

PRESIDENTIAL THRESHOLD LEGAL ANALYSIS WITHIN INDONESIAN PRESIDENTIAL ELECTION (2003-2020)¹

Anindita Irvan Wiryawan² dan Rosyid Ridlo Al-Hakim³

²Faculty of Law, Universitas Gadjah Mada, Indonesia
Sosio Yustisia Bulaksumur Street No.1, Karang Malang, Caturtunggal,
Depok Subdistrict, Sleman Regency, Special Region of Yogyakarta,
Indonesia, Phone: (+62 274) 512781

³Faculty of Science and Technology, Universitas Harapan Bangsa,
Indonesia
K.H. Wahid Hasyim Street No. 274-A, Windusara, Karangklesem, South
Purwokerto Subdistrict, Banyumas Regency, Central Java Province,
Indonesia, Phone (+62 281) 6843493
Email: aninditairvan@gmail.com,

Abstrak

Presiden, Mahkamah Konstitusi, dan DPR adalah lembaga negara yang menjalankan fungsi eksekutif, yudikatif, dan legislatif untuk menegakkan konstitusi. Presiden dipilih langsung oleh rakyat, dengan tata cara pencalonan diatur dalam Pasal 6 dan 6A UUD 1945, yaitu melalui partai politik atau gabungan partai politik. Sejak 2003 hingga 2018, sejumlah regulasi seperti UU No. 23/2003, No. 42/2008, dan No. 7/2017 mengatur ambang batas pencalonan presiden dan wakil presiden berdasarkan perolehan suara hasil pemilu legislatif. Dalam praktiknya, sejumlah pihak mengajukan uji materi ke Mahkamah Konstitusi, namun hingga kini tidak ada putusan yang membatalkan klausul ambang batas tersebut. Ambang batas presiden dinilai membatasi hak calon independen dan membatasi partai politik mencalonkan presiden dan wakil presiden. Mahkamah Konstitusi bahkan dinilai seolah menjadi lembaga legislatif kedua karena memiliki pengaruh besar dalam pembentukan hukum. Namun, baik lembaga legislatif maupun yudikatif tidak proaktif mengubah klausul ini dan justru memperkuatnya. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan peraturan perundang-undangan, putusan pengadilan, dan teori hukum. Penelitian ini mengkaji wacana ambang batas presidensial dari 2003–2018 dan dampaknya terhadap ambang batas parlemen, sistem multipartai, kompetisi politik, sistem presidensial, serta pemilihan presiden dan pemilu serentak.

Kata Kunci: Ambang batas pencalonan presiden, Pencalonan presiden, Pemilu serentak Indonesia, Sistem multi-partai, Sistem presidensial.

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² Correspondence Address: aninditairvan@gmail.com.

³ Email:

Abstract

The President, the Constitutional Court, and the House of Representatives of the Republic of Indonesia are state organs formed to uphold the constitution and carry out executive, legislative, and judicial functions. The President is elected directly by the people, as regulated in Articles 6 and 6A of the 1945 Constitution, which stipulate that presidential candidates must be nominated by political parties or coalitions. From 2003 to 2018, various laws (Law No. 23/2003, No. 42/2008, and No. 7/2017) introduced the presidential threshold, requiring a minimum percentage of legislative election results to nominate a candidate. In practice, several stakeholders have challenged this threshold through judicial reviews, but the Constitutional Court has never declared the provision unconstitutional. Critics argue that the threshold limits individuals from running as independent candidates and restricts political parties' rights to nominate candidates. The Constitutional Court is seen by some as a second legislative body due to its authority in interpreting laws. However, neither the legislature nor judiciary has revised the threshold, instead reinforcing it. This normative legal research examines laws, court decisions, and literature to analyze the discourse surrounding the presidential threshold and its impact on parliamentary thresholds, political competition, the party system, presidential elections, and simultaneous electoral processes.

Keywords: *presidential threshold, presidential system, multi-party system, presidential candidacy, Indonesia simultaneous election.*

A. Introduction

General elections are a fundamental instrument in a democratic state with a representative system, as they enable citizens to exercise their sovereign rights. In Indonesia, the general election mechanism is outlined in the 1945 Constitution, which emphasizes that sovereignty lies with the people and is implemented according to the Constitution. The right to vote and to be voted is derived from people's sovereignty and is integral to human rights as citizens.⁴ As a democratic state, Indonesia has adopted general elections to choose public officials, including legislative and executive representatives, in both central and regional areas.⁵ General elections in Indonesia are mandated to be held every five years. This principle ensures an orderly and systematic electoral process, strengthening the democratic framework and popular sovereignty⁶.

The 1945 Constitution also mandates the direct election of the President and Vice President, a significant reform aimed at strengthening the presidential system. This direct election is intended to ensure a legitimate and accountable leadership,

⁴ Nur Hidayat Sardini, 2011, *Restorasi Penyelenggaraan Pemilu Di Indonesia*, Yogyakarta, Fajar Media Press.

⁵ A. M. Fadjar, "Pemilu Yang Demokratis Dan Berkualitas: Penyelesaian Hukum Pelanggaran Pemilu Dan PHPU," *Jurnal Konstitusi* 6, no. 1 (2009): 1–24.

⁶ Muhammad Mutawalli et al., "Periodization of General Elections: Ideas and Refinements in Indonesia," *Substantive Justice International Journal of Law* 6, no. 2 (October 2, 2023): 118–37, <https://doi.org/10.56087/substantivejustice.v6i2.245>.

free from the constraints of parliamentary coalitions.⁷ The shift to direct presidential elections in Indonesia began after the constitutional amendments, with the first such election taking place in 2004. The objective was to empower the people and make the electoral system more accountable compared to the previous parliamentary system. The idea behind this reform was to ensure that the elected President receives a direct mandate from the people.

However, despite its advantages, the presidential threshold, which requires candidates to secure 20% of parliamentary seats or 25% of national votes, has become a point of contention. This mechanism, detailed in Article 6A par. (2) and Article 222 of Law 7/2017, has been criticized for limiting the ability of smaller parties to nominate presidential candidates, which reduces electoral competition and undermines democratic inclusiveness. The Constitutional Court has upheld the threshold, arguing that it serves to maintain political stability, but it also raises questions about fair representation.

In light of these debates, this research aims to examine the implications of the presidential threshold on Indonesia's presidential election process, particularly its impact on democratic access, the equality of political parties, and political representation. The findings will provide insights into whether the threshold is aligned with the democratic principles set forth in the 1945 Constitution and will explore potential reforms to improve fairness in future elections.

The study used secondary data (normative research) in the form of legislation and various literatures and research journals. Secondary data in normative legal research consists of primary legal material, secondary legal material, and tertiary legal material.⁸ Secondary data is data obtained through library materials such as laws and regulations, books, magazines, and / or newspapers and documents that provide explanations on the object of research. Secondary data is data that is obtained indirectly from the source but is obtained through a study of the search for library materials.⁹ Retrieval of secondary data is intended so that the author can conduct a comprehensive review of all data relating to the problem.

Legal research theoretically consisted of normative legal research, empirical legal research and normative-empirical legal research.¹⁰ This study classified as normative legal research which is conducted to collect and analysis norms from legal provisions and decision made by institution with constitutional adjudication.¹¹ The primary studies of this research is about the implementation of positive law and factuality over legal issues in order to obtain the purposes. Normative legal research would be postulated from certain written positive laws which are enforced through certain legal issues in concrete. In accomplishing the research, Author would endure the analysis over doctrines and norms applied positively within legislative provisions through the legal implementation in concrete to gain the general targets.

⁷ Abdul Latif, "Pilpres Dalam Perspektif Koalisi Multi Partai," *Jurnal Konstitusi* 6, no. 3 (2009); Soerjono Soekanto and Sri Mamudji, 2011, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta, Raja Grafindo Persada

⁸ Soekanto and Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*.

⁹ Soerjono Soekanto, 1984, *Penelitian Hukum*, Jakarta, UI Press

¹⁰ op. cit., Soekanto and Mamudji

¹¹ Ibid.

The practice could be envisioned through the issuance of legal products. Author used juridical-normative legal research which utilize authoritative text. Data is based on secondary data¹², based on primary source (binding law and constitutional court decision and secondary source of law (books and journals).¹³

The data that has been collected is analyzed qualitatively using deductive analysis patterns. This pattern is a step of general data analysis to be studied specifically or specifically. The deduction method originates from the submission of a major premise which then a minor premise is submitted for a conclusion.¹⁴ The data preparation method is carried out by describing the materials through the process of collecting data for further analysis. Qualitative research is carried out with the aim of understanding and / or understanding the symptoms being studied. Then the authors systematically compile the materials that have been collected in order to describe a unity of circumstances and legal events as a whole. The author interprets with the author's own language in order to look detailed answers to the formulation of the problem under investigation.¹⁵ The technical analysis data use descriptive-analysis which correlates law, theory and field practice on presidential threshold within Indonesian election.¹⁶ Then, Author constructs the essential information and lastly conclude the appropriate reform.

This research has never been done before. Previous researchers, namely Abdul Majid, et.al¹⁷. with the title “Analysis of the Presidential Threshold in the Interests of Oligarchy” discusses the Presidential Threshold set by the Constitutional Court which creates a situation that is contrary to what is expected. Researcher Muhammad Aris Mufti, et.al¹⁸. with the title “Presidential Threshold Arrangement Model in Simultaneous General Elections Viewed from a Democratic Perspective” discusses the Presidential Threshold is still considered a valid regulation that can be applied in the next election even though it is contrary to the principles of Pancasila democracy in Indonesia, while the author discusses the implications of the threshold.

B. Result and Discussion

This section presents the analysis of the presidential threshold law and its application in Indonesia. Through careful examination of legislation and constitutional court decisions, it was found that the presidential threshold (Article 5 par. 4 of Law 23/2003) has sparked considerable debate among various political actors. The threshold clause defines the percentage of votes required for a political

¹² op. cit., Soekanto And Mamudji; Soekanto, *Pengantar Penelitian Hukum*.

¹³ Amiruddin And Zainal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, Jakarta, Raja Grafindo Persada; Soekanto, *Pengantar Penelitian Hukum*.

¹⁴ Op. cit., Soekanto, *Pengantar Penelitian Hukum*.

¹⁵ Op. cit., Soekanto And Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*.

¹⁶ Op. cit., Soekanto, *Pengantar Penelitian Hukum*.

¹⁷ Abdul Majid and Anggun Novita Sari, “Analisis Terhadap Presidential Threshold Dalam Kepentingan Oligarki,” *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 5, no. 2 (August 2, 2023): 8–15, <https://doi.org/10.52005/RECHTEN.V5I2.120>.

¹⁸ Muhammad Aris Mufti, Chrisdianto Eko Purnomo, and M. Saleh, “Model Pengaturan Presidential Threshold Dalam Pemilihan Umum Serentak Ditinjau Dari Perspektif Demokrasi,” *Jurnal Diskresi* 2, no. 2 (December 7, 2023), <https://journal.unram.ac.id/index.php/diskresi/article/view/3672>.

party or coalition to nominate presidential candidates. The court decisions from 2003 to 2020 provide a comprehensive view of the shifting interpretations of this law.

1. **Presidential Threshold and Political Dynamics**

The presidential threshold law, as outlined in Article 5 par. 4 of Law 23/2003, plays a pivotal role in shaping Indonesia's presidential elections. This law mandates that political parties or coalitions must secure at least 20% of the total legislative seats or 25% of the national vote to nominate a presidential candidate. Initially, this threshold was intended to promote political stability by reducing the number of presidential candidates and forcing parties to form coalitions early in the electoral process¹⁹. This mechanism was believed to streamline the election process, leading to clearer governance and facilitating decision-making once the president takes office.

The Constitutional Court's interpretation of this law has been a subject of considerable debate. Court rulings from 2003 to 2020 have consistently supported the presidential threshold as a way to improve governance stability by ensuring that the president comes from a majority-supported coalition. However, as noted in multiple judicial reviews, the threshold law's impact on the democratic access of smaller parties has remained a contentious issue. Political analysts have pointed out that, while the law was designed to reduce electoral fragmentation, it inadvertently disadvantages smaller, often more regional, parties, limiting their capacity to challenge larger political entities.

2. **Judicial Review and Political Actors' Response**

From 2003 onwards, political parties, particularly those in the minority, have raised concerns over the threshold. In particular, small parties have argued that the requirement restricts their ability to field presidential candidates, thus limiting political competition and representation. The Constitutional Court, however, has consistently upheld the threshold, emphasizing its role in reducing electoral fragmentation and promoting governance efficiency.²⁰ This position reflects a broader trend within Indonesia's political landscape, where political stability is often prioritized over diversity in candidate choice.

For example, in the 2014 and 2019 elections, the presidential threshold led to coalition-building among larger political parties, resulting in only two dominant presidential candidates. This scenario, while minimizing the risk of fragmentation, has faced criticism for limiting the electoral choices available to voters, particularly in a country as large and diverse as Indonesia. A study by Sholahuddin (2019) showed that, although the presidential threshold does

¹⁹ Sholahuddin Al-Fatih, "Akibat Hukum Regulasi Tentang Threshold Dalam Pemilihan Umum Legislatif Dan Pemilihan Presiden," *Jurnal Yudisial* 12, No. 1 (May 31, 2019): 17–38, <https://doi.org/10.29123/Jy.V12i1.258>.

²⁰ I. D. M. P. Wijaya and D. M. Putra, "Mengukur Derajat Demokrasi Undang-Undang Nomor 42 Tahun 2008 Tentang Pemilihan Umum Presiden Dan Wakil Presiden," *Jurnal IUS* 2, no. 6 (2014): 556–71.

simplify the electoral process, it significantly reduces representation, particularly for voters who support smaller parties with distinct platforms.²¹

3. Impact of the Presidential Threshold on Democratic Access

The presidential threshold has also raised concerns about democratic access for new parties, which often struggle to meet the threshold's stringent requirements. Smaller parties argue that they are effectively excluded from the political discourse, leading to political alienation and frustration among voters who feel their interests are not adequately represented.

A closer look at the 2019 presidential election, where the Joko Widodo-Ma'ruf Amin ticket faced the Prabowo Subianto-Sandiaga Uno ticket, reveals the extent to which the threshold system marginalized other voices. Despite the potential for other political figures to challenge the two major parties, the threshold rule ensured that only those who could form major coalitions were eligible to compete.²² This led to the concentration of power in the hands of a few elite political figures, contributing to the sense that Indonesia's presidential elections were inaccessible to a broader political spectrum.

This highlights a fundamental issue with the presidential threshold: it encourages political consolidation, but at the cost of representation. While the Constitutional Court views this as an essential element of governance efficiency, many critics argue that it compromises democratic ideals, particularly for minority political groups and voters.

4. Electoral Reform and the Role of the Constitutional Court

Despite its criticisms, the presidential threshold has remained a fixture in Indonesia's electoral framework. The Constitutional Court's repeated affirmation of the threshold reflects its belief that the law strengthens presidential legitimacy by ensuring that the president has broad-based support. However, as noted by political scholars like Hanan, while the system enhances political stability, it also requires reform to address the growing concerns about fair representation.²³

The study by Fuqoha highlights those electoral systems, especially those influenced by legal frameworks like the presidential threshold, need

²¹ Op. cit., Sholahuddin Al Fatih

²² Rahmat Teguh Santoso Gobel, "Rekonseptualisasi Ambang Batas Pencalonan Presiden Dan Wakil Presiden (Presidential Threshold) Dalam Pemilu Serentak," *Jambura Law Review* 1, no. 1 (January 30, 2019): 94–119, <https://doi.org/10.33756/JALREV.V1I1.1987>; Anang Sujoko, "Satirical Political Communication 2019 Indonesia's Presidential Election on Social Media," *Informasi* 50, no. 1 (August 4, 2020): 15–29, <https://doi.org/10.21831/INFORMASI.V50I1.30174>; Lutfil Ansori, "Telaah Terhadap Presidential Threshold Dalam Pemilu Serentak 2019," *Jurnal Yuridis* 4, no. 1 (September 28, 2017): 15–27, <https://doi.org/10.35586/V4I1.124>; Ari Santoso Widodo and Rendro Dhani, "When the President Endorses the Nation's Next Leader: Detecting the Concept of Power in Javanese Culture Through Presidential Communication," *Warta Ikatan Sarjana Komunikasi Indonesia* 6, no. 1 (May 24, 2023): 94–106, <https://doi.org/10.25008/WARTAISKI.V6I1.223>.

²³ Djayadi Hanan, "Memperkuat Presidensialisme Multipartai Di Indonesia: Pemilu Serentak, Sistem Pemilu, Dan Sistem Kepartaian," *Jurnal Universitas Paramadina* 13 (2016): 1451.

periodic review to ensure they do not alienate minority groups.²⁴ Electoral reform, such as lowering the threshold or allowing multi-party coalitions to nominate presidential candidates without a threshold, could help address this imbalance.²⁵ Such reforms could potentially lead to a more inclusive and diverse political process, ensuring that all political voices are represented and heard.

In summary, the presidential threshold in Indonesia serves to simplify the electoral system by reducing fragmentation and encouraging coalition-building. However, its impact on democratic participation and political diversity cannot be overlooked. The threshold has marginalized smaller parties and limited their ability to compete effectively in presidential elections, raising concerns about representative democracy. Further reform is necessary to balance the need for governance efficiency with the goal of ensuring fair access to the political system for all segments of society. The findings suggest that revisiting the threshold requirement could help strengthen democracy while maintaining political stability.

B. Conclusion and Recommendation

The analysis of Indonesia's presidential threshold has shown that while the legal framework aims to streamline the electoral process, it also raises issues of political representation and fairness. The Constitutional Court's decisions emphasize the open legal policy approach, giving legislative bodies discretion over electoral laws. However, the application of these laws has led to political debates, especially regarding the democratic access of marginalized political groups.

The primary conclusion of this study is that the presidential threshold remains a fundamental aspect of the presidential system in Indonesia. It has been critical in simplifying party structures and ensuring political stability. However, to address

²⁴ Fuqoha Fuqoha, "Pengisian Jabatan Presiden Dan Presidential Threshold Dalam Demokrasi Konstitusional Di Indonesia," *Ajudikasi : Jurnal Ilmu Hukum* 1, no. 2 (January 4, 2017): 27–38, <https://doi.org/10.30656/AJUDIKASI.V1I2.495>.

²⁵ S. Isra, "Pemilihan Presiden Langsung Dan Problematik Koalisi Dalam Sistem Presidensial," *Jurnal Konstitusi* 2, no. 1 (2009): 107; Scott Mainwaring, "Presidentialism, Multipartism, and Democracy," *Comparative Political Studies* 26, no. 2 (July 1, 1993): 198–228, <https://doi.org/10.1177/0010414093026002003>; Agus Riwanto, "Inkompatibilitas Asas Pengaturan Sistem Pemilu Dengan Sistem Pemerintahan Presidensial Di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 21, no. 4 (October 2014): 509–30, <https://doi.org/10.20885/IUSTUM.VOL21.ISS4.ART1>; S. Ansyari and A. Rahmat, "Alasan Pemerintah Pakai Ambang Batas Presiden 25 Persen," 2017, <https://www.viva.co.id/berita/politik/926377-alasan-pemerintah-pakai-ambang-batas-presiden-25-persen>; Abdul Ghoffar, "Problematika Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain," *Jurnal Konstitusi* 15, no. 3 (November 19, 2018): 480–501, <https://doi.org/10.31078/JK1532>; Suparto, "Presidential Threshold Between The Threshold of Candidacy and Threshold of Electability," *Jurnal Cita Hukum* 6, no. 1 (2018); Muhammad Mukhtarrija, I Gusti Ayu Ketut Rachmi Handayani, and Agus Riwanto, "Inefektifitas Pengaturan Presidential Threshold Dalam Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 4 (October 2017): 644–62, <https://doi.org/10.20885/IUSTUM.VOL24.ISS4.ART7>; D. P. W. J. Pradnyana, I. G. Yusa, and A. N. L. Gede, "Analisa Hukum Ambang Batas Pencalonan Presiden (Presidential Threshold) Dalam Undang-Undang Republik Indonesia Nomor 7 TAHUN 2017 Tentang Pemilihan Umum," *Jurnal Kertha Negara* 6 (2018).

fairness concerns, particularly for new and smaller parties, further reforms should be considered. A more inclusive electoral system, where party diversity is balanced with the need for a stable government, should be prioritized.

Recommendations include reforming the presidential threshold to ensure greater representative democracy while maintaining political stability. Additionally, future reforms should focus on enhancing democratic participation, particularly through internal party mechanisms and transparent candidate selection processes, allowing for a more inclusive and fair electoral process in Indonesia's presidential elections.

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