

CHAPTER I

INTRODUCTION

A. Background

This study begins with the development of the Indonesian political landscape, focusing on threshold regulations which are an important aspect in the threshold process for presidential nominations and regional head nominations its Legality. In this consideration, it has become the subject of close debate and scrutiny because of its implications for the democratic participation of political parties. The Constitutional Court has a vital role in maintaining constitutional sovereignty and ensuring that all laws and regulations are in accordance with the 1945 Constitution. From the comparison of considerations of the Constitutional Court's decisions regarding the threshold for Presidential nominations and Regional Head Nominations, what is currently being hotly discussed is the latest decision in On August 20 2024, the Constitutional Court issued Decision Number.60/PUU-XXII/2024.¹ Changing the threshold provisions for regional head candidacy in the 2024 Regional Head Election (Pilkada). Previously, the law stipulated that political parties must have a minimum of 20% of seats in the Regional People's Representative Council (DPRD) or obtain 25% of the valid votes to be able to nominate a candidate pair. However, in this decision, the Constitutional Court removed this threshold

¹ Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024. 20 Aug. 2024.
<https://paralegal.id/putusan/putusan-mahkamah-konstitusi-nomor-60-puu-xxii-2024/>.

and set a new, lower requirement, namely between 6.5% and 10%, depending on the number of residents in the area.

On August 22, 2024, Constitutional Court Decision Number 101/PUU-XXII/2024² was a significant decision related to testing the constitutionality of the presidential nomination threshold in the context of general elections in Indonesia. In this decision, the Constitutional Court responded to a petition submitted by several parties who felt disadvantaged by the provisions that stipulate that presidential candidate pairs must be proposed by political parties or coalitions of political parties that meet certain vote acquisition requirements in the previous election. In its decision, the Constitutional Court rejected the application because the threshold provisions for presidential candidacy were part of an open legal policy aimed at maintaining political stability and encouraging coalitions between parties. The Constitutional Court emphasized that this threshold does not violate democratic principles and the constitutional rights of citizens. This decision shows the position of the Constitutional Court in maintaining the integrity of the general election system and emphasizes the importance of political coalitions in the context of presidential elections.

² [Putusan Mahkamah Konstitusi Nomor 101/PUU-XXII/2024. 22 Aug. 2024
https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11346_1735808431.pdf](https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11346_1735808431.pdf)

Interestingly, on January 2, 2025, Constitutional Court Decision Number 62/PUU-XXII/2024³ became a milestone in Indonesian democracy by eliminating the presidential threshold. This decision broke the Constitutional Court's tradition of rejecting the judicial review of Article 222 of Law No. 7/2017 30 times, by acknowledging that the threshold of 20% of DPR seats or 25% of the national vote marginalizes small parties and kills the diversity of candidates. The majority of judges (7 out of 9) firmly stated that this article is unconstitutional because it violates the constitutional rights of citizens to elect and be elected, while criticizing the system that only benefits the oligarchy of large parties. The fact that the 2024 Presidential Election will once again be contested by two pairs of candidates, as has been the trend since 2004, is clear evidence that the implementation of a nomination threshold has not been able to stabilize democracy, or shake up political dynamics. This decision is rooted in the failure of the system that triggers extreme polarization and threatens national unity. The Constitutional Court sees the threshold as the root cause of the rise of pragmatic coalitions between large parties that only focus on sharing power rather than fulfilling the aspirations of the people. Moreover, this provision is considered discriminatory because it closes the door for

³ "Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024." 02 Jan, 2025.
https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11344_1735807848.pdf

new parties and independent candidates to compete, even though the 1945 Constitution guarantees absolute sovereignty in the hands of the people.

In Indonesia's democratic system, the presidential and regional head candidacy threshold is a crucial rule that serves as a filter to maintain candidate quality and political stability. However, the Constitutional Court's ruling on this threshold demonstrates significant differences in the judges' legal reasoning. These differences create uncertainty regarding the legality and application of the threshold in general elections. This uncertainty impacts candidates' political rights and has the potential to lead to legal conflicts and irregularities in the democratic process at both the central and regional levels. Therefore, it is essential to comparatively examine the judges' considerations in various Constitutional Court rulings on this threshold, while analyzing their legal implications, to provide legal clarity and a solid foundation for developing future election regulations.

The Constitutional Court's concerns are increasingly apparent, considering the trend of regional elections that often produce single candidates or empty boxes - a phenomenon that is predicted to occur again in the 2029 presidential election if the threshold is maintained. The subjectivity of this decision is reflected in the paradigm shift of the Constitutional Court, which previously always hid behind an open legal policy. Boldly, the Constitutional Court now prioritizes substantive justice over legal formalities. It stated that the political rights of the people should

not be sacrificed for the sake of false stability. Although two judges (Anwar Usman and Daniel Yusmic P. Foekh)⁴ still maintain the old argument about the need for a threshold as a filter, the majority vote emphasized that democracy must be inclusive, not just owned by party elites. This decision is not just a regulatory change, but a total correction of the system that has shackled the progress of Indonesian democracy for two decades. Therefore, the government and the DPR immediately revised Law No. 7 of 2017 concerning general elections, as well as its articles, so that this can be implemented in the upcoming general elections.

In addition, the 20% threshold provision in the General Election Law is contrary to Article 6A paragraph (2) and Article 22E paragraph (2) of the 1945 Constitution. The term "before the general election" in Article 6A of the 1945 Constitution is parallel to Article 22E paragraph (2) of the 1945 Constitution which refers to the general election of members of the DPR, DPD, and DPRD which is held simultaneously with the election of the president and vice president. Therefore, in the situation before the general election, all political parties should have the same position, namely zero percent of seats or zero percent of valid votes.⁵ Regarding the implementation of the presidential threshold, there have been pros and cons recently, especially with the Constitutional Court Decision which

⁴ Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024. *DISSENTING OPINION*. Hal 277. https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11344_17358_07848.pdf

⁵ Munawir Sjadzali, Tata Negara, 2013.

categorized the presidential threshold as an Open Legal Policy. The Constitutional Court Decision, which is final and binding, must be implemented because of the mandate of the constitution, namely the Law. The foundation of the Republic of Indonesia in 1945. With the presidential threshold as an open legal policy, it gives law makers the authority to determine the presidential threshold. What is interesting is that on August 20 2024, the Constitutional Court issued decision number 60/PUU-XXII/2024⁶ which changed the threshold for nominations for regional heads. Now, the threshold is no longer 25% of the vote share of a political party/combination of political parties resulting from the previous DPRD legislative elections, or 20% of DPRD seats. The Constitutional Court decided that the threshold for nominating regional heads from political parties is the same as the threshold for nominating regional heads on independent/individual/non-party lines, as regulated in Articles 41 and 42 of the Regional Election Law.⁷

Presidential threshold is the minimum level of support that must be met by a political party or coalition of political parties in order to nominate candidates for President and Vice President. The concept of presidential threshold refers to determining the threshold for requirements for support from the House of Representatives (DPR), based on the number of votes

⁶ Nomor 60/PUU-XXII/2024 - MKRI." https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11003_1724130779.pdf.

⁷ "MK Ubah Ambang Batas Pencalonan Pilkada, Anies dan PDI-P Bisa Maju di" 20 Aug. 2024, <https://nasional.kompas.com/read/2024/08/20/12125011/mk-ubah-ambang-batas-pencalonan-pilkada-anies-dan-pdi-p-bisa-maju-di-jakarta>.

(*ballot*) obtained or the number of seats (*seat*) achieved by a political party participating in the General Election, in order to enable that political party or coalition of parties to nominate a presidential candidate. Presidential threshold is the minimum criteria that must be met to nominate a candidate pair for president and vice president by a political party or coalition of political parties, based on the number of votes (*ballot*) or the number of seats successfully won in legislative elections.⁸ In short, the presidential threshold is the minimum percentage of votes required for the presidential election.

Meanwhile, in the context of regional election, the regional head election threshold as per the regional election law, *requires nominating regional* heads through political parties or combinations of political parties, with a threshold of 25 percent of the accumulated valid votes in legislative elections or 20% of seats in the DPRD. This rule was then changed by the Constitutional Court through its decision which granted some of the requests from the Labor Party and the Gelora Party. Now, political parties participating in elections can register pairs of candidates if they have met the requirements. Thus, Article 40 paragraph (1) of Law 10/2016 must also be declared conditionally unconstitutional as long as it is not interpreted as "political parties or combinations of political parties participating in elections can register pairs of candidates if it meets the requirements."

⁸ Devi Rakhmatika Nopit Ernasari, "Dampak Penerapan Presidential Threshold Terhadap Pencalonan Presiden dan Wakil Presiden dalam Sistem Pemilu di Indonesia," *Jurnal Lex Specialis*.

To nominate candidates for governor and deputy governor as follows: a. provinces with a population on the permanent voter list of up to 2,000,000 (two million) people, political parties or combinations of political parties participating in the election must obtain valid votes of at least 10% (ten percent) in that province; b. provinces with a population on the permanent voter list of more than 2,000,000 (two million) people up to 6,000,000 (six million) people, political parties or combinations of political parties participating in the election must obtain valid votes of at least 8.5% (eight and a half percent) in the province; c. provinces with a population on the permanent voter list of more than 6,000,000 (six million) people up to 12,000,000 (twelve million) people, political parties or combinations of political parties participating in the election must obtain at least 7.5% of the valid votes (seven and a half percent) in the province; d. provinces with a population on the permanent voter list of more than 12,000,000 (twelve million) people, political parties or combinations of political parties participating in the election must obtain valid votes of at least 6.5% (six and a half percent) in that province; To nominate candidates for regent and deputy regent as well as mayor and deputy mayor candidates: a. districts/cities with a population on the permanent voter list of up to 250,000 (two hundred and fifty thousand) people, political parties or combinations of political parties participating in the election must obtain valid votes of at least 10% (ten percent) in the district/city; b. districts/cities with a population on the permanent voter list of more than 250,000 (two hundred

and fifty thousand) up to 500,000 (five hundred thousand) people, political parties or combinations of political parties participating in the election must obtain at least 8.5% of the valid votes (eight and a half percent) in the district/city; c. districts/cities with a population on the permanent voter list of more than 500,000 (five hundred thousand) up to 1,000,000 (one million) people, political parties or combinations of political parties participating in the election must obtain at least 7.5% of valid votes (seven and a half percent) in the district/city; d. districts/cities with a population on the permanent voter list of more than 1,000,000 (one million) people, political parties or combinations of political parties participating in the election must obtain valid votes of at least 6.5% (six and a half percent) in the district/city that.”⁹

As representatives of the people and the will of the people, the DPR and DPRD have the responsibility to ensure that the presidential and regional head election process runs fairly, transparently and participatively. Therefore, the DPR and DPRD must certainly involve the public in the policy-making process and consider input and views from various groups of society as a whole without distinguishing between minorities and the majority. One example of a policy that must involve the public is in determining the comparative consideration of the number of thresholds, and

⁹ Putusan Mahkamah Konstitusi Nomor 60/PUU-XXII/2024 Hal. 73-75.
https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_11003_1724130779.pdf.

must ensure that the policy taken is in accordance with democratic principles so that it will not cause discrimination and restrictions in the presidential and regional head election process, including the right to elect and vote.

The essence of this study is that the author examines how the Constitutional Court considers the decision on thresholds for nominations for President and Regional Heads, and what the opportunities are for eliminating the thresholds for presidential nominations as well as eliminating the thresholds for nominations for regional heads. By examining the impact of threshold requirements, this study aims to explain their impact on the political landscape, especially as it relates to the participation of new and emerging political parties. However, from comparative considerations, this threshold functions as an important criterion that shapes the competitive environment for presidential and regional head candidates, which influences the diversity and inclusiveness of the election and regional election processes. In addition, this study seeks to evaluate the relevance and consideration of the justice threshold in presidential and regional head nominations. In the upcoming elections and local elections. This assessment is critical in determining whether the threshold is in line with democratic principles and ensuring fair opportunities for all political entities. By exploring the implications of this threshold for the number of candidate pairs and its potential impact on new parties, this study aims to

provide insight into the need to adjust or enforce presidential and regional head requirements.

This study functions as a comprehensive analysis of the comparative considerations of the Constitutional Court's decisions on the threshold for presidential and regional head nominations in Indonesia. These are the legal, political and democratic implications of the threshold which aims to contribute to the discourse on election regulations and improve the democratic process in the Indonesian political landscape. For this reason, based on the background above, the author is interested in writing a thesis with a title. "Comparative Study of Considerations of Constitutional Court Decisions in the Thresholds for Presidential and Regional Head Candidates its Legality."

B. Problem Formulation

Based on the background as stated above, the author is interested in examining the comparative consideration of Constitutional Court decisions in the threshold for presidential and regional head candidacy in Indonesia. So the author formulates the problem as follows:

1. What is the Constitutional Court's consideration in the decision on the Threshold for Presidential and Regional Head Candidates?
2. What are the legal consequences of the Constitutional Court decision on the Threshold for Presidential and Regional Head Candidates?

C. Research Purposes

The author's aim in reviewing the problems above is:

1. To find out the considerations of the Constitutional Court's decision regarding the threshold for presidential and regional head nominations;
2. To comply with the opportunity to eliminate the Presidential Nomination Threshold as well as the Elimination of the Regional Head Nomination Threshold.

D. Benefits of Research

1. Theoretically, the benefits of writing this research include:
 - a. Develop legal knowledge in general, especially in the fields of politics and constitutional law;
 - b. Contribute to the development of legal theory by analyzing how the principle of impartiality of judges is applied in Constitutional Court decisions;
 - c. Provides a deeper understanding of the relevance of the nomination threshold to the constitution and the political rights of citizens, as well as the implications for the government system in Indonesia.
2. Practically, the benefits of writing this research include;

- a. To provide practical guidance for judges and legal practitioners in handling cases related to nomination thresholds, as well as increasing their understanding of applicable ethical standards;
- b. Provide recommendations to policymakers regarding the need to review threshold provisions, based on analysis of existing Constitutional Court decisions, to create a fairer and more democratic general election system;
- c. Providing information to the public about the implications of the Constitutional Court's decision regarding nomination thresholds, so that the public can better understand the political process and their rights in general elections.

E. Research Originality

To find out the originality of the author's research entitled "Comparison of Considerations of the Constitutional Court's Decision on the Threshold of Presidential Candidates and Regional Heads its Legality." With the formulation of the problem, what is the Constitutional Court's consideration in the decision on the Threshold for Presidential and Regional Head Candidates, and what are the legal consequences of the Constitutional Court decision on the Threshold for Presidential and Regional Head Candidates. So, in this case, it is explained that this research is more focused on the comparison of Considerations of the Constitutional Court's Decision

on the Threshold of Presidential Candidates and Regional Heads its Legality.

After the author searched, the author found several types of literature whose research themes were the same as the research on writing several scientific works or Journals that the author found through internet searches, including:

1. Thesis entitled "Analysis of Constitutional Court Decision Number 54/PUU-XVI/2018 Concerning Presidential Nomination Threshold"¹⁰

With the following problem formulation:

- a. What are the Considerations of Constitutional Court Judges in Decision Number 54/PUU-XVI/2018?
- b. How is the Ius Constituendum for the Elimination of Presidential Threshold in Indonesia?

If related to the author's title, the Author Emphasizes a comparison between the considerations of the Constitutional Court's decision for two types of elections, namely presidential and regional head. This shows the intention to discuss how the Constitutional Court applies constitutional

¹⁰ M.Zikri Neva Nugraha, Analysis of Constitutional Court Decision Number 54/PUU-XVI/2018 Concerning Presidential Nomination Threshold dari Universitas Jambi, Fakultas Hukum. 2023

principles in different contexts and explore the consistency or differences in the manifestation of the Constitutional Court.

Therefore, compared to the author's research, this title focuses specifically on the analysis of one particular decision (Number 54/PUU-XVI/2018) regarding the presidential nomination threshold. This includes an in-depth review of the reasons behind the decision, including the legal norms involved and their impact on the electoral system in Indonesia.

2. Thesis entitled "Counter-Productive Threshold for Presidential and Vice Presidential Nominations in Indonesia"¹¹ With the following problem formulation:
 - a. How are the Constitutional rights of citizens and political parties in elections related to the presidential and vice presidential nomination threshold?
 - b. What is the correlation between the presidential and vice presidential nomination threshold and the presidential system in Indonesia?
 - c. What is the disparity in the Constitutional Court's decision regarding the provisions of the presidential and vice presidential election threshold in Indonesia?

¹¹ Muhammad Andri Alvian, Counter-Productive Threshold for Presidential and Vice Presidential Nominations in Indonesia Program Studi Hukum Tata Negara Fakultas Syariah Dan Ilmu Hukum Islam Institut Agama Islam Negeri (IAIN). 2023.

If related to the author's title, the Author Emphasizes a comparison between the considerations of the Constitutional Court's decisions for two types of elections, namely the president and regional heads. This shows the intention to discuss how the Constitutional Court applies constitutional principles in different contexts and explore the consistency or differences in the Constitutional Court's decisions.

Therefore, when compared to the author's research, this title focuses on criticism of the presidential and vice presidential nomination threshold, with an emphasis on the negative impacts of the policy. This shows the intention to explore how the threshold can hinder political participation and create injustice in the election process.

3. Thesis entitled "Comparative Study Between the Constitutional Court of the Republic of Indonesia and the Constitutional Court of South Korea"¹²

With the formulation of the problem as follows:

- a. How is the existence of the Constitutional Court according to Law Number 24 of 2004 concerning the Constitutional Court?
- b. B. How is the comparison of authority between the Constitutional Court of Indonesia and the Constitutional Court of South Korea?

¹² Ahmad Fathoni, Comparative Study Between the Constitutional Court of the Republic of Indonesia and the Constitutional Court of South Korea dari Universitas Negeri Jember, Fakultas Hukum. 2005.

If related to the author's title, the Author Emphasizes a comparison between the considerations of the Constitutional Court's decisions for two types of elections, namely the president and regional heads. This shows the intention to discuss how the Constitutional Court applies constitutional principles in different contexts and explore the consistency or differences in the Constitutional Court's decisions.

Therefore, when compared to the author's research, this title focuses on a comparison between two constitutional institutions, namely the Indonesian Constitutional Court and the South Korean Constitutional Court. This study aims to identify similarities and differences in the authority, procedures, and impacts of decisions taken by the two institutions. This includes an analysis of how each Constitutional Court functions in different legal contexts.

4. Research Journal entitled "Legal Politics of the Nomination Threshold in the Constitutional Court Decision and Its Implications for the Simultaneous Regional Elections in 2024"¹³ With the formulation of the problem as follows:
 - a. What is the direction of the legal politics of single candidates in the Constitutional Court decision?

¹³ Yefri Febriansah, Legal Politics of the Nomination Threshold in the Constitutional Court Decision and Its Implications for the Simultaneous Regional Elections in 2024, Magister Terapan Studi Pemerintahan Institut Pemerintahan Dalam Negeri. 2024.

- b. What is the essence of the enforcement of the Constitutional Court against the democratic situation in the simultaneous regional elections in 2024?

If related to the author's title, the Author Emphasizes a comparison between the considerations of the Constitutional Court's decisions for two types of elections, namely the president and regional heads. This shows the intention to discuss how the Constitutional Court applies constitutional principles in different contexts and explore the consistency or differences in the Constitutional Court's decisions.

Therefore, when compared to the author's research, this title focuses on legal politics related to the nomination threshold, with an emphasis on the impact of the Constitutional Court's decision on the implementation of the 2024 Simultaneous Regional Elections. This includes an analysis of how legal policies set by the Constitutional Court affect the dynamics of elections and political participation at the regional level.

5. Research Journal entitled "Critical Review of the Constitutional Court's Decision on the Presidential Nomination Threshold"¹⁴ With the formulation of the problem as follows:

- a. What are the main criticisms of the Presidential Threshold concept?

¹⁴ Denny Indra Sukamawan, Critical Review of the Constitutional Court's Decision on the Presidential Nomination Threshold, Syaugi Pratama Faculty of Social and Political Sciences, dari Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia. Desember 2023.

- b. Why is the Constitutional Court's assumption regarding the Presidential Threshold which can increase political support for the elected president and vice president considered inappropriate?
- c. Why does the Constitutional Court consider that the Presidential Threshold can allow political parties to be considered inappropriate?

If related to the author's title, the Author Emphasizes a comparison between the considerations of the Constitutional Court's decisions for two types of elections, namely the president and regional heads. This shows the intention to discuss how the Constitutional Court applies constitutional principles in different contexts and explore the consistency or differences in the Constitutional Court's decisions.

Therefore, when compared to the author's research, this title focuses on a critical review of the Constitutional Court's decision regarding the presidential nomination threshold. It includes an in-depth analysis of the legal arguments, social impacts, and implications of the decision on the political system and general elections in Indonesia.

F. Literature Review

1. The Theory of Democracy

Understanding democracy can be seen from the observation of language (*epistemology*) and terms (*terminology*). Epistemologically, "*democracy*" consists of two words derived from Greek, namely "demos"

which means people or residents of a place, and "*cretein*" or "*cratos*" which means power or supervision. So in terms of language, *demos-cretein* or *demos-cratos* is a state of the state where in its government system sovereignty is in the hands of the people, the highest power is in the joint decision of the people, the people are in power, the government of the people and by the people.

The idea of democracy from Greece can be said to have disappeared from the face of the Western world when the European world entered the Middle Ages. Many of the Middle Ages ended, in Western Europe at the beginning of the 16th century national states emerged in modern form, causing Western Europe to experience several social and cultural changes to prepare the way to enter a more modern era with the belief that reason can free itself from its restrictions. The two events were the Renaissance and the Reformation. It is undeniable that democracy is the best principle and system in the political and state system. The treasury of political thought and performance in various countries has reached a common ground on this, namely that democracy is the best choice among various other choices.¹⁵

In the system of people's sovereignty, the highest power in a country is considered to be in the hands of the people of the country itself. Democracy is primarily an idea that assumes that power essentially

¹⁵ Ni'matul Huda, *Hukum Tata Negara Indonesia*, Jakarta, PT. Rajagrafindo Persada, 2005, hal.237.

comes from the people, is managed by the people, and is in the interests of all the people. The jargon that was later developed in connection with this is "*power is from the people, by the people, and for the people*". In the participatory democratic system, the addition of together with the people was also developed, so that it became "government power comes from the people, for the people, by the people, and with the people". This means that power is basically recognized as coming from the people, and therefore the people are the ones who determine and give direction and who organize state life. The entire system of state administration is also intended for all the people themselves. Even good countries are also idealized to be organized together with the people in the sense of involving society in the broadest sense.¹⁶

In the concept of democracy, the government of a country is a government by the people. However, in the current understanding, the concept of government is no longer required to be direct but can also be indirect or representative. Based on this principle, government power is divided into several functions which, under the influence of Montesquieu, consist of legislative, executive, and judicial functions. In a country that adheres to sovereignty, all functions of power are subject to the will of the people which are channeled through the institutions that represent them. In the legislative field, the people have the highest

¹⁶ Jimly As-Shiddiqie, *Hukum Tata Negara*, Op.Cit., Jakarta, Konstitusi Press, 2006, hal. 335.

authority to determine whether legislative products are valid. In the executive field, the people have the power to implement or at least supervise, control the wheels of government, and implement the regulations they have set. In the judicial field, in essence, the people have the highest power to make final and highest decisions regarding the judicial function. Whoever carries out these functions, in the practice of organizing the state, the source of power they have is the sovereignty of the people.¹⁷

Therefore, various other ambiguous ideas in the concept of government by the people lie in the word rule. There are two views, one side can be called a rule, on the other side is not included in the rule, and is part of the political system. If the rule is interpreted as justice, official, or other terms, then the democratic system is no less than some others and will require some concentration on the rule in greater power. If the people's government does not understand that the majority determines all lines of government policy and legislation, then in practice it is difficult to implement. If this is considered an organization, whether it is said to be a majority or not, then the decision is in the hands of the ruler.

¹⁷ Jimly As-Shiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta, Sekjen dan Kepaniteraan Mahkamah Konstitusi RI, 2006, hal. 140-146.

2. Nomination Threshold

The nomination threshold is a provision that sets out the minimum requirements for candidates to be able to participate in a general election. In this context, the threshold can affect who can run for president or regional head, as well as its impact on political representation and public participation in general elections. There is no explicit provision in the constitution that regulates the minimum number of votes required by political parties to nominate a presidential candidate pair, as stated in Article 222 of the Election Law.¹⁸

In this case, the 1945 Constitution of the Republic of Indonesia does not provide a minimum threshold of votes that must be met by political parties to be able to nominate a presidential candidate pair. Article 6A paragraph (5) does not provide any additional obligations to political parties, it only states that the process of holding presidential elections will be further regulated by statutory regulations. Article 6A paragraph (2) of the 1945 Constitution of the Republic of Indonesia means that the requirements that apply to presidential and vice presidential candidates are:¹⁹

¹⁸ "Arti Presidential Threshold dalam Pemilu | Klinik Hukumonline." 29 Jan. 2019, <https://www.hukumonline.com/klinik/a/arti-ipresidential-threshold-i-dalam-pemilu-lt5c2c96b9b0800/>.

¹⁹ "Isi Pasal 6 dan 6A: Bunyi Sebelum & Setelah Amandemen UUD 1945 - Tirto.ID." 04 Oct. 2021, <https://tirto.id/isi-pasal-6-dan-6a-bunyi-sebelum-setelah-amandemen-uud-1945-gj5C>.

- a. Candidate pairs must be proposed by political parties or a coalition of political parties participating in the election before the election is held.
- b. Candidate pairs who wish to be declared winners must win more than half of the total votes in the presidential election and win at least twenty percent of the votes in more than half of the provinces in Indonesia.

The 1945 Constitution in Article 6a paragraph (2) emphasizes that presidential candidate pairs must be supported by political parties or a coalition of political parties. The presidential election in Indonesia does not open up space for independent or individual candidates as is applied in various countries. In addition, if we look more closely at the 1945 Constitution regarding regulating the threshold which in its original meaning is the threshold of victory that must be met by candidate pairs to be declared winners.²⁰ Candidate pairs who can win more than half of the total votes in the election and win at least twenty percent of the votes in more than half of the provinces can be declared winners. The conditions for victory are clearly stated in Article 6 paragraph (3) of the 1945 Constitution. The 1945 Constitution does not regulate the threshold for presidential nomination which is known as the minimum requirement

²⁰ Santoso, Bidang Hukum Tata Negara, Fakultas Hukum Universitas Indonesia.

for votes for the party supporting the pair. However, it regulates the threshold of victory.

On August 20, 2024, the Constitutional Court issued an important decision, Number 60/PUU-XXII/2024, which changed the provisions of the regional head nomination threshold. The Constitutional Court decided that the threshold was no longer 25% of the votes obtained by political parties/coalitions of political parties from the previous legislative election, or 20% of DPRD seats. Instead, the Constitutional Court equated the regional head nomination threshold with the independent route, thus providing an alternative for political parties to nominate candidate pairs by meeting the new requirements set. Although there is no national threshold similar to the presidential threshold, several regions apply similar provisions based on their respective regional regulations, which often refer to the vote acquisition in the previous legislative election. The provisions of the regional head nomination threshold can vary depending on regional regulations and local political dynamics, so there is no one universally applicable measure.

On January 02, 2025, Constitutional Court Decision Number 62/PUU-XXII/2024 became a milestone in Indonesian democracy with the abolition of the Presidential Threshold. This ruling breaks the Constitutional Court's tradition of rejecting 30 judicial reviews of Article 222 of Law No. 7/2017, by acknowledging that the threshold of 20% of

DPR seats or 25% of the national vote marginalizes small parties and kills all candidates. The majority of judges (7 out of 9) firmly stated that this article is unconstitutional because it violates the constitutional rights of citizens to vote and be elected, while warning of a system that only benefits large oligarchic parties. The fact that the 2024 Presidential Election will again be filled by two pairs of candidates, as has been the trend since 2004, is clear evidence that the threshold frustrates democracy, not stabilizes politics. This decision is not just a regulatory change, but a total overhaul of the system that has hampered the progress of Indonesian democracy for two decades.

Thus, the threshold for nominating presidential and regional heads, although the threshold for nominating regional heads in Indonesia has undergone significant changes since it was first implemented. With the latest ruling from the Constitutional Court and KPU regulations, the nomination system now gives political parties the freedom to propose presidential and regional head candidate pairs. This change is also expected to be a reference for increasing political representation and providing greater opportunities for new candidates to compete, so that there are no obstacles in participating in general elections and providing opportunities for new candidates to compete in future general elections.

3. Constitutional Authority Within The Threshold

The Constitutional Court is a state institution that has the authority to test laws against the Constitution (UUD) and resolve disputes over the authority of state institutions and disputes over general election results. The Constitutional Court of Indonesia has played an important role in shaping democratic governance by ensuring that laws are in line with constitutional principles and democratic values. Established in 2003, the Constitutional Court has played an important role in maintaining the supremacy of the Constitution and protecting fundamental human rights, as evidenced by its various decisions on a variety of issues, including general election disputes and recognition of minority religions. The authority of the Constitutional Court to test and annul laws that conflict with the 1945 Constitution, which is stated in Article 24C of the 1945 Constitution, the Constitutional Court has four main authorities, including:²¹

- a. Testing laws against the Constitution,
- b. Deciding on disputes over the authority of state institutions,
- c. Deciding on the dissolution of political parties,

²¹ Dasar Hukum Mahkamah Konstitusi dalam UUD 1945 dan UU MK." 10 Nov. 2023, <https://www.hukumonline.com/klinik/a/dasar-hukum-mahkamah-konstitusi-lt628b76075befa/>

d. Deciding on disputes over general election results.

The Constitutional Court of Indonesia, despite its notable achievements in upholding the rule of law and fostering social harmony, faces significant challenges that impact its effectiveness, most notably political pressures that threaten judicial independence. Since its establishment in 2003, the Constitutional Court has rendered more than 1,000 decisions, most of which have major implications for Indonesian society, including mitigating social conflict and promoting balance in the nation's diversity. However, the Constitutional Court's role as an impartial guardian of the Constitution is often compromised by political interference, manifested in attempts to influence the appointment of judges and the decision-making process. This interference undermines the Constitutional Court's ability to function independently and impartially, as highlighted by pressures from various parties and interests that can hinder its ability to ensure constitutional justice.²²

The Constitutional Court's judicial review mechanism has major implications for Indonesian democracy. From the relevant constitutional law theory According to Hans Kelsen, the legal system must have a hierarchy of norms, with the constitution at the top. The Constitutional Court acts as a guardian of the Constitution by conducting judicial

²² Ristawati & Salman, 2023.

review.²³ The Constitutional Court functions to maintain the balance of power between state institutions through constitutional review and dispute resolution, thus preventing abuse of power, namely with the Principle of Checks and Balances.²⁴ By acting as a supervisor of legislative and executive powers, the Constitutional Court helps uphold the supremacy of law and protect individual rights. The decisions of the Constitutional Court contribute to the development of democratic norms and principles, encouraging a more accountable and transparent system of government.

However, addressing the challenges faced by the Constitutional Court is essential to ensure its continued effectiveness. Strengthening the legal framework, enhancing judicial independence, and providing adequate resources are important steps in supporting the role of the Constitutional Court to continue to shape the future of Indonesian democracy. By addressing these issues, the Constitutional Court can continue to play an important role in promoting democratic governance and constitutional integrity.

The nomination threshold is a provision that determines the minimum requirements for candidates to be able to participate in general

²³ Persamaan Dan Perbedaan Teori Norma Hans Kelsen Dengan Teori Hierarki" 30 Aug. 2020, <https://www.materihukumweb.eu.org/2020/08/teori-norma-hans-kelsen-dan-tori-hierarki-norma-dalam-negara-hans-nawiasky.html>.

²⁴ Pengertian Check And Balances Dalam Sistem Pemerintah." 31 Jul. 2024, <https://redasamudera.id/pengertian-check-and-balances-dalam-sistem-pemerintah/>.

elections. In this context, thresholds can influence who can run for president or regional head, as well as their impact on political representation and community participation in elections.

G. Research methods

1. Types of Research

This research is normative legal research. Analytical legal studies and conclusions are focused on applicable legal norms, including laws and court decisions. This study aims to understand and analyze the legal considerations used by the Constitutional Court in deciding cases related to the presidential and regional head nomination thresholds.

2. Approach Method

The approach used in this research is a comparative approach. This approach aims to compare the Constitutional Court's decision regarding the threshold for presidential nominations with the decision regarding the threshold for regional head nominations its Legality. By using this approach, researchers will be able to:

- a. Identify differences and similarities in legal considerations between the two types of decisions.
- b. Analyzing how the political and social context influences the conclusions of the Constitutional Court.

3. Data Source Method

The data used in this research consists of:

- a. **Primary Legal Data:** Primary legal materials are legal materials that have binding force, consisting of statutory regulations which are ordered based on the hierarchy of statutory regulations as stated in Article 7 of the Law on the Establishment of Legislative Regulations. In this research, the primary legal materials used include the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), based on Constitutional Court Decision Number 60/PUU-XXII/2024, 62/PUU-XXII/2024 and the Court's Decision Constitution Number 101/PUU-XXII/2024.
- b. **Secondary Legal Data:** Secondary legal materials are legal materials that are closely related to primary legal materials. This material includes various books on law, politics, constitutional law regarding government regulations, books on elections, party regulations, democracy, legal literature, journal articles, books, and other sources that discuss legal theory, constitutional principles, and analysis regarding the decision of the Constitutional Court.

4. Method of Collecting Data

Data collection methods that will be used include:

- a. Document Study: Collect and analyze official documents, including Constitutional Court decisions and related laws and regulations.
- b. Literature Review: Reviewing relevant literature to support analysis and provide context for research results.

5. Data Analysis Methods

Data analysis will be carried out by:

- a. Using qualitative analysis methods to evaluate legal considerations in Constitutional Court decisions. This includes content analysis of the decisions to identify the legal arguments used.
- b. Comparing the results of the analysis of the Constitutional Court's decisions between the president and regional heads to draw conclusions about the consistency and differences in the application of laws.

H. Writing System

1. Chapter I is the background and reasons for carrying out research, formulation of research problems, research objectives, originality of research, literature review, research methods and systematic writing of research results.

2. Chapter II is an explanation and general review of the meaning of democracy, constitutional authority in democracy, and nomination thresholds.
3. Chapter III is an explanation of the answer to the research problem formulation. This explanation includes the results of the analysis of the Constitutional Court decision. As well as an explanation of the essence of the research results regarding What is the Constitutional Court's consideration in the decision on the Threshold for Presidential and Regional Head Candidates and What are the legal consequences of Constitutional Court decision on the Threshold for Presidential and Regional Head Candidates.
4. Chapter IV is the conclusions and suggestions from the results of the research that has been carried out.