



The Dynamics of Constitutional Court Jurisprudence on the Presidential Threshold in the Judicial Review of Article 222 of the Election Law

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Abstract

This article examines the Constitutional Court's evolving jurisprudence on the presidential threshold (PT) under Article 222 of the Election Law, a provision that has generated sustained constitutional controversy in Indonesia. Using a normative–doctrinal method with statute, case, and conceptual approaches, this study analyzes more than thirty Constitutional Court decisions issued between 2017 and 2024. The findings show that, during the early period, the Court consistently upheld the PT as part of the legislature's open legal policy, leading most petitions to be dismissed due to strict interpretations of legal standing. However, a major shift occurred in Decision 62/PUU-XXII/2024, in which the Court invalidated Article 222 on the grounds that it restricted political rights, reduced electoral competitiveness, and undermined democratic morality. This shift reflects the Court's embrace of a living constitution approach, interpreting constitutional provisions dynamically to safeguard substantive democracy and protect citizens' political rights.

Keywords: Article 222 Election Law; Constitutional Court; Electoral Democracy; Judicial Review; Open Legal Policy

A. Introduction

The regulation of the presidential threshold (PT) under Article 222 of Law No. 7 of 2017 on General Elections (the Election Law) has become one of the most widely criticized provisions in the development of Indonesian electoral law. This provision stipulates that pairs of presidential and vice-presidential candidates may only be nominated by political parties or coalitions of political parties that obtained at least 20% of the seats in the House of Representatives (DPR) or 25% of the national popular vote in the previous legislative elections. The provision is grounded in the assumption that such a threshold is necessary to foster governmental effectiveness and political stability within a presidential system. At the same time, however, it generates serious concerns for electoral democracy because it restricts competitive access for new or small political parties to nominate presidential candidates, thereby reducing the range of political alternatives available to voters.¹

Theoretically, constitutional law scholars observe that the PT constitutes a form of constitutional engineering that affects citizens' political opportunities and the openness of competition in presidential elections. Jimly Asshiddiqie, for instance, notes that the design of an electoral system must not undermine fundamental democratic principles, including the guarantee that every citizen and political party can participate equally in political processes.² Meanwhile, Mahfud MD emphasizes that technical changes in electoral regulations that

¹ Lihat Titi Anggraini, "Evaluasi Presidential Threshold dalam Sistem Presidensial Indonesia," *Jurnal Konstitusi*, Vol. 16 No. 4 (2019), p.833–853.

² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Rajawali Press, 2021), p.215.



affect the quality of political competition must be strictly reviewed to prevent political exclusion.³ From another perspective, scholars such as Titi Anggraini argue that the PT tends to benefit large parties and consolidate political oligarchy, thereby limiting the emergence of alternative candidates who could be considered by the public.⁴

Controversies surrounding Article 222 intensified as the provision was challenged more than thirty times before the Constitutional Court (Mahkamah Konstitusi, MK) between 2017 and 2024. Applicants who filed judicial review petitions came from a wide range of backgrounds: individual citizens, civil society groups, academics, members of the Regional Representative Council (DPD), as well as both new and established political parties. They argued that the PT contradicts the principles of popular sovereignty, equality before the law, and the fundamental character of Indonesia's presidential system. Several applicants also contended that using the results of the previous legislative elections as a basis for determining eligibility to nominate presidential candidates is irrational and constitutionally distorted, given that the 1945 Constitution does not provide for such a threshold. This argument aligns with academic critiques asserting that Article 222 has no delegative basis in Article 6A of the Constitution, which only authorizes the legislature to regulate the *procedures* for nomination, not to impose additional substantive requirements on political parties.⁵

However, from the dozens of petitions filed, the majority were dismissed by the Court due to issues of legal standing. The Court held that only (i) political parties that had previously participated in elections, or (ii) individuals with a realistic opportunity to be nominated by political parties, could claim direct constitutional injury. Decisions such as 74/PUU-XVIII/2020, 44/PUU-XIX/2021, and 66/PUU-XIX/2021 reaffirmed this position, leading the Court to conclude that petitions filed by new parties, first-time voters, or ordinary citizens generally failed to meet the requirements of legal standing.⁶ As a result, many petitions never reached substantive examination concerning the constitutionality of Article 222.

In cases that did proceed to the merits, the Constitutional Court consistently held that the determination of the PT falls within the realm of open legal policy, a domain of legislative discretion that should not be interfered with by the Court so long as the chosen

³ Moh. Mahfud MD, *Perdebatan Hukum Tata Negara Pasca Amandemen UUD 1945*, (Jakarta: LP3ES, 2018), p.142.

⁴ Titi Anggraini, *Ibid.*, p.840.

⁵ Saldi Isra, *Hukum Pemilu dan Demokrasi Konstitusional*, (Jakarta: Konstitusi Press, 2019), p.98–99.

⁶ Putusan MK No. 74/PUU-XVIII/2020; Putusan MK No. 44/PUU-XIX/2021; Putusan MK No. 66/PUU-XIX/2021.



policy does not clearly violate the Constitution. Decisions such as 53/PUU-XV/2017 and 73/PUU-XX/2022 exemplify how the Court viewed the PT as a legitimate political and legal policy designed to enhance the effectiveness of the presidential system. During this period, the Court adopted a positivistic approach that afforded wide latitude to the legislature in designing electoral mechanisms.⁷

A significant shift occurred with Constitutional Court Decision No. 62/PUU-XXII/2024, where, for the first time, the Court invalidated Article 222 of the Election Law. In this landmark ruling, the Court held that the PT can no longer be justified as an exercise of open legal policy because it has “exceeded the reasonable limits of legislative discretion” and has demonstrably produced democratic distortions, reduced voter choice, narrowed political competition, and strengthened political oligarchy.⁸ The Court emphasized that the right to vote and to be elected is a fundamental constitutional right that cannot be unduly restricted through disproportionate regulation. This ruling marks a turning point in the Court’s jurisprudence, as it recognizes the PT as incompatible with substantive democratic principles and constitutional morality.

Accordingly, the evolving jurisprudence of the Constitutional Court regarding Article 222 requires comprehensive examination to understand the development of constitutional arguments, the Court’s interpretation of the limits of open legal policy, and the interplay between political structures and electoral design in shaping judicial outcomes. Such an analysis is crucial not only for understanding Indonesia’s electoral legal framework but also for appreciating how the Constitutional Court functions as a guardian of democracy and a counterbalance to legislative power in regulating citizens’ political rights.

1. How has the Constitutional Court’s interpretation of the presidential threshold under Article 222 of the Election Law evolved from 2017 to 2024, particularly in relation to the doctrine of open legal policy and the protection of constitutional political rights?
2. What constitutional principles and democratic considerations underpinned the Constitutional Court’s shift in Decision No. 62/PUU-XXII/2024, and what are the implications of this shift for electoral democracy and the design of Indonesia’s presidential system?

B. Research Method

⁷ Putusan MK No. 53/PUU-XV/2017; Putusan MK No. 73/PUU-XX/2022.

⁸ Putusan MK No. 62/PUU-XXII/2024, Pertimbangan Hukum.



This study employs a normative doctrinal legal research method, which is grounded in the analysis of positive legal norms, judicial decisions, and legal doctrines developed within scholarly literature. The primary approach used is the statute approach, which examines Article 222 of Law No. 7 of 2017 on General Elections and relates it to the constitutional provisions contained in Articles 6, 6A, 22E, and Article 28D paragraph (1) of the 1945 Constitution, all of which concern political rights, the electoral system, and the principle of equality before the law. In addition, this research adopts a case approach by conducting an in-depth analysis of various Constitutional Court decisions that reviewed the constitutionality of Article 222, including Decisions 44/PUU-XV/2017, 53/PUU-XV/2017, 59/PUU-XV/2017, 49/PUU-XVI/2018, 73/PUU-XX/2022, 80/PUU-XXI/2023, 129/PUU-XXI/2023, and the landmark Decision 62/PUU-XXII/2024, which marked a significant shift in the Court's jurisprudence.

To strengthen the analytical framework, this study also applies a conceptual approach, employing concepts such as open legal policy, constitutional democracy, citizens' political rights, and the institutional design of the presidential system as developed in constitutional law scholarship. The primary legal materials consist of Constitutional Court decisions and relevant statutory regulations, while secondary legal materials include books, academic journals, and scholarly articles. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to support definitional clarity and conceptual consistency. All materials are analyzed through a qualitative-descriptive method, involving the identification of argumentative patterns, the examination of consistency or shifts in jurisprudence, and the assessment of the normative relevance of each decision to the protection of political rights and the quality of electoral democracy in Indonesia. Through this normative-doctrinal method, the study aims to construct a comprehensive understanding of the direction and evolution of the Constitutional Court's jurisprudence regarding the presidential threshold.

C. Results and Discussion

The dynamics of the Constitutional Court's jurisprudence in the judicial review of Article 222 of the Election Law demonstrate that the issue of legal standing has been the most decisive factor in determining the fate of challenges to the presidential threshold. From 2017 to 2023, the majority of petitions were dismissed not because the Court found the substantive arguments unpersuasive, but because the petitioners failed to meet the legal standing requirements as stipulated in Article 51 of the Constitutional Court Law. The Court consistently interpreted standing in cases involving the presidential nomination requirements



in a strict manner, holding that only parties experiencing a direct and actual constitutional injury may submit a petition. In several decisions, such as 74/PUU-XVIII/2020, the Court emphasized that newly established political parties that had not participated in previous elections could not be considered parties suffering constitutional harm, as they had not yet taken part in the electoral process used to determine the presidential threshold.⁹ Similar reasoning appears in Decisions 44/PUU-XIX/2021 and 66/PUU-XIX/2021, in which the Court held that ordinary citizens, members of the Regional Representative Council (DPD), and first-time voters lacked a direct causal link between their constitutional rights and the enforcement of Article 222.¹⁰ In these decisions, the Court affirmed that constitutional injury must be personal and actual not abstract, hypothetical, or merely potential.¹¹

The Court's view on legal standing aligns with the prevailing doctrine in constitutional law, which requires that a constitutional review must be initiated by a party directly affected by the enforcement of the challenged norm.¹² At the same time, some scholars argue that an excessively restrictive approach to standing may limit public access to constitutional review mechanisms and weaken the Court's function as the guardian of citizens' constitutional rights.¹³ Nevertheless, the Court maintained this strict standard for many years, resulting in only a few petitions concerning Article 222 reaching substantive examination.

In cases that did proceed to the merits, the Court's reasoning revealed a consistent tendency to treat the presidential threshold as part of the legislature's authority under the doctrine of open legal policy a discretionary domain in which the legislature may formulate political-legal choices so long as they do not clearly violate the Constitution.¹⁴ In Decision 53/PUU-XV/2017, the Court affirmed that the 20% seat threshold or 25% popular vote requirement was a legitimate policy choice intended to strengthen the presidential system and prevent excessive political fragmentation.¹⁵ The Court also regarded the threshold as a form of constitutional engineering designed to ensure that elected governments possess

⁹ Putusan MK No. 74/PUU-XVIII/2020.

¹⁰ Putusan MK No. 44/PUU-XIX/2021; Putusan MK No. 66/PUU-XIX/2021.

¹¹ Zainal Arifin Mochtar, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Rajawali Press, 2020), p.87.

¹² Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2017), p.113.

¹³ Jimly Asshiddiqie, *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, (Jakarta: Konstitusi Press, 2016), p.242.

¹⁴ Saldi Isra, "Open Legal Policy dan Batas-Batasnya", *Jurnal Hukum Ius Quia Iustum*, Vol. 27 No. 3 (2020).

¹⁵ Putusan MK No. 53/PUU-XV/2017.



sufficient political support to maintain stability.¹⁶ This view mirrors academic analyses suggesting that presidential systems require certain technical regulations to prevent conflicts between the executive and the legislature that may undermine governmental effectiveness.¹⁷

The Court's highly deferential approach toward the legislature also appears in Decision 73/PUU-XX/2022, where it again dismissed a petition and held that the threshold was a matter within the legislature's freedom of policy-making.¹⁸ The Court did not evaluate whether the threshold resulted in substantive injustice for small or new political parties; rather, it focused solely on whether the policy remained within the bounds of legislative authority. Thus, during 2017–2022, the Court predominantly adopted a legalistic–formalistic approach and avoided interfering with the substance of electoral policy.

A major shift occurred in Decision 62/PUU-XXII/2024, widely regarded as a landmark ruling that transformed the trajectory of the Court's jurisprudence on the presidential threshold. In this decision, the Court declared that Article 222 could no longer be upheld because it violated principles of substantive democracy and was incompatible with the constitutional guarantee of popular sovereignty under the 1945 Constitution.¹⁹ The Court stated that the presidential threshold had empirically reduced voter choice in presidential elections, hindered the emergence of alternative candidates, strengthened the dominance of major political parties, generated political polarization, and eroded democratic morality.²⁰ The Court rejected the notion that open legal policy grants the legislature unlimited freedom, especially when such discretion restricts citizens' political rights or obstructs political parties' access to the nomination process. Accordingly, the Court adopted a substantive–democratic approach, prioritizing democratic values over purely procedural or technical considerations.²¹

Decision 62/PUU-XXII/2024 also reflects the Court's evolving interpretation of open legal policy. Whereas the Court previously treated legislative discretion as nearly absolute, it now recognizes that such discretion must not be exercised in ways that disproportionately curtail constitutional rights. This shift demonstrates that the Court is responding to democratic developments and the constitutional imperative to safeguard the integrity of elections as an embodiment of popular sovereignty.²² Thus, the change in

¹⁶ Ibid., pertimbangan hukum.

¹⁷ Lihat Bivitri Susanti, "Sistem Presidensial dan Tantangan Fragmentasi Politik", *Jurnal Konstitusi* Vol. 15 (2018).

¹⁸ Putusan MK No. 73/PUU-XX/2022.

¹⁹ Putusan MK No. 62/PUU-XXII/2024, pertimbangan hukum.

²⁰ *ibid*

²¹ *ibid*

²² Saldi Isra, *Hukum Pemilu dan Demokrasi Konstitusional*, (Jakarta: Konstitusi Press, 2019), p.101.



jurisprudence is not merely a reinterpretation but a reflection of evolving democratic conditions and constitutional needs.

From a constitutional structural perspective, the annulment of Article 222 carries significant implications for the electoral system and the configuration of political power. First, the legislature and the government must comprehensively revise the presidential nomination mechanism, as thresholds based on previous legislative election results are no longer valid. Second, small and new political parties now have more equitable opportunities to nominate presidential and vice-presidential candidates, opening the door to healthier political competition. Third, coalition-building becomes more fluid and no longer constrained by the threshold requirement. Fourth, electoral competition is likely to become more vibrant as voters are presented with a broader selection of candidates an outcome consistent with competitive democratic theory, which underscores the importance of candidate pluralism and open competition.²³ Fifth, academically, the decision reaffirms that open legal policy is not an absolute doctrine and remains subject to constitutional limits when legislative choices threaten fundamental democratic principles. This shift strengthens the Court's position as the guardian of constitutional democracy and the protector of citizens' political rights.

Thus, the evolving jurisprudence of the Constitutional Court reveals a maturing understanding of political stability, equitable competition, and citizens' political rights. The shift from a predominantly legalistic approach to a substantive-democratic one reflects the Court's responsiveness to political realities and societal demands for fairer and more inclusive elections.

Beyond the substantive reasoning in Decision No. 62/PUU-XXII/2024, the Constitutional Court's jurisprudence on Article 222 demonstrates a consistent reliance on several core constitutional principles and legal arguments to either uphold or reject challenges to the presidential threshold. In earlier decisions, the Court predominantly invoked the doctrine of open legal policy, emphasizing that the determination of nomination thresholds fell within the legislature's discretionary authority to strengthen the presidential system and ensure governmental stability. During this period, the Court adopted a deferential approach, holding that such policy choices did not violate the Constitution as long as they remained formally within legislative competence.

²³ bert Dahl, *Democracy and Its Critics*, (Yale University Press, 1989), p.112.



However, in its later jurisprudence, particularly in Decision No. 62/PUU-XXII/2024, the Court recalibrated its constitutional reasoning by prioritizing substantive democratic principles, including popular sovereignty, the principle of equal treatment before the law, and the protection of citizens' political rights. The Court recognized that while legislative discretion is constitutionally permissible, it is not absolute and must be exercised within reasonable limits that do not disproportionately restrict political competition, entrench oligarchic dominance, or exclude political actors from the nomination process. Accordingly, the presidential threshold was no longer assessed merely as a technical instrument for strengthening the presidential system, but as a constitutionally impactful policy subject to strict scrutiny based on fairness, representation, and equal opportunity. This shift confirms that the Court's reliance on open legal policy is ultimately constrained by fundamental constitutional principles and democratic morality.

This perspective underscores that a healthy electoral system requires open, inclusive, and nondiscriminatory competition. The Constitutional Court's varying jurisprudence on the presidential threshold has generated significant constitutional and political implications for the quality of Indonesian democracy. During the period in which the presidential threshold was upheld, the Court's deferential stance toward legislative discretion contributed to the consolidation of major political parties, limited public participation through restricted candidate choices, and reinforced concerns over oligarchic dominance, albeit with the stated objective of enhancing governmental effectiveness and political stability. Conversely, the annulment of Article 222 in Decision No. 62/PUU-XXII/2024 reorients electoral regulation toward broader political inclusion by expanding access for small and new political parties, increasing voter choice, and revitalizing public participation in presidential elections. While this shift may raise concerns regarding potential party system fragmentation and coalition volatility, it simultaneously strengthens the substantive quality of democracy by reaffirming popular sovereignty, equal political opportunity, and meaningful electoral competition. Accordingly, the Court's evolving jurisprudence demonstrates that constitutional adjudication in electoral matters inevitably shapes not only institutional stability but also the depth of democratic participation and representation in Indonesia.

D. Conclusion

This study demonstrates a clear evolution in the Constitutional Court's jurisprudence concerning Article 222 of the Election Law. Between 2017 and 2022, the Court consistently upheld the presidential threshold as a matter of legislative open legal policy, leading most



petitions to be dismissed on procedural or deferential substantive grounds. This approach reflected a positivistic orientation that prioritized legislative discretion in electoral design. A decisive shift occurred in Decision No. 62/PUU-XXII/2024, in which the Court declared the presidential threshold unconstitutional on the grounds that it disproportionately restricted political rights, reduced electoral competition, and undermined popular sovereignty. This decision marks the Court's transition toward a substantive democratic approach, recognizing that legislative discretion in electoral matters is not absolute and must remain subject to constitutional limits.

Accordingly, the Court's changing jurisprudence illustrates its evolving role as a guardian of constitutional democracy, balancing governmental effectiveness with the protection of citizens' political rights and the integrity of electoral competition in Indonesia.

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