majority support in parliament. The presidential threshold has long been cited as one mechanism to build a “bridge” between the presidential system and the multiparty system by encouraging pre-electoral coalitions. With the elimination of the presidential threshold, several potential scenarios can be identified:

- a) Proliferation of presidential candidates: The number of candidate pairs could increase significantly. In the first presidential election following the ruling, it is possible that there could be 5 to 10 or more candidate pairs running.
- b) A second round as the norm: The more candidates there are, the less likely it is that a single pair will secure a majority of more than 50% of the vote in the first round. A two-round presidential election is expected to become the more common scenario.
- c) Post-election coalition dynamics: Without the obligation to form pre-election coalitions, coalition dynamics will shift to the post-election phase, where the president-elect must build parliamentary support following a victory.
- d) Strengthening of medium and small parties: Parties that previously did not have enough seats to field their own candidates now have the opportunity to bring forward potential figures from among their ranks.

C. Comparison with Systems in Other Countries

Several countries with multiparty presidential systems adopt different approaches to regulating presidential nominations. Brazil, for example, does not have a parliamentary seat threshold requirement for presidential nominations; the result is an election with many candidates that almost always proceeds to a second round. France, in its semi-presidential system, also opens nominations as widely as possible through a public support-based selection mechanism. On the other hand, some African and Latin American countries that have similar requirements have faced criticism that such mechanisms foster political exclusivity. This comparative analysis strengthens the Constitutional Court’s reasoning in Decision 62/PUU-XXII/2024.

D. Implementation Challenges

Although the Constitutional Court’s decision is final and binding, there are a number of practical challenges to its implementation:

- a) Technical regulations: The House of Representatives (DPR) and the government need to immediately revise the Election Law to align the technical provisions for candidacy with the Constitutional Court’s decision, including registration, verification, and campaign procedures in a multi-candidate context.
- b) Presidential Election Management: The General Elections Commission (KPU) must prepare administrative and logistical infrastructure capable of accommodating a potentially larger number of candidates, including ballot design and campaign phases.
- c) Voter education: The growing number of candidates requires an increase in voters’ capacity to rationally evaluate and compare candidates’ platforms.
- d) Fragmentation vs. Consolidation: The greatest challenge is ensuring that the proliferation of candidates does not lead to destructive social polarization or a political stalemate following the presidential election.

V. Further Constitutional Analysis

A. A Paradigm Shift in Open Legal Policy

The most revolutionary aspect of Decision 62/PUU-XXII/2024 is the Constitutional Court’s paradigm shift in defining the boundaries of “open legal policy.” For more than a decade, the Constitutional Court used the “open legal policy” doctrine as a shield to reject the review of electoral norms, arguing that the Constitution delegates technical regulations to the legislature. In this decision, the Constitutional

Court implicitly affirmed that the “open legal policy” doctrine is not a free pass for the legislature to enact policies that conflict with constitutional rights. “Open legal policy” still has constitutional limits that must be respected: it must not be used to create constitutional discrimination or to unduly restrict the rights guaranteed by the 1945 Constitution.

B. The Principle of Proportionality in the Restriction of Constitutional Rights

This ruling also substantively reinforces the doctrine of proportionality in constitutional review in Indonesia. Restrictions on constitutional rights—in this case, the right of political parties to nominate presidential candidates—must satisfy the proportionality test, which encompasses three aspects: (i) suitability (alignment between the objective and the means); (ii) necessity (whether there are no other, less restrictive means available); and (iii) proportionality *stricto sensu* (the balance between benefits and the sacrifice of rights). The Constitutional Court ruled that the 20/25 presidential threshold failed the proportionality test because there are other, less restrictive means to achieve the goal of governmental stability, such as constructive mechanisms for motions of no confidence or post-election coalitions.

C. Effectiveness of the Decision and Legal Transition

Given the final, binding, and universally applicable (*erga omnes*) nature of the Constitutional Court’s decision, Article 222 of the Election Law no longer has binding legal force as of the issuance of Decision 62/PUU-XXII/2024. This means that in the next general election, all participating political parties will be able to nominate presidential and vice-presidential candidates without being subject to the threshold requirement that has been declared unconstitutional. This situation demands a swift and precise response from lawmakers to immediately revise the Election Law and bring it into line with the Constitutional Court’s decision, in order to provide legal certainty for all stakeholders in Indonesia’s democratic process.

VI. Conclusion

Based on the analysis conducted, this article draws the following conclusions:

- a) Constitutional Court Decision No. 62/PUU-XXII/2024 marks a fundamental jurisprudential turning point in the history of Indonesia’s constitutional adjudication. By declaring Article 222 of the Election Law unconstitutional, the Constitutional Court ended more than one consistent line of rulings that had upheld the presidential threshold.
- b) The Constitutional Court’s reasoning is based on three main pillars: (i) a textual interpretation of Article 6A of the 1945 Constitution, which does not contain any threshold requirement; (ii) equal constitutional rights for all political parties participating in the election; and (iii) the principle of popular sovereignty in the context of democratic presidential elections.
- c) The presence of two dissenting opinions reflects the complexity of the issue at hand and enriches the constitutional discourse regarding the limits of the Constitutional Court’s authority in assessing the legislature’s open legal policy.
- d) From the perspective of a multiparty legislative system, this ruling has the potential to increase candidate fragmentation in the presidential election, encourage the normalization of a second round, shift coalition dynamics to the post-election period, and open up broader opportunities for medium-sized and small parties.
- e) The implementation of this ruling requires a swift and comprehensive legislative response to ensure legal certainty and the smooth conduct of future presidential elections.

Overall, Constitutional Court Decision No. 62/PUU-XXII/2024 is an important manifestation of the Constitutional Court’s role as the guardian of the Constitution, which does not hesitate to revise its own jurisprudence to guarantee the protection of citizens’ constitutional rights and strengthen the principle of substantive democracy in Indonesia’s system of government.

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