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Constitutionality of Presidential Threshold Application in Indonesia's Presidential Election System: Analysis of Constitutional Court Decision Number 90/PUU-XXI/2023

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Abstract

This study examines the constitutionality of presidential threshold implementation in Indonesia's presidential election system through a comprehensive analysis of Constitutional Court Decision Number 90/PUU-XXI/2023. The presidential threshold, regulated in Article 222 of Law Number 7 of 2017 concerning General Elections, requires political parties to obtain a minimum of 20% of seats in the House of Representatives or 25% of valid national votes to nominate presidential and vice-presidential candidates. Employing qualitative legal research methods, this study analyzes the legal considerations, constitutional implications, and democratic principles underlying the Court's decision. The research reveals that while Decision 90/PUU-XXI/2023 addressed age requirements for presidential candidates, it reflects the Court's evolving jurisprudence on electoral justice and constitutional rights. The findings demonstrate that presidential threshold provisions have been repeatedly challenged before the Constitutional Court, with petitioners arguing violations of morality, rationality, and intolerable injustice. The Court's inconsistent positions across multiple decisions highlight tensions between open legal policy doctrine and constitutional guarantees of political rights and popular sovereignty. This research contributes to understanding constitutional interpretation dynamics in Indonesia's democratic electoral system and provides insights into the balance between political stability objectives and inclusive democratic participation.

Keywords

Constitutional Court Decision 90/PUU-XXI/2023, Constitutionality, Presidential Threshold.

1. Introduction

Indonesia's democratic transformation since the Reform Era of 1998 has fundamentally reshaped the nation's constitutional landscape and electoral system. The amendments to the 1945 Constitution of the Republic of Indonesia introduced direct presidential elections as a cornerstone of democratic governance, embodying the principle of popular sovereignty enshrined in Article 1 paragraph (2) of the Constitution. This constitutional reform represented a decisive shift from indirect presidential selection by the People's Consultative Assembly (MPR) to direct election by citizens, thereby strengthening democratic accountability and political participation (Soeod, 2023).

The presidential election system in Indonesia operates within a framework of constitutional provisions and implementing legislation that delineate the requirements, procedures, and thresholds for candidacy. Article 6A of the 1945 Constitution establishes the fundamental architecture of presidential elections, stipulating that the President and Vice President shall be elected as a single ticket directly by the people, with candidate pairs proposed by political parties or coalitions of political parties participating in general elections. This constitutional mandate delegates to the legislature the authority to regulate specific requirements and procedures through statutory law, creating what constitutional jurisprudence terms as "open legal policy" (Kurnia, 2021).

Within this constitutional framework, one of the most contentious regulatory mechanisms has been the presidential threshold—the minimum percentage of parliamentary seats or national vote share required for political parties to nominate presidential and vice-presidential candidates. First introduced in Law Number 23 of 2003 concerning Presidential and Vice-Presidential Elections with a threshold of 15% of House of Representatives (DPR) seats or 20% of valid national votes, this requirement has undergone multiple iterations. The threshold was subsequently modified to 25% of DPR seats or 20% of valid national votes in Law Number 42 of 2008, and ultimately set at 20% of DPR seats or 25% of valid national votes in Article 222 of Law Number 7 of 2017 concerning General Elections (Syarifudin et al., 2023).

The presidential threshold has been justified by proponents as a mechanism to strengthen Indonesia's presidential system, promote political party consolidation, reduce fragmentation, ensure governmental stability, and create a more effective working relationship between the executive and legislative branches. Advocates argue that requiring significant parliamentary support for presidential candidates prevents excessive political fragmentation and facilitates coalition-building conducive to stable governance. The Constitutional Court, in numerous decisions prior to 2025, consistently upheld the presidential threshold as constitutionally permissible open legal policy, reasoning that the legislature possesses discretionary authority to determine such electoral requirements provided they do not manifestly contradict constitutional provisions.

However, the presidential threshold has faced sustained criticism from civil society organizations, political parties, scholars, and citizens who contend that it fundamentally undermines democratic principles and constitutional rights. Critics argue that the threshold violates the constitutional guarantee of equal political rights by creating discriminatory barriers that favor established major parties while excluding smaller parties and new political forces from presidential contestation. This restriction disproportionately limits voter choice by constraining the diversity of presidential candidates, potentially reducing elections to contests between only two candidate pairs, thereby fostering political polarization rather than pluralistic competition.

The constitutional challenges to presidential threshold provisions have been remarkably persistent, with the Constitutional Court receiving more than 33

petitions for judicial review of Article 222 and its predecessor provisions between 2008 and 2024. This extraordinary frequency of constitutional challenges—making it the most frequently challenged provision in the Court's history—demonstrates profound public concern about the provision's compatibility with constitutional democracy. Despite this sustained legal resistance, the Constitutional Court consistently rejected petitions challenging the presidential threshold until its landmark Decision Number 62/PUU-XXII/2024 in January 2025, which fundamentally overturned decades of jurisprudence by declaring any presidential threshold unconstitutional (Wiradirja et al., 2024).

In this constitutional context, Decision Number 90/PUU-XXI/2023 emerges as a significant jurisprudential development that, while addressing age requirements rather than percentage thresholds, reflects the Constitutional Court's evolving approach to electoral justice, constitutional rights, and open legal policy boundaries. Decided on October 16, 2023, this decision concerned a petition filed by Almas Tsaqibbiru Re A, a student from Universitas Sebelas Maret, challenging Article 169 letter q of Law Number 7 of 2017, which required presidential and vice-presidential candidates to be at least 40 years old. The petitioner argued that this age restriction unconstitutionally limited political participation opportunities for younger qualified individuals and contradicted principles of equal opportunity in democratic governance.

The Constitutional Court granted the petition in part, reinterpreting Article 169 letter q to allow candidates under 40 years of age if they had previously held or were currently holding elected positions through general elections, including regional head elections. This interpretive addition created an alternative pathway to candidacy based on prior electoral experience, effectively expanding eligibility while maintaining age requirements for those without such experience. The decision stated that presidential and vice-presidential candidates must be "at least 40 years old or have/are currently holding positions elected through general elections including regional head elections".

Decision 90/PUU-XXI/2023 generated significant controversy and scholarly debate regarding the Constitutional Court's authority, consistency, and independence in constitutional interpretation. Critics questioned whether the Court exceeded its judicial review authority by creating new normative content rather than merely striking down unconstitutional provisions, thereby encroaching upon legislative prerogatives. The decision appeared inconsistent with the Court's previous rejections of similar petitions in Cases Number 29/PUU-XXI/2023, 51/PUU-XXI/2023, and 55/PUU-XXI/2023, where judges had dismissed challenges to the same age requirement as matters of open legal policy beyond judicial intervention. This abrupt reversal in judicial position, without substantial change in constitutional text or precedent, raised concerns about the predictability and principled consistency of constitutional adjudication (Majda El Muhtaj et al., 2024).

Furthermore, the decision's timing and beneficiaries prompted allegations of conflict of interest and judicial impropriety, as it enabled Gibran Rakabuming Raka, then-mayor of Solo and son of President Joko Widodo, to qualify as a vice-presidential candidate despite being under 40 years old. The involvement of Chief Justice Anwar Usman—who was Gibran's uncle by marriage—in deliberations despite initially recusing himself due to conflict of interest, intensified suspicions about the decision's political motivations and institutional integrity. These circumstances generated widespread public criticism and undermined confidence in the Constitutional Court as an independent guardian of constitutional principles.

Despite these controversies, Decision 90/PUU-XXI/2023 provides valuable insights into the Constitutional Court's interpretive methodology, its conception of petitioner standing (legal standing), and its willingness to recognize potential

constitutional harms to voters' rights when electoral regulations restrict candidate diversity. The decision acknowledged that voters possess constitutional interests in having meaningful candidate choices that reflect their political preferences, and that unduly restrictive candidacy requirements can infringe upon these voting rights. This voter-centric approach to standing and constitutional harm assessment represents a potentially significant evolution in the Court's electoral jurisprudence that extends beyond the specific age requirement issue.

The analysis of Decision 90/PUU-XXI/2023 must be situated within the broader constitutional debate about presidential threshold requirements, which culminated in Decision 62/PUU-XXII/2024's abolition of the percentage-based nomination threshold. Both decisions engage fundamental questions about the proper boundaries of open legal policy, the constitutional limits on legislative discretion in electoral regulation, and the Court's role in protecting political rights and democratic participation against majoritarian preferences for restriction. Understanding the Court's reasoning in Decision 90/PUU-XXI/2023 illuminates the interpretive frameworks and constitutional values that subsequently informed its historic reversal on presidential threshold constitutionality in 2024.

This research examines the constitutionality of presidential threshold application through comprehensive analysis of Constitutional Court Decision Number 90/PUU-XXI/2023, focusing on its legal reasoning, constitutional implications, and relationship to broader debates about electoral justice in Indonesia's presidential system. By analyzing the Court's treatment of candidacy restrictions, voter rights, and open legal policy doctrine, this study contributes to understanding the constitutional dynamics shaping Indonesia's democratic electoral framework and the evolving jurisprudence on political participation rights. The research addresses critical questions about how constitutional courts balance political stability objectives with inclusive democratic participation, how they interpret the scope of legislative discretion in electoral matters, and how they protect fundamental political rights within presidential systems characterized by multiparty competition.

2. Methods

This research employs a qualitative legal research methodology to comprehensively analyze the constitutionality of presidential threshold implementation in Indonesia's presidential election system through examination of Constitutional Court Decision Number 90/PUU-XXI/2023. Qualitative legal research is particularly appropriate for this study as it enables in-depth investigation of constitutional interpretation, judicial reasoning, normative legal principles, and the relationship between legal doctrine and democratic governance. This methodological approach allows for nuanced understanding of how constitutional courts construct meaning, apply legal principles to contested political questions, and balance competing constitutional values in electoral regulation.

The research adopts a normative juridical approach, which focuses on examining legal norms, constitutional provisions, statutory regulations, judicial decisions, and doctrinal principles as primary objects of analysis. This approach is appropriate for constitutional law research that seeks to understand legal interpretation, assess normative consistency, and evaluate the alignment between legislative enactments and constitutional mandates. Through normative legal analysis, this study examines the textual content, structural relationships, and principled coherence of constitutional and statutory provisions governing presidential elections in Indonesia.

The research utilizes multiple complementary analytical approaches to ensure comprehensive examination of the research questions. First, a statutory approach analyzes the relevant legal provisions, including Article 6A of the 1945 Constitution of the Republic of Indonesia, Article 169 letter q and Article 222 of Law Number 7

of 2017 concerning General Elections, and related electoral legislation. This approach examines the hierarchical relationship between constitutional provisions and implementing legislation, assesses whether statutory requirements remain within the scope of constitutional delegation, and identifies potential normative conflicts or inconsistencies (Bhat, 2020).

Second, a case approach focuses on Constitutional Court decisions, particularly Decision Number 90/PUU-XXI/2023 and related decisions on presidential threshold and electoral requirements. The case approach involves systematic examination of judicial reasoning, identification of ratio decidendi and obiter dicta, analysis of legal considerations and their constitutional foundations, and comparison of precedential consistency across related decisions. This approach enables understanding of how the Constitutional Court has interpreted electoral provisions, applied constitutional principles to specific controversies, and evolved its jurisprudence on political rights and open legal policy.

Third, a conceptual approach examines the theoretical and doctrinal frameworks underlying constitutional issues, including concepts of popular sovereignty, political rights, electoral justice, open legal policy, separation of powers, checks and balances, and constitutional interpretation. The conceptual approach situates the legal analysis within broader constitutional theory, democratic theory, and comparative constitutional law scholarship. By engaging with conceptual frameworks, the research can assess whether judicial decisions align with foundational democratic principles and constitutional values.

Fourth, a comparative law approach examines presidential election systems and candidacy requirements in other democratic presidential systems, particularly in Latin America and Asia, to contextualize Indonesia's presidential threshold within international practice. This comparative dimension illuminates alternative regulatory approaches, identifies best practices in electoral regulation, and assesses whether Indonesia's presidential threshold is exceptional or aligned with international norms. Countries examined include Brazil, Chile, Uruguay, and the United States, which operate presidential systems without presidential nomination thresholds.

Data collection for this qualitative legal research relies primarily on secondary data sources, including constitutional court decisions, statutory legislation, scholarly legal literature, academic journal articles, legal textbooks, and policy documents. Primary legal materials constitute the core data sources, encompassing the 1945 Constitution, Law Number 7 of 2017 concerning General Elections and its predecessors, Constitutional Court decisions on presidential threshold and related electoral issues, and official court summaries and legal considerations. Secondary legal materials supplement primary sources through scholarly analyses, doctrinal commentaries, legal journals, comparative constitutional studies, and expert testimonies presented in constitutional court proceedings (Rezah & Sapada, 2021).

The research employs document analysis as the principal data collection technique, involving systematic retrieval, organization, and examination of legal texts and judicial decisions. Document analysis is appropriate for legal research as it enables rigorous examination of authoritative legal sources without requiring empirical fieldwork or experimental manipulation. Documents analyzed include official texts of Constitutional Court decisions accessed through the Court's website and database, statutory legislation from official state gazettes, scholarly articles from legal databases and academic repositories, and expert legal opinions and analyses published in reputable journals.

For analysis of Constitutional Court Decision 90/PUU-XXI/2023 specifically, the research examines multiple components of the decision document. These components include the petitioner's profile and legal standing arguments, the

petition's substantive legal arguments (*posita*), the petition's specific requests (*petitum*), the Court's assessment of jurisdictional authority, the Court's evaluation of petitioner's legal standing, the Court's substantive legal considerations (*ratio decidendi*), the Court's interpretive reasoning and constitutional analysis, and the decision's *dispositif* (*amar putusan*) and binding legal effects. This comprehensive examination of decision components enables systematic reconstruction of the Court's interpretive methodology and constitutional reasoning.

Data analysis employs qualitative content analysis techniques to interpret legal texts, identify patterns in judicial reasoning, extract legal principles and constitutional values, and assess normative consistency and coherence. Content analysis involves systematic coding of legal provisions and judicial statements, thematic categorization of legal arguments and constitutional principles, comparative analysis across multiple court decisions to identify jurisprudential evolution, and critical assessment of logical coherence and constitutional alignment. The analysis is interpretive rather than quantitative, focusing on meaning construction, normative evaluation, and principled coherence rather than statistical measurement.

The research utilizes legal reasoning analysis to evaluate the logical structure and persuasiveness of judicial arguments in Constitutional Court decisions. This involves identifying legal syllogisms and deductive reasoning patterns, assessing the application of constitutional principles to factual circumstances, evaluating analogical reasoning and precedential consistency, and examining interpretive methodologies such as textual, structural, purposive, and historical interpretation. Legal reasoning analysis enables critical assessment of whether judicial conclusions follow logically from constitutional premises and whether interpretive choices align with accepted constitutional methodologies.

To assess the constitutionality of presidential threshold provisions, the research applies constitutional compliance testing, which examines whether statutory provisions satisfy constitutional requirements and respect constitutional limitations. This testing involves comparison of statutory requirements with constitutional text and structure, assessment of whether regulations remain within delegated legislative authority, evaluation of whether restrictions on political rights satisfy constitutional justification standards, and determination of whether provisions violate constitutional principles of equality, fairness, and democratic participation. Constitutional compliance testing provides systematic framework for normative evaluation of electoral regulations.

The research examines legal standing (*kedudukan hukum*) doctrine as developed in Constitutional Court jurisprudence, particularly the five-criteria test established in Decision Number 006/PUU-III/2005 and Number 011/PUU-V/2007. This doctrine requires petitioners to demonstrate constitutional rights granted by the 1945 Constitution, actual or potential harm to those rights from challenged legislation, specific and concrete nature of constitutional harm, causal relationship between the legislation and constitutional harm, and likelihood that granting the petition would remedy the constitutional harm. Analysis of how the Court applied these criteria in Decision 90/PUU-XXI/2023 illuminates the Court's approach to voter standing and constitutional injury in electoral cases (Kelilauw & Firmantoro, 2024).

The research incorporates precedent analysis to examine consistency in Constitutional Court decisions on presidential threshold and electoral requirements. This involves chronological mapping of relevant decisions from 2008 to 2024, identification of controlling precedents and their subsequent treatment, analysis of instances where the Court upheld, distinguished, or overruled prior decisions, and assessment of factors explaining jurisprudential evolution or inconsistency.

Precedent analysis reveals patterns in the Court's treatment of open legal policy doctrine and its evolving conception of constitutional limits on electoral regulation.

Triangulation enhances research validity by examining legal issues from multiple analytical perspectives, comparing judicial reasoning across different cases addressing similar issues, integrating doctrinal analysis with policy evaluation and democratic theory, and consulting diverse scholarly interpretations of constitutional provisions and court decisions. Triangulation reduces interpretive bias and strengthens the reliability of qualitative legal conclusions.

The research acknowledges methodological limitations inherent in normative legal research. The study focuses primarily on formal legal texts and judicial decisions rather than empirical investigation of electoral behavior, political party strategies, or voter attitudes. While this focus is appropriate for constitutional analysis, it means the research does not directly assess the practical political effects of presidential threshold requirements or voter perceptions of electoral fairness. Additionally, the interpretive nature of legal analysis means that reasonable scholars may reach different conclusions about constitutional meaning and judicial reasoning quality.

Ethical considerations in legal research include accurate representation of legal sources without distortion, acknowledgment of diverse scholarly perspectives and interpretive possibilities, objective analysis that distinguishes between description of legal doctrine and normative evaluation, and proper attribution of ideas and arguments to their sources through comprehensive citation. This research maintains these ethical standards through rigorous documentation, balanced analysis, and transparent methodological explanation.

The qualitative legal research methodology employed in this study enables comprehensive, theoretically informed, and normatively rigorous analysis of Constitutional Court Decision 90/PUU-XXI/2023 and its implications for the constitutionality of presidential threshold in Indonesia's electoral system. By combining statutory analysis, case law examination, conceptual inquiry, and comparative perspectives, the research produces nuanced understanding of constitutional interpretation dynamics, electoral justice principles, and the evolving relationship between legislative policy discretion and constitutional rights protection in Indonesian constitutional democracy.

3. Results and Discussion

The analysis of Constitutional Court Decision Number 90/PUU-XXI/2023 and the broader constitutional framework governing presidential threshold in Indonesia reveals significant findings regarding legal standing doctrine, constitutional interpretation, electoral rights, and the boundaries of open legal policy. This section presents the research results through qualitative examination of key decision components, supplemented by comparative analysis of related Constitutional Court decisions and systematic documentation of constitutional principles at stake.

3.1. Legal Standing and Petitioner Qualification in Decision 90/PUU-XXI/2023

The Constitutional Court's treatment of legal standing (*kedudukan hukum*) in Decision 90/PUU-XXI/2023 represents a significant aspect of the decision's jurisprudential contribution. The petitioner, Almas Tsaqibbirru Re A, qualified himself as an individual Indonesian citizen with voting rights in general elections, arguing that Article 169 letter q of Law Number 7 of 2017 violated his constitutional rights as a voter by limiting candidate choices available in presidential elections.

Table 1. Legal Standing Assessment in Constitutional Court Decision 90/PUU-XXI/2023

Legal Standing Criteria	Constitutional Court Assessment	Constitutional Foundation
Constitutional Rights Held by Petitioner	Right to vote in free and fair elections; right to have meaningful candidate choices reflecting political preferences	Article 1(2), Article 27(1), Article 28C(1), Article 28D(1) of 1945 Constitution
Nature of Constitutional Harm	Limitation of candidate diversity restricts voter choice and diminishes quality of democratic contestation	Article 6A(2), Article 22E of 1945 Constitution regarding electoral fairness
Specificity and Actuality of Harm	Potential harm to voting rights in upcoming 2024 presidential election due to reduced candidate options	Potential harm recognized as sufficient for standing
Causal Relationship	Age restriction in Article 169 letter q directly limits pool of eligible candidates, thereby affecting voter choices	Direct causal link established between statutory provision and voter harm
Remediability Through Judicial Relief	Reinterpretation of age requirement would expand candidate eligibility and restore voter choice options	Court determined petition could remedy constitutional harm

Table 1 demonstrates that the Constitutional Court adopted an expansive approach to voter standing in Decision 90/PUU-XXI/2023, recognizing that voters possess constitutional interests not only in exercising the mechanical act of voting but also in having access to diverse candidate choices that genuinely reflect the democratic spectrum. This represents a voter-centric conception of constitutional harm that extends beyond direct personal injury to encompass systemic effects on electoral quality and democratic representativeness. The Court acknowledged that while the petitioner was not directly barred from candidacy by the age requirement, he suffered potential constitutional harm as a voter whose choices would be restricted by the limitation on eligible candidates.

This approach contrasts with the Court's treatment of standing in earlier presidential threshold cases, where petitioners frequently were found to lack legal standing because they could not demonstrate direct, personal constitutional harm from percentage-based nomination requirements. In those cases, the Court often reasoned that voters remained free to choose among candidates who did meet the threshold, and therefore suffered no constitutional injury. The more expansive standing doctrine in Decision 90/PUU-XXI/2023 potentially created precedential foundation for subsequent challenges to electoral restrictions, including the successful abolition of presidential threshold in Decision 62/PUU-XXII/2024.

However, the Court's inconsistency in applying standing criteria across similar cases has generated scholarly criticism. In Cases Number 29/PUU-XXI/2023, 51/PUU-XXI/2023, and 55/PUU-XXI/2023—all challenging the same Article 169 letter q age requirement—the Court rejected petitions on standing grounds, finding that petitioners had not demonstrated actual constitutional harm. Yet when Almas Tsaqibbirru filed a substantively identical petition as Case Number 90/PUU-XXI/2023, the Court suddenly recognized voter standing and granted relief. This dramatic reversal within weeks, addressing the identical legal provision with similar petitioner profiles, raises questions about the principled application of standing doctrine and suggests potential influence of extralegal considerations.

3.2. Constitutional Court's Substantive Legal Reasoning

The Constitutional Court's substantive analysis in Decision 90/PUU-XXI/2023 engaged multiple constitutional provisions and interpretive principles. The Court

examined whether Article 169 letter q's requirement that presidential and vice-presidential candidates be "at least 40 years old" violated constitutional guarantees of equal opportunity, political participation rights, and democratic representation.

Table 2. Constitutional Provisions Analyzed in Decision 90/PUU-XXI/2023

Constitutional Provision	Content	Relevance to Presidential Age Requirement
Article 1(2) 1945 Constitution	Sovereignty rests with the people and is implemented according to the Constitution	Age restrictions that unduly limit candidacy potentially undermine popular sovereignty by constraining citizen choice
Article 6(2) 1945 Constitution	Requirements for President and Vice President shall be further regulated by law	Delegates to legislature authority to establish candidacy requirements, creating open legal policy space
Article 6A(2) 1945 Constitution	Candidate pairs proposed by political parties participating in general elections	Establishes nomination process without specifying age or other candidate qualifications
Article 18(4) 1945 Constitution	Governors, regents, and mayors elected democratically	Provides constitutional basis for recognizing electoral experience at regional level
Article 27(1) 1945 Constitution	All citizens equal before law and government	Age discrimination in candidacy must be rationally justified and not arbitrarily exclusive
Article 28C(1) 1945 Constitution	Right to develop oneself and fight for rights collectively	Political participation and candidacy rights constitute fundamental aspects of self-development
Article 28D(1) 1945 Constitution	Right to recognition, guarantees, protection and legal certainty	Electoral regulations must provide fair, predictable, and justifiable standards
Article 28D(3) 1945 Constitution	Right to equal opportunity in government	Age restrictions should not create arbitrary barriers preventing qualified individuals from serving

Table 2 illustrates the constitutional framework within which the Court analyzed the age requirement challenge. The Court acknowledged that Article 6(2) of the 1945 Constitution explicitly delegates to statutory law the authority to establish requirements for presidential and vice-presidential candidates, thereby creating legitimate space for legislative policy choices. This delegation encompasses determinations about minimum age, educational qualifications, citizenship status, and other criteria that ensure candidates possess appropriate maturity, competence, and commitment to the nation.

However, the Court emphasized that legislative discretion under open legal policy is not unlimited. Even within delegated authority, legislation must respect constitutional principles of equality, non-discrimination, rationality, and proportionality. The Court found that a rigid 40-year age minimum, without alternative qualification pathways, could arbitrarily exclude individuals who have already demonstrated political competence, leadership ability, and public trust through prior electoral success. This finding reflected the Court's view that electoral experience at the regional level provides tangible evidence of capability that can substitute for age-based presumptions of maturity.

The Court's solution—reinterpreting Article 169 letter q to permit candidates under 40 who have held elected office—attempted to balance competing considerations. On one hand, the reinterpretation maintained age requirements for individuals without proven electoral track records, thereby preserving legislative judgment about typical maturity levels. On the other hand, it created an experience-based exception recognizing that successful election to public office demonstrates political competence regardless of age. The Court reasoned that voters who previously elected someone as governor, mayor, or other regional head had already validated that individual's leadership capabilities, making additional age restrictions unnecessary and potentially discriminatory.

Table 3. Comparative Analysis of Constitutional Court Decisions on Article 169 Letter q

Case Number	Petitioner	Decision Date	Outcome	Legal Standing Assessment	Key Reasoning
29/PUU-XXI/2023	Individual citizens	September 2023	Petition rejected	Petitioners lack legal standing; no actual constitutional harm demonstrated	Age requirement is open legal policy within legislative authority; reduction to 35 years would be arbitrary
51/PUU-XXI/2023	Political party representative	September 2023	Petition rejected	Petitioners lack legal standing	Age determination is legislative prerogative; no constitutional violation shown
55/PUU-XXI/2023	Regional leaders	September 2023	Petition rejected	Petitioners lack legal standing	Age requirement does not exceed constitutional bounds of open legal policy
90/PUU-XXI/2023	Almas Tsaqibbiru Re A	October 16, 2023	Petition granted in part	Petitioner has legal standing as voter whose choices are affected	Article 169 letter q constitutional if interpreted to allow alternative qualification through elected office experience
141/PUU-XXI/2023	Multiple petitioners	October 2023	Petition rejected	Court affirms binding force of Decision 90/PUU-XXI/2023	Previous decision 90/PUU-XXI/2023 has settled constitutional interpretation; no basis for different ruling
159/PUU-XXI/2023	Yuliantoro	November 2023	Petition rejected	Court affirms binding force of Decision 90/PUU-XXI/2023	Article 169 letter q as interpreted in Decision 90/PUU-XXI/2023 is constitutional and binding

Table 3 reveals the Constitutional Court's striking inconsistency in addressing identical legal questions within a brief timeframe. Within approximately one month, the Court rejected three petitions challenging Article 169 letter q on standing grounds, then granted a fourth petition addressing the same provision with similar petitioner qualifications. This pattern has generated substantial criticism from legal scholars, civil society organizations, and political observers who question whether the Court applied neutral legal principles or responded to political pressures and personal interests.

Critics have particularly emphasized the apparent conflict of interest involving Constitutional Court Chief Justice Anwar Usman, who is the brother-in-law of President Joko Widodo and uncle by marriage to Gibran Rakabuming Raka. Decision 90/PUU-XXI/2023's reinterpretation of the age requirement enabled Gibran, then 36 years old and serving as Mayor of Solo, to qualify as a vice-presidential candidate in the 2024 election. Justice Anwar initially recused himself from deliberations citing conflict of interest, but ultimately participated in the decision-making process, raising serious questions about judicial ethics and independence. The Court's Code of Ethics and Conduct Board subsequently found Justice Anwar guilty of ethical violations and imposed sanctions, though these did not nullify the decision itself.

3.3. Open Legal Policy Doctrine and Its Constitutional Boundaries

Decision 90/PUU-XXI/2023 engages the concept of open legal policy (*kebijakan hukum terbuka*), a central doctrine in Indonesian constitutional adjudication that delineates the respective spheres of judicial and legislative authority. Open legal policy refers to matters that the Constitution delegates to legislative discretion, allowing the legislature to make policy choices without detailed constitutional specification, provided those choices remain within constitutional boundaries and do not violate fundamental rights.

Table 4. Evolution of Open Legal Policy Doctrine in Presidential Threshold Cases

Time Period	Representative Decisions	Court's Position on Presidential Threshold	Conception of Open Legal Policy Limits
2008-2013	Decision 51-52-59/PUU-VI/2008; Decision 14/PUU-XI/2013	Presidential threshold is constitutional open legal policy	Open legal policy valid unless manifestly contradicts Constitution; threshold serves legitimate governmental stability objective
2014-2020	Decision 52/PUU-XIV/2016; Decision 20/PUU-XX/2022	Presidential threshold remains constitutional open legal policy	Legislature has wide discretion in electoral design; threshold does not violate constitutional rights if voters can still freely choose among qualifying candidates
2021-2023	Decision 4/PUU-XXI/2023; Decision 73/PUU-XX/2022	Presidential threshold is constitutional open legal policy	Threshold percentage is legislative policy choice; Court will not substitute its judgment for legislature's reasonable choices
2024-2025	Decision 62/PUU-XXII/2024	Presidential threshold violates Constitution regardless of percentage	Open legal policy must respect morality, rationality, and not create intolerable injustice; any presidential threshold exceeds constitutional limits

Table 4 documents the Constitutional Court's evolving interpretation of open legal policy boundaries in the context of presidential threshold. For more than fifteen years, the Court consistently held that presidential threshold provisions fell within legitimate legislative policy discretion. The Court reasoned that the Constitution's delegation to law of the authority to regulate candidacy requirements (Article 6A paragraph 2 and 5) created broad legislative discretion to establish thresholds aimed at political consolidation and governmental stability.

However, the Court also articulated principles limiting open legal policy, even during periods when it upheld presidential threshold constitutionality. These limiting principles include respect for constitutional morality (*moralitas konstitusi*), rational policy justification (*rasionalitas*), avoidance of intolerable injustice (*ketidakadilan yang intolerable*), and protection of constitutional rights. The Court indicated that if open legal policy choices violated these principles, they would exceed constitutional boundaries and become subject to judicial invalidation.

In Decision 90/PUU-XXI/2023, the Court applied these limiting principles to age requirements, finding that a rigid 40-year minimum without recognition of alternative qualifications could create irrational exclusions and unjustified discrimination. While the Court did not completely invalidate the age requirement, its conditional reinterpretation reflected sensitivity to the principle that open legal policy must maintain rational relationship to legitimate governmental objectives and must not arbitrarily exclude qualified individuals.

The Court's subsequent decision in Case 62/PUU-XXII/2024 dramatically expanded these limiting principles, determining that presidential threshold provisions—regardless of specific percentage—inherently violate constitutional morality, rationality, and create intolerable injustice. The Court found that threshold requirements distort democratic competition by privileging established parties, limit voter choice to predetermined options, create political polarization by reducing elections to two-candidate contests, and undermine the constitutional principle that sovereignty rests with the people. This 2024 decision represents a fundamental reconception of open legal policy boundaries, establishing that certain electoral restrictions fall outside permissible legislative discretion even when not explicitly prohibited by constitutional text.

3.4. Comparative Presidential Election Systems

Comparative analysis reveals that Indonesia's presidential threshold requirements have been exceptional among democratic presidential systems. Most presidential democracies do not impose minimum parliamentary vote or seat thresholds for parties to nominate presidential candidates, instead allowing any party meeting basic organizational requirements to field candidates.

Table 5. Comparative Presidential Nomination Requirements in Selected Democracies

Country	Presidential System Type	Presidential Nomination Threshold	Alternative Qualification Paths	Rationale for System Design
United States	Presidential with federal structure	None; parties nominate through primary elections; independent candidates through petition signatures	Independent candidates can qualify with signature petitions (varies by state)	Two-party system emerged organically through electoral college mechanics rather than legal thresholds
Brazil	Presidential with multiparty system	None; parties meeting registration	Independent presidential candidates not permitted; must be	Emphasis on party-based representation without vote/seat thresholds

Country	Presidential System Type	Presidential Nomination Threshold	Alternative Qualification Paths	Rationale for System Design
		requirements can nominate	nominated by registered party	
Chile	Presidential with multiparty system	None; registered party or coalition can nominate	Independent candidates can qualify with voter signatures (0.5% of electorate)	Open competition model without threshold restrictions
Uruguay	Presidential with multiparty system	None; parties meeting registration requirements can nominate	No presidential threshold; internal party primaries determine nominees	Democratic inclusivity without seat/vote requirements
Indonesia (pre-2024)	Presidential with multiparty system	20% DPR seats OR 25% national valid votes from previous legislative election	None; only party/coalition pathway existed	Governmental stability and party consolidation objectives
Indonesia (post-2024)	Presidential with multiparty system	None following Decision 62/PUU-XXII/2024	All participating parties in elections can nominate candidates	Alignment with democratic principles and voter choice maximization

Table 5 demonstrates that Indonesia's presidential threshold, requiring parties to obtain 20% of parliamentary seats or 25% of national votes, represented one of the highest barriers to presidential candidacy among democratic presidential systems worldwide. In the United States, while the two-party dominance of presidential elections is pronounced, this results from structural features of the electoral college system and single-member district congressional elections rather than legal thresholds preventing smaller parties from fielding presidential candidates. In Latin American presidential democracies such as Brazil, Chile, and Uruguay, parties meeting basic registration requirements can nominate presidential candidates without needing to demonstrate minimum levels of prior electoral support.

The comparative evidence challenges claims that high presidential thresholds are necessary for governmental stability in presidential systems. Countries like Chile and Uruguay have maintained stable democratic governance and effective presidential leadership despite allowing multiple candidates from diverse parties to compete in presidential elections. Brazil's presidential elections regularly feature numerous candidates from across the ideological spectrum, yet the two-round runoff system (when no candidate receives majority support in the first round) ensures the elected president achieves majority legitimacy. These comparative examples suggest that alternative institutional mechanisms—such as runoff elections, coalition-building incentives, and constitutional checks and balances—can promote governmental effectiveness without restricting candidacy through high thresholds.

3.5. Analysis and Normative Evaluation of Decision 90/PUU-XXI/2023 within the Presidential Threshold Framework

The analysis of Constitutional Court Decision Number 90/PUU-XXI/2023 and its relationship to the broader constitutional debate on presidential threshold reveals several critical dimensions of constitutional interpretation, democratic governance, and electoral justice in Indonesia's presidential system. This section discusses the

theoretical, normative, and practical implications of the research findings, examining how the Constitutional Court's evolving jurisprudence shapes the balance between political stability objectives and inclusive democratic participation.

Decision 90/PUU-XXI/2023 raises fundamental questions about the proper scope of constitutional court authority in interpreting electoral legislation and the boundaries between judicial review and legislative prerogative. The Constitutional Court's approach of granting conditional constitutionality through reinterpretation—declaring Article 169 letter q constitutional only if understood to include an alternative qualification pathway—represents an activist interpretive methodology that effectively creates new normative content rather than merely striking down unconstitutional provisions (Dian Pratama et al., 2025).

Constitutional scholars have debated whether this interpretive approach exceeds judicial authority by encroaching upon legislative policy-making functions. In parliamentary democracies with judicial review, courts typically confine themselves to binary determinations of constitutionality, either upholding challenged provisions as compatible with constitutional requirements or invalidating them as unconstitutional. When courts invalidate provisions, the legislature retains primary responsibility for crafting replacement legislation that addresses constitutional deficiencies while pursuing legitimate policy objectives. The Indonesian Constitutional Court's practice of conditional interpretation through reinterpretation arguably blurs this separation of functions by essentially drafting new legislative language through judicial decision.

Proponents of the Court's interpretive approach argue that conditional constitutionality serves important values of constitutional efficiency and rights protection. Rather than completely invalidating a provision and creating potential legal vacuums, the Court preserves the provision's core content while eliminating its unconstitutional applications. This approach minimizes disruption to electoral administration and provides immediate clarity about constitutional requirements without requiring legislators to enact new legislation. Additionally, conditional interpretation can better protect constitutional rights by tailoring remedies precisely to constitutional violations rather than employing the blunt instrument of complete invalidation.

However, critics emphasize that Decision 90/PUU-XXI/2023's reinterpretation fundamentally altered Article 169 letter q's meaning in ways that the legislature did not contemplate or approve. The original provision established a simple, objective criterion—minimum age of 40 years—that provided clear, predictable guidance and equal treatment of all candidates. The Court's reinterpretation introduced a complex, dual-track system requiring fact-intensive determinations about whether candidates have "held elected office," raising questions about which positions qualify, whether currently holding office is equivalent to previously holding office, and how election-related disputes should be resolved. These policy choices—determining which electoral experiences substitute for age requirements—properly belong to legislative deliberation and democratic accountability rather than judicial imposition (Tatawu & Tawai, 2023).

The controversy surrounding Decision 90/PUU-XXI/2023 intensified due to its specific political beneficiary and the circumstances of its adoption. The decision's primary practical effect was to enable Gibran Rakabuming Raka, son of the sitting president and then 36-year-old mayor, to qualify as a vice-presidential candidate. The involvement of Chief Justice Anwar Usman—Gibran's uncle by marriage—despite conflict of interest concerns, combined with the Court's sudden reversal from rejecting similar petitions weeks earlier, generated widespread perception that the decision served particular political interests rather than neutral constitutional principles. This perception has damaged the Constitutional Court's institutional legitimacy and public trust in judicial independence.

The subsequent investigation by the Court's Code of Ethics and Conduct Board found Justice Anwar guilty of ethical violations for participating in Decision 90/PUU-XXI/2023 despite conflict of interest. However, the Board lacked authority to nullify the decision itself, which remains legally binding and was subsequently affirmed in Decisions 141/PUU-XXI/2023 and 159/PUU-XXI/2023. This situation highlights institutional weaknesses in Indonesia's judicial ethics enforcement mechanisms and the need for clearer recusal standards and more robust conflict of interest protocols.

The evolution of open legal policy doctrine through Decision 90/PUU-XXI/2023 and subsequent decisions illuminates the Constitutional Court's struggle to articulate principled boundaries between legitimate legislative discretion and unconstitutional restrictions on political rights. The doctrine of open legal policy recognizes that constitutions cannot and should not specify every detail of governmental organization and electoral procedure, requiring delegation of many implementation decisions to legislative judgment (Aldani et al., 2024).

In Indonesia's constitutional framework, Article 6(2) explicitly delegates to statutory law the authority to establish requirements for presidential and vice-presidential candidates, while Article 6A(5) authorizes legislation to regulate presidential election procedures more generally. This delegation creates presumptive legislative discretion to determine age requirements, educational qualifications, citizenship criteria, and nomination procedures, provided such determinations remain within constitutional bounds. The Constitutional Court has consistently recognized this legislative discretion, hesitating to substitute its policy preferences for reasonable legislative choices about electoral design.

However, the Court has also articulated that open legal policy is not a license for unlimited legislative discretion or arbitrary restrictions on constitutional rights. In Decision 62/PUU-XXII/2024—abolishing presidential threshold—the Court identified three specific boundaries that open legal policy must respect: morality (*moralitas*), rationality (*rasionalitas*), and avoidance of intolerable injustice (*ketidakadilan yang intolerable*). These principles provide substantive standards for assessing whether legislative policy choices, even within delegated authority, exceed constitutional limits.

Morality in this constitutional context refers to adherence to democratic principles, respect for fundamental rights, and alignment with constitutional values of fairness and equal treatment. The Court found that presidential threshold violated constitutional morality by creating hierarchies among political parties, privileging established parties over newer or smaller parties, and thereby distorting the democratic principle that all parties should compete on equal footing. Similarly, rigid age requirements without recognition of alternative qualifications could violate constitutional morality by arbitrarily excluding qualified individuals and denying voters access to their preferred candidates (Munawar et al., 2025).

Rationality requires that electoral regulations maintain logical relationship to legitimate governmental objectives and employ means reasonably calculated to achieve those objectives. The Court in Decision 62/PUU-XXII/2024 found that presidential threshold lacked rationality because it did not reliably produce the governmental stability it purportedly served. Comparative evidence from presidential systems without thresholds demonstrated that stable, effective governance can be achieved through alternative mechanisms such as coalition-building, constitutional checks and balances, and political culture. The threshold's actual effect—reducing elections to two candidate pairs and fostering political polarization—contradicted rather than advanced stability objectives.

Avoidance of intolerable injustice establishes that even rationally justifiable policies become unconstitutional if they create disproportionate burdens or fundamental unfairness that offends basic justice principles. Presidential threshold

created intolerable injustice by denying voters meaningful choice among diverse candidates, forcing smaller parties to abandon their political identities through opportunistic coalitions, and ensuring that parties winning 19% of legislative votes—representing millions of voters—could not nominate presidential candidates reflecting their constituents' preferences. This degree of rights restriction, affecting core democratic participation, exceeded acceptable bounds regardless of stability benefits.

Decision 90/PUU-XXI/2023's treatment of age requirements implicitly applied similar limiting principles, though less explicitly articulated. The Court recognized that blanket age requirements, without exception for demonstrated capability through electoral success, could create unjustified exclusions and deny voters access to qualified younger leaders. By creating an alternative qualification pathway, the Court sought to preserve rationality (age as proxy for maturity) while avoiding intolerable injustice (rigid exclusion of proven leaders).

The application of these limiting principles raises difficult line-drawing questions. At what point does legitimate policy discretion become immoral, irrational, or intolerably unjust? The Constitutional Court's answers have evolved substantially over time, as evidenced by its reversal from consistently upholding presidential threshold to completely abolishing it. This evolution suggests that these principles provide broad standards requiring contextual judgment rather than bright-line rules yielding determinate outcomes.

Critics of the Court's recent expansive application of limiting principles argue that it effectively eliminates meaningful open legal policy space, transforming the Court into a super-legislature that can invalidate any electoral regulation it deems suboptimal. If courts can override legislative choices whenever regulations seem unfair or imperfectly designed, legislative authority becomes illusory and democratic accountability shifts from elected representatives to appointed judges. This concern has particular force in Indonesia's multiparty presidential system, where electoral regulations necessarily involve value judgments and trade-offs among competing democratic goods—candidate diversity versus governmental cohesion, party autonomy versus electoral simplicity, innovation versus stability—that may lack single correct constitutional answers (Aisyah et al., 2024).

Defenders of the Court's approach respond that constitutional rights protections require robust judicial enforcement precisely because majoritarian political processes tend toward self-serving restrictions that protect incumbents and established interests. Presidential threshold exemplified this dynamic, adopted and maintained by legislatures dominated by large parties that benefited from excluding smaller competitors. Without active judicial review applying substantive constitutional standards, incumbent politicians can manipulate electoral rules to entrench their power and insulate themselves from democratic accountability. The Court's willingness to scrutinize electoral regulations and enforce meaningful limitations on open legal policy serves vital counter-majoritarian functions that protect democratic competition itself.

The constitutional debate about presidential threshold and candidacy restrictions fundamentally concerns competing conceptions of democracy and electoral justice. Two distinct democratic values create tension in electoral system design: maximizing political participation and representation on one hand, and promoting governmental effectiveness and stability on the other hand.

The participatory and representative dimension of democracy emphasizes that legitimate government derives from broad, inclusive citizen participation in selecting leaders. This perspective prioritizes maximizing voter choice, ensuring diverse viewpoints find representation, lowering barriers to political entry, and preventing oligarchic control by established parties. From this vantage, presidential threshold constitutes a serious democratic deficiency because it denies

representation to citizens whose preferred parties fall below the threshold, forces voters to choose among pre-filtered options rather than their authentic preferences, and effectively disenfranchises millions of voters whose parties cannot independently nominate presidential candidates.

The stability and effectiveness dimension of democracy emphasizes that government must be capable of implementing coherent policies, managing complex administrative challenges, and responding effectively to national problems. This perspective prioritizes creating conditions for stable governing majorities, reducing political fragmentation that can paralyze decision-making, ensuring presidents have adequate legislative support, and preventing chaotic electoral competitions that confuse voters. From this vantage, presidential threshold serves legitimate purposes by consolidating party systems, encouraging coalition formation, and increasing likelihood that elected presidents possess parliamentary support enabling effective governance.

The research findings suggest that the Constitutional Court's evolving jurisprudence reflects shifting judgments about how to balance these democratic values. During the period from 2008 to 2023, the Court prioritized stability concerns, deferring to legislative determinations that presidential threshold would strengthen governmental effectiveness. The Court accepted legislative arguments that threshold reduced fragmentation, encouraged party consolidation, and created more stable governance conditions (Murray, 2025).

However, by 2024-2025, the Court reconsidered this balance, determining that presidential threshold's costs to participatory and representative democracy exceeded any stability benefits. Several factors influenced this shift. First, empirical evidence from Indonesia's own electoral experience demonstrated that presidential threshold did not reliably produce the claimed stability benefits. The 2014 and 2019 presidential elections, despite threshold requirements limiting competitions to two candidate pairs, resulted in intense political polarization, close electoral margins, and contentious post-election periods. The threshold did not prevent political fragmentation or ensure smooth governance transitions.

Second, comparative evidence from presidential democracies without thresholds—including Brazil, Chile, Uruguay, and others—demonstrated that governmental stability and effectiveness can be achieved through alternative institutional mechanisms without restricting candidacy. These countries maintain effective presidential leadership despite multicandidate elections, suggesting that institutional features such as runoff elections, constitutional checks and balances, and coalition-building incentives matter more for stability than nomination thresholds.

Third, the Court recognized that presidential threshold's actual effects contradicted democratic principles by creating political oligopoly, limiting electoral competition, reducing accountability, and forcing artificial party alignments that obscured ideological differences. Rather than producing clearer choices and stable mandates, the threshold generated opportunistic coalitions that confused voters about policy positions and created governing arrangements based on transactional calculations rather than programmatic coherence (Bariguna et al., 2021).

The principle of popular sovereignty (*kedaulatan rakyat*) proved central to the Court's constitutional reasoning. Article 1(2) of the 1945 Constitution establishes that sovereignty rests with the people and is implemented according to the Constitution. The Court interpreted this provision as requiring that electoral systems maximize citizen participation in selecting leaders and ensure that governmental authority derives from genuine popular choice rather than pre-filtered options determined by party gatekeepers. Presidential threshold violated popular sovereignty by denying citizens the opportunity to vote for presidential candidates representing their preferred parties if those parties fell below the threshold.

The Court also emphasized equality of political rights guaranteed by Articles 27(1) and 28D(3) of the Constitution. These provisions establish that all citizens possess equal status before the law and equal opportunities in government. Presidential threshold created inequality between citizens whose preferred parties met the threshold and those whose parties did not, denying the latter group meaningful participation in presidential selection despite their equal constitutional status. This unequal treatment particularly disadvantaged supporters of newer parties, smaller ideological movements, and reform-oriented political forces challenging established power structures.

4. Conclusion

This comprehensive analysis of Constitutional Court Decision Number 90/PUU-XXI/2023 concerning age requirements for presidential candidates, examined within the broader constitutional framework governing presidential threshold in Indonesia's electoral system, reveals significant tensions between legislative policy discretion and constitutional protections for political rights and democratic participation. The research demonstrates that while the Indonesian Constitution delegates to statutory law the authority to establish candidacy requirements, creating legitimate space for open legal policy, this legislative discretion operates within constitutional boundaries defined by principles of morality, rationality, avoidance of intolerable injustice, popular sovereignty, and equality before the law. Decision 90/PUU-XXI/2023 represents both an evolution and a controversy in Indonesian constitutional jurisprudence. By reinterpreting Article 169 letter q to permit candidates under 40 years of age who have held elected office, the Court attempted to balance age-based maturity presumptions with recognition that electoral success demonstrates political competence regardless of age. However, the decision's inconsistency with prior rulings on identical provisions, combined with serious conflict of interest concerns involving Chief Justice Anwar Usman and the political beneficiary Gibran Rakabuming Raka, undermined its legitimacy and raised fundamental questions about judicial independence and principled constitutional interpretation. The broader constitutional debate concerning presidential threshold, culminating in Decision 62/PUU-XXII/2024's abolition of percentage-based nomination requirements, demonstrates the Constitutional Court's reconceptualization of open legal policy boundaries. After more than fifteen years of upholding presidential threshold as legitimate legislative discretion, the Court determined that any threshold—regardless of specific percentage—violates constitutional principles by restricting voter choice, privileging established parties, fostering political polarization, and undermining popular sovereignty. This jurisprudential transformation reflects growing recognition that electoral restrictions ostensibly promoting stability actually distort democratic competition and deny citizens meaningful participation in selecting leaders.

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Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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