

THE ROLE OF THE CONSTITUTIONAL COURT IN TESTING THE PRESIDENTIAL THRESHOLD LAW FOR THE 2024 PRESIDENTIAL ELECTION

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Abstract

Objective study This is for know The Role of the Constitutional Court in Reviewing the Presidential Threshold Law for the 2024 Presidential Election As for the method study This is a qualitative study, and research qualitative is a research method used to understand social phenomena in depth. As for the type of research used by the researcher, i.e., studies, usage studies, because the researcher can understand in a way the deep context, process, and complexity of the phenomenon researched. The research results show that the Constitutional Court has the responsibility to ensure that the presidential threshold requirements are in accordance with the constitution and the basic principles of democracy. Controversial cases in various countries and the challenges associated with presidential threshold testing demonstrate the complexity and controversy involved in these arrangements

I. Introduction

Every government in a country has a basis that becomes the foundation for democratic life, known as transparency in the election of a state leader or president (Al Kamal et al., 2022). Therefore, Amir's opinion (2020) in the context of democracy is that the function of general elections is one of the key instruments for determining the people's representatives who sit in the legislature (DPR/DPRD) who will make decisions on behalf of the people. Through political parties, elected politicians are considered people or groups who have the ability or obligation to speak and act on behalf of a larger group. Regulations regarding elections are regulated in the General Election Law of the Republic of Indonesia Number 7 of 2017 (Election Law). One democratic system that is commonly used is the presidential system, where the president is elected separately from the legislative body. However, in several countries that adopt a presidential system, there are special requirements that must be met by presidential candidates, known as the "presidential threshold" (Antamaeng, 2019).

The presidential threshold is a requirement that regulates the amount of political support that a presidential candidate must have before he can run for the presidential election. The requirements are in the form of the number of political parties' support in parliament, which is determined by law (Fendabi, 2019). According to Ghoffar (2018), the presidential threshold is one of the mechanisms used to ensure that only candidates who have sufficient support can compete in the presidential election. Although the presidential threshold can be considered a tool that helps ensure the quality and sustainability of government, this setting can also be a source of controversy and debate in a democratic context. Some people argue that the presidential threshold can be used as a political tool to limit political competitors who challenge incumbent candidates (Hidayatullah, 2018). On the other hand, others argue that the presidential threshold is important to avoid excessive vote splitting and ensure that presidential candidates are truly qualified and have the support of the people (Kusnadi, 2020).

One of the important instruments in a democratic country is the Constitutional Court, which is an institution with an important role in supervising the constitution and laws. The Constitutional Court is tasked with ensuring that existing laws and regulations comply with the constitution and that the rights of citizens are protected (Mukhtarrija et al., 2017). Therefore, the constitutional court often has a role in reviewing laws relating to the presidential threshold. Testing of the presidential threshold law by the Constitutional Court is important in the context of democracy. Because it relates to the balance between protecting the rights of citizens to run for office in presidential elections and the interest in preventing excessive vote splitting. Determining

whether or not a presidential threshold is in accordance with the constitution is a complex question, and this raises various legal and political considerations.

Basically, the role of the Constitutional Court in a democratic system is as an institution that plays a key role in maintaining democracy and protecting the rights of citizens in the country. The main function of the Constitutional Court is to examine existing laws and regulations to ensure that they are in line with the constitution. By doing this, the Constitutional Court plays a role in maintaining the basic principles of democracy, such as the supremacy of law, human rights, and the separation of powers. The Constitutional Court has the authority to annul laws as invalid because they conflict with the Constitution. This is to provide protection to citizens against government actions that may violate people's rights. In relation to the presidential threshold, the role of the Constitutional Court is very important because the presidential threshold is part of the presidential election regulations, which must be tested to ensure that they do not violate the rights of citizens.

The presidential threshold is a requirement that regulates how much political support a presidential candidate must have before they can run for office. These requirements vary from country to country and can take many forms. Some common types of presidential thresholds include:

1. **Number of Signatures:** One of the most common forms of presidential threshold is the requirement to collect a certain number of signatures from political parties that have seats in parliament. The amount of support required varies greatly, depending on the laws in force in the country. The method is used by many countries, including the United States, to ensure that presidential candidates have significant support before they can run for office.
2. **Number of Votes or Percentage:** In some countries, the presidential threshold can be measured in terms of the number of votes obtained by a presidential candidate in a general election or in terms of the percentage of votes out of the total votes required. In some cases, a candidate must obtain a certain percentage of the vote before they can run.
3. **Other Criteria:** Apart from the number of signatures and votes, there are countries that use other criteria to determine the presidential threshold. For example, in some countries, a candidate must obtain support from a number of members of parliament or other legislative institutions (Yasa, 2022).

The presidential threshold is a controversial issue in politics and constitutional law (Diniyanto, 2018). There are various arguments for and against the use of the presidential threshold. Some arguments supporting the use of the presidential threshold include:

1. **Preventing Excessive Vote Splitting:** One of the main arguments used by supporters of the presidential threshold is that this requirement could help prevent excessive vote splitting in presidential elections. By ensuring that only candidates who have significant support can run, the presidential

threshold can help avoid an overly divisive election, which could disrupt the stability of the government.

2. Improving Candidate Quality: Some people argue that the presidential threshold can force candidates to be more serious and qualified because they must gain significant support before they can run. This can produce candidates who are more competent and careful in the election.
3. Reducing Campaign Costs: By requiring candidates to gather support before they can run, the presidential threshold can help reduce exorbitant campaign costs. This could help prevent excessive spending in presidential elections.

On the other hand, there are also arguments against the use of a presidential threshold, with the opinion that a presidential threshold could be an unfair restriction on citizens' rights to run for elections because this could limit access to the political arena and limit the diversity of candidates. Next, there is also concern that the presidential threshold could be misused by the government or parties in power to limit candidates who might challenge the incumbent, and this could damage the principles of democracy and pluralism (Antamaeng, 2019).

The controversy related to the presidential threshold highlights the importance of reviewing such laws by the Constitutional Court. The Constitutional Court has a key role in assessing whether the existing presidential threshold is in accordance with the constitution and the basic principles of democracy (Majid & Sari, 2023). Based on news from Kompas.com regarding the presidential threshold, it was recorded that the norms in Article 222 had been tested 27 times, with five decisions being rejected and the rest being unacceptable. Article 222 of the Election Law stipulates that presidential and vice presidential candidates can only be nominated by political parties that have a minimum of 20 percent of DPR seats and/or obtained 25 percent of the valid national vote in the previous election (Abustan, 2023). Thus, referring to previous decisions, the Constitutional Court remains in its position, declaring the presidential threshold constitutional. So, in all these decisions, in principle, the Constitutional Court is of the opinion that the threshold for nominating presidential and vice presidential candidates is constitutional.

Based on this background, researchers are interested in conducting research with the title The Role of the Constitutional Court in Reviewing the Presidential Threshold Law for the 2024 Presidential Election.

2. Research Method

The research method used in this research is qualitative research. Qualitative research is a research method used to understand social phenomena in depth. Qualitative research does not just describe phenomena but also seeks to understand the meaning and context of these phenomena (Yusanto, 2020). This type of research is library research, which researchers carry out by collecting,

studying, and analysing references or sources obtained in written form, such as books, journals, articles, documents, and other significant sources of information with the topic or title researched. And then the researcher analyses and draws conclusions to find answers to what the researcher is studying.

3. Results and Discussion

The Constitutional Court in the constitutional system in many countries in the world is known as "the guardian of the constitution" because of its role in overseeing that constitutional provisions are implemented and respected in the practice of state life (Syahuri & Fahrozi, 2020). In Indonesia, apart from the Supreme Court (MA), the MK is also the institution implementing judicial power within the constitutional framework. The Constitutional Court's decision, which is the result of the implementation of its duties and authority as the highest constitutional interpreter, has binding legal force.

Wijaya et al. (2020) stated that the Constitutional Court's authority to examine the conformity of a law (UU) with the Constitution (UUD) is a mandate from the constitution. This authority is regulated in Article 24C paragraph (1), which states: "The Constitutional Court has the authority to adjudicate at the first and final level, with final decisions, to review laws against the Constitution, resolve disputes over the authority of state institutions granted by the Constitution, adjudicate cases of dissolution of political parties, and resolve disputes regarding the results of general elections."

Sodikin (2014) stated that based on the results of the discussions that have been carried out, it can be concluded that since the establishment of the Constitutional Court (MK), the MK has had a significant role in resolving cases related to constitutional law and politics. This expansion of the Constitutional Court's authority is based on the 1945 Constitution, the Law on the Constitutional Court, and other regulations. As the guardian of the constitution and a constitutional institution, the MK is considered the party that explains and interprets the constitution. Therefore, the Constitutional Court is not bound by the law that regulates its existence or other laws, especially those based on a certain doctrine (Armia et al., 2016). As a consequence, the nature of the Constitutional Court's decisions tends to change according to the judge's views and interpretations of the law. The results of tracing the Constitutional Court's decisions show that there are at least seven decisions that were produced through the judicial review process of the Election Law. These decisions can be considered key elements in resolving issues related to the constitutionality of the election law. The description of these decisions has been prepared in tabular form by the author for ease of understanding.

In terms of the presidential threshold, the Constitutional Court has an important role in reviewing the law to ensure it is in accordance with the constitution and basic principles of democracy. The role of the Constitutional Court in this matter

includes several important aspects:

1. **Compliance with the Constitution:** The Constitutional Court is tasked with ensuring that existing laws and regulations comply with the Constitution. In the context of the presidential threshold, the Constitutional Court will assess whether the requirements applied are in accordance with constitutional principles, including the rights of citizens to nominate themselves.
2. **Human Rights Examination:** The Constitutional Court also has a role in protecting human rights in presidential elections. If the presidential threshold is deemed to violate human rights, the Constitutional Court can decide that the law is invalid.
3. **Dispute Resolution:** The Constitutional Court is often the forum where disputes related to the presidential threshold can be resolved. Candidates who feel that they have been wronged by these requirements can file a lawsuit with the Constitutional Court to seek justice.
4. **Application of Democratic Principles:** The Constitutional Court must also consider democratic principles in reviewing the presidential threshold law. This includes consideration of the balance between maintaining government stability and ensuring fair and open access for all potentially qualified candidates (Setiawan, 2023).

Testing of the presidential threshold law by the Constitutional Court does not always produce a clear decision and does not always result in the abolition of this requirement. In contrast, the Constitutional Court often has to carry out complex deliberations and consider various factors before making a decision.

The existence of a threshold for political parties to have the right to nominate pairs of candidates for President and Vice President (Presidential Threshold) in the general elections, which will be held simultaneously in 2024, gives rise to juridical implications, namely: The existence of a threshold for political parties to have the right to nominate pairs of candidates for President and Vice President (Presidential Threshold) in the general election, which is held simultaneously, according to Saifulloh (2022), has juridical implications, namely:

1. **Violates the 1945 Constitution concerning the Presidential System.** If it is considered that the Indonesian government system uses a pure presidential system, as stated in the 1945 Constitution, namely Article 1 paragraph (1) of the 1945 Constitution, which reads, "The Indonesian state is a unitary state in the form of a republic". So the president is the highest administrator of the state government. According to the Constitution, Article 3 paragraph (2) and Article 4 paragraphs (1) to (2) explain that the President is not responsible for the DPR. Articles 4 to 16 and Articles 19 to 22B explain that Ministers of State are assistants to the President.

This in itself violates the provisions of the 1945 Constitution, which regulate that the Indonesian government system is presidential, because the presidential threshold rules in the 2019 simultaneous elections, as regulated in Law Number 7 of 2017 concerning general elections, actually weaken the presidential system adopted. Indonesia. In the presidential system scheme, the President and the DPR are two separate institutions that have different bases of political legitimacy, and the executive and legislative institutions are not mutually dependent on each other, so the President's candidature should not be determined by the political formation of the national parliament as a result of the legislative action. Moreover, the mandates from the President and the DPR are not the same, so it is impossible to combine them.

2. Contrary to Article 6A, paragraph (2) of the 1945 Constitution The existence of the Presidential Threshold provisions in Law Number 7 of 2017 is contrary to Article 6A paragraph (2) of the 1945 Constitution, which states that the candidate pairs for President and Vice President are proposed by a political party or combination of political parties participating in the election before the election. This means that every political party should be able to nominate pairs of candidates for president and vice president, including political parties that have just participated in the elections.

With the Presidential Threshold provisions, it certainly limits the rights of each party to nominate presidential candidates, or new political parties are forced to support the available presidential and vice presidential candidate pairs without having the political power to convey their wishes or aspirations due to their positions, which are neither extraordinary nor fulfilling. Because in reality, the threshold in its original meaning is not a threshold that prevents candidature for President and Vice President; however, it is a minimum percentage rule for the election of the President and Vice President (Fikri et al., 22). This has been regulated in the 1945 Constitution, namely Article 6A paragraph (3), which explains that the presidential and vice presidential candidate pair, who received more than 50 percent of the total votes in the general election with at least 20 percent of the votes in each province in more than half of the provinces in Indonesia, were appointed as President and Vice President.

3. The Constitutional Court's Inconsistency in Decision Number 14/PUU-XI/2013 The existence of Constitutional Court Decision Number 14/PUU-XI/2013, which mandates that the legislative and presidential elections be held simultaneously, but this can only be held in the 2019 election and not in 2014, shows the Constitutional Court's inconsistency in implementing legal provisions. Because in Article 46 of the Constitutional Court Law, it is stated that the Constitutional Court's decision is legally binding immediately after it is pronounced in open session. Legal provisions whose implementation can be suspended are legal provisions in the law; while court decisions, including MK decisions, cannot be postponed, they must

be implemented immediately. Another example of the Constitutional Court's inconsistency can be seen in Decision Number 072-073/PUU/2004, which essentially states that the regional election is an election regime so that disputes are resolved in the MK. This was later changed by Decision Number 97/PUU-XI/2013, which essentially states that the Constitutional Court has no authority to handle regional election disputes.

So the Constitutional Court should also be responsible for decisions that can cause inconsistencies or result in various interpretations, such as the Constitutional Court's decision Number 14/PUU-XI/2013, which has given rise to various interpretations, because there are those who interpret the Presidential Threshold as no longer relevant, but there are also interpretations that the Constitutional Court's decision stated that the Presidential Threshold is an open legal policy for law makers, as in decision Number 515259/PUU-VI/2008, which rejected the review of Article 9 of Law Number 42 of 2008 concerning the Presidential Threshold. The Constitutional Court should confirm in its decision whether the Presidential Threshold is still relevant in the 2019 simultaneous elections or not, so that there is no legal confusion in the 2019 simultaneous elections.

4. Incomplete Understanding of Constitutional Court Decision Number 14/PUU-XI/2013 There is an incompleteness of the makers of Law Number 7 of 2017 concerning general elections in viewing and reading Constitutional Court Decision Number 14/PUU-XI/2013 regarding the request for a judicial review of Article 9 of Law Number 42 of 2008 regarding the presidential threshold. Referring to the legal considerations of the Constitutional Court in the decision document, the Constitutional Court is of the opinion that "regarding the review of the constitutionality of Article 9 of Law Number 42 of 2008, the Court considers that by holding the Presidential Election and the Election of Members of Representative Institutions in the General Election simultaneously, the provisions of the article on the conditions for obtaining political party votes as a condition for nominating candidate pairs "The President and Vice President have the authority to form laws while remaining based on the provisions of the 1945 Constitution." In these legal considerations, it can be understood that, regarding the minimum threshold provisions for the nomination of President and Vice President, the Constitutional Court is of the opinion that this is the authority of the legislators, in this case the People's Representative Council together with the government (President). In reading this, it seems that there is something that the makers of Law Number 7 of 2017 didn't pay attention to, because it seems they only stop at the sentence "authority to make laws", even though the link to the sentence emphasises that "it remains based on the provisions of the 1945 Constitution".

The sentence "still based on the provisions of the 1945 Constitution" certainly refers to the article in the 1945 Constitution that discusses the election of the President and his deputy, which means it refers to the provisions of Article 6A

paragraphs (1) to (5) of the 1945 Constitution that specifically regulate the election of the President and Vice President. Article 6A paragraph (2) of the 1945 Constitution explicitly stipulates that "Pairs of candidates for President and Vice President are proposed by political parties or combinations of political parties participating in the general election before the general election is held", so there should be no Presidential Threshold regulations that limit political parties' ability to nominate pairs of candidates for President and Vice President. Because of the 1945 Constitution, all political parties have the right to nominate candidates for president and vice president.

5. Violating Citizens' Rights in the 1945 Constitution Based on the 1945 Constitution, there are provisions regarding citizens' rights, which can be seen in Article 27 paragraph (1), which explains the rights of citizens to vote, which are included in the rights of citizens guaranteed by the constitution in the form of equality of status in law and government. Apart from that, Article 28D paragraph (1) explains the right to obtain recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. As well as Article 28 D paragraph (3), which explains the right to obtain equal opportunities in government. These rules regarding human rights are a form of manifestation of people's sovereignty as regulated in Article 1 paragraph (2) and Article 6A paragraph (1).

According to Nindyapuri (2014), reviewing the presidential threshold law by the Constitutional Court is a complex and difficult task. This is because the Constitutional Court needs to consider several important things, such as: Balance Between Rights and Public Interests: One of the main challenges in testing the presidential threshold is finding the right balance between the rights of citizens to nominate themselves and the public interest in preventing excessive vote splitting. The Constitutional Court must consider these two factors carefully when reviewing the law. Interpretation of the Constitution: The Constitutional Court must carry out a careful interpretation of the country's constitution to determine whether the presidential threshold is in accordance with the basic principles of the constitution. This may involve research into the history of the constitution, the intentions of the framers of the constitution, and previous constitutional law practices. Comparison with International Standards: The Constitutional Court can also compare the presidential threshold law with international standards on human rights and democratic principles. This international standard can provide guidance on whether a presidential threshold violates citizens' rights. Impact on the Election Process: The Constitutional Court must also consider the impact that eliminating or changing the presidential threshold may have on the presidential election process. Removing the existing presidential threshold could result in more diverse elections but may also present challenges to government stability.

Santoso (2011) said that the Constitutional Court's decision to review the

presidential threshold law had a significant impact. These decisions can influence the outcome of presidential elections, affect candidates' access to the political arena, and shape political dynamics within a country like that.

1. The Constitutional Court's decision could influence the outcome of the presidential election. If the Constitutional Court decides to remove or change the presidential threshold, it could open the way for more candidates to run, which could change the dynamics of elections.

2. Constitutional Court decisions can also affect political parties and coalitions. If presidential threshold requirements change, parties and coalitions may need to adjust their political strategies.

3. Constitutional Court decisions can affect government stability. If the existing presidential threshold is removed and elections become more divisive, this could disrupt political stability.

The Constitutional Court's decision could also have a broader impact on democracy. Such decisions can affect candidates' access to the political arena and can affect basic democratic principles, such as pluralism and human rights.

4. Conclusion

Based on the research and findings that have been presented, the Constitutional Court plays a key role in maintaining democratic principles and protecting the rights of citizens by verifying whether the presidential threshold requirements are in accordance with the constitution and the basic principles of a democratic country. In line with political and legal developments in Indonesia, the role of the Constitutional Court in examining the presidential threshold will always be a significant and relevant issue in discussions regarding democracy and citizens' rights. Therefore, in making its decision, the Constitutional Court must carefully consider various factors because the Constitutional Court's decision could have a major impact on the presidential election process and political dynamics leading up to the 2024 election.

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