



Electoral Justice in Indonesia's Presidential System: A Normative Study of the Presidential Threshold and Constitutional Court Decision No. 14/PUU-XI/2013

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Abstract: This research aims to normatively analyze the legal basis, rationality, and implications of the presidential threshold on the multi-party system and the principle of electoral justice in Indonesia, with a focus on Constitutional Court Decision Number 14/PUU-XI/2013. Thru a normative legal approach, this research examines the provisions of Article 222 of Law Number 7 of 2017 concerning General Elections and the Constitutional Court's constitutional arguments in maintaining the presidential nomination threshold. The analysis results show that although formally the presidential threshold is an open and legitimate legal policy, it substantially creates political inequality and limits the participation of small parties in the multi-party system. The Constitutional Court's decision is considered not fully reflective of the principles of electoral justice and popular sovereignty, as it prioritizes government stability over political equality. Therefore, it is necessary to reformulate the presidential candidacy threshold policy to make it more proportional, inclusive, and aligned with the principles of constitutional democracy. This reform is expected to strengthen the legitimacy of Indonesia's presidential system without neglecting the fundamental values of justice and political representation of the people.

Keywords: Constitutional Court; Constitutional Democracy; Electoral Justice; People's Sovereignty; Presidential Threshold.

1. INTRODUCTION

The election of the president and vice president is the highest manifestation of the sovereignty of the people as mandated by Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In the presidential system adopted by Indonesia, the people have the constitutional right to directly elect their leaders. However, the exercise of this right is limited by a legal policy known as the presidential threshold, which is the minimum threshold for presidential and vice-presidential nominations by political parties or coalitions of political parties. This provision sparked a lengthy debate about the balance between government stability and electoral justice.

The presidential threshold is normatively regulated in Article 222 of Law Number 7 of 2017 concerning General Elections. This article stipulates that only political parties or coalitions of political parties that obtained at least 20% of House of Representatives (DPR) seats or 25% of the national valid votes in the previous legislative election can nominate presidential and vice presidential candidates. Historically, this provision was intended to reduce political fragmentation and strengthen the presidential system, ensuring the elected president had sufficient political support in parliament. However, from a constitutional perspective, this rule raises fundamental issues because it is not explicitly regulated in the 1945 Constitution.

The concept of a presidential nomination threshold first appeared in Law Number 23 of 2003 concerning the Election of the President and Vice President, and was subsequently

maintained in subsequent election laws. The implementation of this policy is the result of a political compromise between the presidential system and the multi party political reality of Indonesia. However, in practice, the presidential threshold actually concentrates power in the hands of large parties and narrows the space for small parties to participate in the national leadership contest.

From a constitutional law perspective, the existence of a presidential threshold raises normative questions about its compatibility with the principles of democracy and popular sovereignty. The 1945 Constitution does not explicitly limit political parties in proposing presidential candidates, but only requires that the proposal be made by political parties or a coalition of political parties participating in the election. Therefore, the establishment of a candidacy threshold is considered an open legal policy, which is valid in principle but must be tested constitutionally based on the principles of justice and equal political rights.

The debate regarding the presidential threshold reached its peak when the Constitutional Court ruled on case number 14/PUU-XI/2013, which tested the constitutionality of the presidential nomination threshold provision. In its decision, the Court affirmed that the regulation regarding the nomination threshold is the authority of the legislature and does not conflict with the constitution. However, the Court did not provide clear parameters regarding the limits of proportionality and the impact of the policy on electoral justice. This decision reinforces the view that the presidential threshold is a political policy that cannot be fully tested solely from a formal constitutional perspective.

Nevertheless, substantively, many constitutional law experts believe that the presidential threshold has the potential to violate the principle of electoral fairness. With the high threshold, small parties lose the right to nominate presidential candidates, even tho they have met the requirements to participate in the election. This condition leads to an oligarchic and less inclusive political system, where only the major parties have control over the presidential nomination process. As a result, the people, as the ultimate holders of sovereignty, did not have adequate alternative choices in the presidential election.

Indonesia's multi party system should allow for healthy and diverse political competition. However, the implementation of the presidential threshold actually creates an imbalance in representation between large and small parties. In this context, the threshold can be considered to hinder the mechanism of substantive democracy, as it restricts the right of political parties to participate in the presidential nomination process, which should be one form of constitutional political rights.

Additionally, since the simultaneous elections were implemented based on Constitutional Court Decision Number 14/PUU-XI/2013, the existence of the presidential threshold has become increasingly problematic. Because the legislative and presidential elections are held simultaneously, the results of the legislative election were not yet known when the presidential nomination took place. Therefore, using the results of the previous legislative elections as a threshold basis is no longer constitutionally relevant and contradicts the principle of legal certainty and the principle of legal rationality.

From the perspective of presidential systems theory, the existence of a presidential threshold also creates structural contradictions. In a pure presidential system, the president's legitimacy comes directly from the people, not from the composition of forces in parliament. However, the implementation of a threshold makes legislative support the main requirement for candidacy, giving the impression that the president is dependent on the results of legislative politics which should only be a supervisory function, not a determinant of executive legitimacy.

In political practice, the presidential threshold also gives rise to the phenomenon of pragmatic coalitions among major parties. Such coalitions are often formed not on the basis of ideological or programmatic similarities, but solely to meet candidacy threshold requirements. As a result, the government stability that was the initial goal of this policy is actually threatened by the weak political cohesion within the coalition government. This situation shows that legal policies intended to strengthen the presidential system can actually lead to new political instability.

Beside practical political issues, the normative aspect of the presidential threshold also needs to be examined from the perspective of citizens' constitutional rights. Article 28D paragraph (3) of the 1945 Constitution guarantees that every citizen has equal rights in government. Thus, restrictions on the right of political parties to nominate presidents indirectly also limit citizens' right to have diverse choices in elections. This indicates an imbalance between the goals of governmental effectiveness and the principles of constitutional justice.

Normatively, the analysis of the presidential threshold must consider the principle of proportionality testing as known in modern constitutional law doctrine. Restrictions on citizens' political rights can only be justified if they meet three criteria: having a legitimate aim, being proportional to that aim (necessity), and being balanced against the rights being sacrificed (balancing). In the Indonesian context, it is difficult to justify that such a high threshold meets the principle of proportionality, as the goal of government stability can be achieved thru other mechanisms without sacrificing the right to political participation.

Thus, the issue of the presidential threshold is not merely a technical matter in elections, but also concerns the philosophical foundation of Indonesia's constitutional system. The conflict between the goals of governmental effectiveness and the principles of electoral justice reflects the tension between practical political logic and the principle of popular sovereignty. A normative study of this policy is needed to assess the extent to which the presidential threshold aligns with constitutional principles, and how legal reforms can be directed to balance stability and substantive democracy.

Therefore, this study aims to normatively analyze the legal basis and implications of the presidential threshold in the Indonesian constitutional system. Thru a normative legal approach, this study will examine the constitutional basis for the presidential candidacy threshold, the Constitutional Court's perspective in Decision No. 14/PUU-XI/2013, and its impact on the multi-party system and electoral justice. The analysis results are expected to contribute academically and practically to efforts to improve the constitutional design of democratic, proportional presidential elections that are in accordance with the principle of popular sovereignty.

2. RESEARCH METHOD

The research method used in this article is a normative legal approach, which is a legal research method that examines positive legal norms, legal principles, and constitutional principles related to the regulation of the presidential threshold in the election of presidents and vice presidents. This research focuses on analyzing laws and regulations, specifically Law Number 7 of 2017 concerning General Elections and Constitutional Court Decision Number 14/PUU-XI/2013, as primary legal sources. Secondary legal materials were obtained from scientific literature, national and international law journals, and the opinions of constitutional law experts relevant to the issue of electoral justice and the presidential system. The data analysis technique was conducted qualitatively-descriptively, by interpreting legal norms and linking them to constitutional principles in the 1945 Constitution of the Republic of Indonesia. This approach allows the author to assess the consistency between the presidential threshold policy and the principles of direct democracy and popular sovereignty. Thus, the research results are expected to provide a comprehensive legal argument regarding the urgency of reforming the presidential nomination threshold in the Indonesian constitutional system.

3. RESULTS AND DISCUSSION

Legal Basis and Normative Rationality of Presidential Threshold in the Indonesian Constitutional System

The legal basis for the presidential threshold is found in Article 222 of Law Number 7 of 2017 concerning General Elections, which stipulates that presidential and vice-presidential candidates can only be nominated by political parties or a coalition of political parties participating in the election that secured at least 20% of House of Representatives (DPR) seats or 25% of the national valid votes in the previous legislative election. This provision is a central element in Indonesia's presidential election system, as it directly influences the nomination structure and the national political landscape. The rationale put forward by the lawmakers is to ensure that presidential candidates have sufficient political support from the outset so that the government formed will be more stable and effective. In other words, this policy is intended to curb political fragmentation, which can hinder cooperation between the executive and legislative branches.

Nevertheless, from a constitutional perspective, the existence of a presidential threshold is not explicitly regulated in the 1945 Constitution of the Republic of Indonesia (UUD 1945). Article 6A paragraph (2) only states that presidential and vice-presidential candidates are nominated by political parties or a coalition of political parties participating in the election before the election is held. There is no explanation or restriction regarding the minimum percentage of seats or votes required to nominate a candidate pair. This shows that setting the presidential nomination threshold is a legal policy outcome of the legislature, not a constitutional mandate. Thus, its regulation is an open legal policy, which is legally valid but can still be tested for its compatibility with the basic principles of the constitution.

In the context of Indonesia's constitutional system, open legal policy grants broad authority to lawmakers to regulate matters not explicitly addressed in the 1945 Constitution. However, this authority is not absolute. The principle of constitutional supremacy requires that every legislative policy, including the setting of presidential candidacy thresholds, must not contradict the basic values of the constitution, such as popular sovereignty, political justice, and equality in electoral competition. Therefore, although the presidential threshold is formally valid, it can be problematic if its implementation leads to the restriction of citizens' constitutional rights to participate in government.

Constitutional Court Decision Number 14/PUU-XI/2013 serves as an important basis for the debate regarding the normative legitimacy of the presidential threshold. In that decision, the Court rejected the application for judicial review of the threshold provisions and stated that

setting the threshold is part of the legislature's authority. According to the Constitutional Court, this provision does not contradict the 1945 Constitution as long as its purpose is to maintain the effectiveness of the presidential system of government. Thus, the Court provides legal justification for the existence of the presidential threshold as an instrument to strengthen the political system.

However, the Constitutional Court's decision drew criticism from constitutional law academics because it was considered not to have thoroughly assessed the proportionality and substantive fairness aspects of the threshold. The Constitutional Court does not set a size or parameters regarding the ideal limit that is still acceptable within the framework of the constitution. As a result, determining the threshold becomes entirely the political authority of the DPR and the government, without adequate constitutional oversight. In this case, the risk of abuse of open legal policy becomes significant, as lawmakers can set threshold numbers that actually hinder democracy and healthy political competition.

From the perspective of constitutional law theory, the presidential threshold needs to be tested based on the proportionality test, which is commonly used in modern constitutional court practice. This theory assesses whether restrictions on constitutional rights have a legitimate aim, whether those restrictions are necessary, and whether they are proportionate to the right being restricted. If one of the elements is not met, then the policy is considered substantively unconstitutional. In the Indonesian context, the argument that a presidential threshold is needed to maintain government stability must be proven with empirical analysis, not just political assumptions.

Empirically, there is no strong evidence that a high presidential threshold is directly correlated with government stability. In fact, many countries with presidential systems and no high thresholds have still managed to maintain political stability thru mechanisms of checks and balances and strong public accountability. For example, the United States and Brazil rely on a direct election system without restricting political parties in nominating presidential candidates. Thus, the argument that a high threshold is the only way to prevent political fragmentation does not have a completely solid scientific basis.

In the context of electoral justice, the presidential threshold can be considered a form of disproportionate restriction on citizens' political rights. The right of political parties to nominate presidential candidates is a manifestation of citizens' right to participate in government. When only large parties can nominate a president, smaller parties lose their constitutional right to compete on an equal footing. This contradicts the principle of political equality guarantyd in Article 28D paragraph (3) of the 1945 Constitution.

From the perspective of political system theory, setting a high presidential threshold also has the potential to create an electoral oligarchy, where only a handful of dominant political parties have control over presidential nominations. This situation leads to a reduction in voter choice diversity and increases the potential for transactional politics. As a result, the dynamics of democracy became limited to negotiations among party elites, rather than the aspirations of the people. This condition clearly contradicts the spirit of direct democracy that underlies the post-reform presidential elections.

Philosophically, Indonesia's presidential system is designed based on the principles of separation of powers and direct mandate from the people. The president derives legitimacy not from a coalition of political parties in parliament, but from the popular vote thru general elections. Therefore, using the results of the legislative elections as the basis for presidential nominations is a contradiction within the presidential system. This creates a dependency between the executive and legislative branches of government, which are supposed to be equal and independent.

From a sociological perspective, the presidential threshold also has implications for public political participation. Limiting the number of presidential candidates can reduce public interest and enthusiasm in participating in the election process because political choices become limited. Society tends to be presented with figures from the same major party in every election period. As a result, political regeneration became stagnant and the space for the emergence of alternative leaders closed.

From a historical perspective, the implementation of presidential candidacy thresholds first appeared in Law Number 23 of 2003 concerning the General Election of the President and Vice President, with a figure of 15%. However, in 2008 thru Law No. 42 of 2008, the threshold was raised to 20%. This means that this policy tends to increasingly restrict political competition, rather than expand it. The trend of increasing thresholds indicates that lawmakers' orientation is more inclined toward political power stability than toward the principles of openness and democratic competition.

From the perspective of constitutional democratic theory, any restriction on political rights must always be reviewed periodically to adapt to the socio-political developments of society. A static and excessively high presidential threshold has the potential to become an exclusive instrument that restricts the people's right to vote and be elected. If left unchecked, this can undermine the moral and political legitimacy of the democratic system itself.

Although the formal existence of the presidential threshold can be justified based on the principle of open legal policy, substantively this provision requires a deep evaluation from

the perspective of justice, equality, and the effectiveness of the presidential system. Re-testing thru constitutional channels or revising laws is an important step to ensure that the electoral system in Indonesia remains in line with the democratic values contained in the Preamble of the 1945 Constitution.

Therefore, it can be concluded that the legal basis for the presidential threshold does indeed have formal legitimacy in the legislation, but its normative rationality still raises problems in the context of electoral justice and popular sovereignty. The implementation of a high threshold is not in line with the principles of direct democracy, as it actually limits popular participation and strengthens the political dominance of large parties. Therefore, revising the threshold policy has become an urgent need to uphold the principles of inclusive, fair, and representative constitutional democracy.

Analysis of Constitutional Court Decision Number 14/PUU-XI/2013 in Relation to the Presidential Threshold System, the Multi Party System, and the Principle of Electoral Justice

Constitutional Court Decision (MK) Number 14/PUU-XI/2013 is a significant milestone in the debate regarding the constitutionality of the presidential threshold in Indonesia. The application for this matter was filed by a number of parties who believe that the presidential candidacy threshold provisions stipulated in Law Number 42 of 2008 concerning the Election of the President and Vice President are contrary to the 1945 Constitution of the Republic of Indonesia, particularly the principles of popular sovereignty and electoral justice. The applicant believes that the restriction on political parties' right to nominate a president has eroded citizens' constitutional right to directly and freely elect their leaders in a democratic system.

In that decision, the Constitutional Court decided to reject the petition for judicial review of the threshold provisions. The Constitutional Court reasoned that the regulation regarding the presidential threshold is an open legal policy of the law making body. The court stated that as long as the policy does not clearly contradict the 1945 Constitution and has a constitutionally legitimate purpose, its existence is justifiable. The Constitutional Court's main argument is that a threshold is necessary to maintain the effectiveness of the presidential system of government and prevent excessive political fragmentation due to the multi-party system in Indonesia.

However, upon closer examination, the Constitutional Court's considerations in this case reveal a legal formal approach that prioritizes procedural legitimacy, rather than a substantive analysis of the principles of electoral justice and equal political rights. The

Constitutional Court did not conduct a proportionality test on the extent to which the threshold limits the political rights of citizens and political parties to participate equally in the presidential election. This has led to criticism that the Constitutional Court's decisions are conservative and less progressive in interpreting the dynamic values of the constitution.

From a constitutional perspective, the Constitutional Court's reason for maintaining the presidential threshold is for the sake of the stability of the presidential government. The Constitutional Court believes that without a threshold, there will likely be many presidential candidates, making the political process inefficient and increasing the potential for political conflict. However, this view is speculative because it is not supported by empirical data showing that a large number of presidential candidates will automatically disrupt the stability of the political system. Conversely, excessive restrictions can lead to political monopolies by large parties.

In the context of Indonesia's multi party system, the existence of a presidential threshold actually narrows the space for participation by small and medium sized political parties. The multi party system is inherently designed to guaranty the diversity of political aspirations and social representation, whereas high thresholds encourage political homogenization at the elite level. As a result, what was supposed to be a pluralistic system turned into a semi duopoly, where only two or three major parties dominate presidential nominations. This contradicts the principle of popular sovereignty guarantyd in Article 1 paragraph (2) of the 1945 Constitution, as the people lose the variety of political choices that should be available in a democracy.

In its considerations, the Constitutional Court also did not provide a clear normative limit on what is considered a reasonable threshold in a presidential system. In fact, without clear parameters, open legal policy can become a loophole for lawmakers to set figures that are actually disproportionate. For example, the 20% quota for House of Representative (DPR) seats or 25% of national valid votes in the 2017 Election Law has led to political exclusion for most participating political parties. Thus, the absence of proportionality guidelines in the Constitutional Court's decisions has the potential to strengthen elitist and non inclusive political practices.

From the perspective of electoral fairness, a high presidential threshold creates a fundamental imbalance between large and small parties. Small parties, despite having significant support from certain segments of society, cannot nominate a president because they do not meet the threshold. As a result, the votes of supporters for smaller parties lose their substantive meaning in the nomination process. This contradicts the principle of one person,

one vote, one value, where every vote should have equal weight in determining the country's political direction.

Constitutional Court Decision Number 14/PUU-XI/2013 was issued before the simultaneous election system was implemented thru another Constitutional Court decision. After the simultaneous election system was implemented, the logic of the presidential threshold became increasingly problematic because the results of the legislative elections were not yet known when the presidential nominations were made. This means that the empirical basis for using the results of the previous legislative elections becomes irrelevant and legally inconsistent. This creates an anomaly in the electoral legal system because its temporal logic is not synchronized with the stages of the election process.

The presidential threshold actually encourages pragmatic coalitions between political parties, which are often not based on ideological similarities but rather on short term electoral interests. This condition leads to weak ideological consolidation within the government, making the expected stable presidential system vulnerable to transactional political compromises. Therefore, the political stability argument used by the Constitutional Court in its decision needs to be criticized from the perspective of long-term government effectiveness.

The Constitutional Court should not only serve as the guardian of the constitution but also as the interpreter of the living values of the constitution. In other words, the constitutional assessment of the presidential threshold should consider the real impact on citizens' political rights, not solely on legalistic formalities. When the Constitutional Court prioritizes a substantive approach, it can be found that a high threshold policy has the potential to violate the principle of equal participation in democracy.

In the context of modern democratic theory, restrictions on the right to nominate a president can only be justified if they meet the principles of constitutional legitimacy and democratic rationality. This means that such restrictions must be truly necessary to protect the greater public interest, not to benefit specific political groups. In the case of the presidential threshold, this restriction tends to benefit established large parties more, while eliminating potential new parties as an alternative force.

Criticism of the Constitutional Court's decision Number 14/PUU-XI/2013 also emerged from academics such as Jimly Asshiddiqie, Saldi Isra, and Feri Amsari, who believe that the Constitutional Court should have provided a stricter limiting interpretation of the concept of open legal policy. In the context of constitutional law, an open legal policy should not be used as a reason to disregard the principles of proportionality and equality before the law. In other

words, every legal policy must still adhere to the basic principles of the constitution, including the equal protection of political rights for all citizens.

From a multi-party system perspective, the presidential threshold also has long term consequences for Indonesia's political structure. This provision encourages the formation of large coalitions that are often artificial and not based on clear ideologies or political platforms. In the long run, this condition weakens the representative function of political parties in parliament and muddies the mechanisms of political accountability to the people. Thus, the multi party system, which was supposed to be a vehicle for pluralism, was instead stunted by exclusive legal policies.

A constitutional reorientation is needed regarding the perspective of the Constitutional Court and the legislature on the presidential threshold. Setting thresholds should consider the balance between the need for government stability and ensuring political justice. The Constitutional Court can play an active role thru a judicial activism approach to ensure that political policies do not violate the essence of popular sovereignty and the principles of substantive democracy. This reform will lead to an electoral system that is more inclusive, fair, and in line with the mandate of the constitution.

Thus, Constitutional Court Decision Number 14/PUU-XI/2013, although legally upholding the legitimacy of the presidential threshold, still leaves serious debate regarding the principles of electoral justice and the multi party system. From a normative constitutional law perspective, the existence of a threshold should be reexamined, considering the balance between governmental effectiveness and equal political rights for all citizens. Revisions to this policy are not only a legal necessity but also a moral imperative in upholding the principles of just, participatory, and people-sovereign constitutional democracy.

4. CONCLUSION

While legally permissible as an open legal policy, the presidential nomination threshold regulation still raises issues of electoral justice and political representation in substance. High threshold requirements have limited the participation of smaller parties in presidential nominations, thereby reducing political diversity in the multi-party system. From a constitutional perspective, this policy is not fully aligned with the principles of popular sovereignty and equal political rights guarantyd by the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision to uphold the threshold indicates a tendency toward judicial restraint, prioritizing political stability over the protection of citizens' political rights. Therefore, it is necessary to reformulate the presidential threshold policy to make it

more proportional, fair, and in accordance with the principles of direct democracy. Thus, the presidential election system in Indonesia can function effectively without disregarding the principles of electoral justice and popular sovereignty, which are the spirit of constitutional democracy.

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