



## CONSTITUTIONAL INTERPRETATION: THE CONSTITUTIONAL COURT'S PARADIGM SHIFT IN THE JUDICIAL REVIEW OF PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDACY THRESHOLD NORMS IN INDONESIA

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### Abstract

The presidential threshold provision under Article 222 of Law No. 7 of 2017 on General Elections has generated prolonged debate concerning the inclusivity of electoral competition and the integrity of the presidential system. For over a decade, the Constitutional Court consistently upheld this norm as an open legal policy of the legislature. However, a fundamental shift occurred through Decision No. 62/PUU-XXII/2024, which declared the provision unconstitutional. This study analyzes the structure of the Constitutional Court's legal arguments in its prior jurisprudence and examines the legal rationale underlying the paradigm shift in this recent decision. This is a normative legal study employing statutory, case, and conceptual approaches. The findings indicate that the earlier jurisprudence relied on judicial restraint to maintain government stability and promote the simplification of the political party system. In contrast, Decision No. 62/PUU-XXII/2024 applies the doctrine of responsive judicial review, emphasizing substantive justice, the restoration of popular sovereignty, equality among political parties participating in the current general election, and the determination of the framers' original intent. The invalidation of this norm creates a technical legal vacuum, requiring the legislature to restructure the regulatory framework through new constitutional engineering for the 2029 General Election. This restructuring must combine the guarantee of inclusive rights—free from percentage thresholds—with a mandatory nomination mechanism to preserve stable and democratic electoral management.

**Keywords:** Threshold; Open Legal Policy; Constitutional Court; Constitutional Interpretation; Constitutional Engineering.

### INTRODUCTION

Democratic elections in a constitutional state require robust institutional guarantees, particularly the right of political leaders to compete for public support, alongside equal access for every citizen to be nominated for and hold public office (Asshiddiqie, 2005). These institutional guarantees function not merely as components of formal electoral procedures, but as metrics to assess the quality and depth of democratization within an electoral system. In the post-amendment constitutional order of the 1945 Constitution of the Republic of Indonesia, the fulfillment of these political rights conflicts with administrative restrictions that are deemed to alter the degree of competitive inclusivity. The provision on presidential and vice-presidential candidacy thresholds, commonly referred to as the presidential threshold, has emerged as a constitutional law issue that incites theoretical and practical debates among legal scholars, academics, and national political actors (Crouch, 2022).

This threshold mechanism is regulated under Article 222 of Law No. 7 of 2017 on General Elections (Law No. 7 of 2017). The provision stipulates that presidential and vice-presidential candidate pairs can only be nominated by a political party or a coalition of political parties participating in the general election that meets the requirement of obtaining at least twenty percent of the total seats in the House of Representatives, or twenty-five percent of the national valid votes in the preceding legislative election. This normative construction introduces issues within electoral procedural law by conditioning the current executive nomination right on past legislative electoral performance. Such a causal relationship between distinct electoral jurisdictions is viewed as generating an

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inconsistency in constitutional reasoning, given that voter preferences and political configurations are dynamic and subject to change in each five-year cycle. At the conceptual level, the existence of the presidential threshold norm in Indonesia presents two opposing primary perspectives. On one hand, a legal school of thought supports the threshold application as an instrument of constitutional engineering to strengthen the presidential system adopted by Indonesia (Lailam, 2019). This functionalist perspective rests on the premise that the presidential threshold serves to establish national political stability, simplify the number of election contestants fragmented by an extreme multi-party system, and ensure that the elected president and vice president possess a solid parliamentary support base for effective governance. In this context, the synchronization of power between the executive and legislative branches is considered a prerequisite to avoid executive-legislative gridlock that could impede strategic decision-making at the national level.

Conversely, on the other hand, constitutional arguments contend that the application of the candidacy threshold imposes a disproportionate restriction on the political rights of citizens and hinders the expansion of inclusive political representation. The practice of a high presidential threshold is argued to risk facilitating the concentration of political power within a few elites, fostering transactional politics in coalition building, and narrowing the alternatives available to the public for national leadership (Abustan, 2023). This opposition relies on the principle of popular sovereignty, which asserts that political parties participating in general elections should hold equal standing and rights to present their best candidates to voters without being obstructed by numerical, administrative constraints. The restrictive rule is considered to disregard the essence of elections as a mechanism for the fair, open, and equal contestation of ideas among all legitimate political entities.

Responding to the debates and judicial review petitions submitted by various segments of society, the Constitutional Court, throughout more than a decade of its jurisprudence, maintained the constitutionality of the presidential threshold norm. Through a series of judicial review decisions, the Court dismissed the petitioners' claims on the legal rationale that determining the specific threshold percentage constitutes an open legal policy within the legislative discretion of the lawmakers, namely the President and the House of Representatives (Constitutional Court Decision No. 59/PUU-XV/2017; Constitutional Court Decision No. 49/PUU-XVI/2018; Constitutional Court Decision No. 54/PUU-XVI/2018). In this context, the Court declined to assess the appropriateness of the percentage figure, viewing it as a matter of pure political expediency that falls outside the technical competence of constitutional adjudication.

The legal stance of the Constitutional Court during that period reflected a judicial restraint approach. Under this approach, the judiciary limits its judicial authority to avoid intervening in the legislature's public policy, provided it does not conflict with express constitutional prohibitions. This approach prioritized the fulfillment of formal legal certainty (*Rechtssicherheit*) by positioning the constitutional court as a negative legislator tasked with invalidating laws that violate the constitution, rather than creating new norms or altering the direction of state political policy. This legal position was reinforced in subsequent cases affirming that the candidacy threshold rule did not contradict the principle of the rule of law (Constitutional Court Decision No. 52/PUU-XX/2022; Constitutional Court Decision No. 73/PUU-XX/2022).

Indonesia's constitutional dynamics shifted in early 2025. Through Decision No. 62/PUU-XXII/2024, the Constitutional Court altered its legal position, declaring that the presidential candidacy threshold norm in Article 222 of the General Election Law contradicted the 1945 Constitution of the Republic of Indonesia and lacked binding legal force. This decision redirected the jurisprudence previously maintained by the Court. This development reflects the application of the responsive judicial review doctrine, wherein the judiciary does not merely rely on procedural formalities but responds to democratic dynamics by integrating principles of substantive justice and the protection of human rights into its legal conclusions (Dixon, 2023, as cited in Constitutional Court Decision No. 62/PUU-XXII/2024).

The invalidation of this presidential threshold norm has implications for the electoral legal system in Indonesia, as it creates a technical legal vacuum regarding the administrative requirements for nominating presidential and vice-presidential candidate pairs. This legal vacuum requires the legislature to restructure the regulatory framework through constitutional engineering to guarantee certainty and the orderly conduct of the 2029 General Election. This measure demands an adaptive legal formulation to ensure that the expansion of candidacy inclusivity does not disrupt the stability of electoral phases and the effectiveness of the presidential system. Within this context, this study examines the dynamics of the Constitutional Court's interpretation regarding the presidential and vice-presidential candidacy threshold provisions within the Indonesian governance system. This normative legal inquiry addresses two primary issues. First, an analysis of the legal arguments and constitutional doctrines of the Constitutional Court in its prior jurisprudence upholding the presidential threshold norm. Second, an analysis of the

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legal rationale, interpretative theories, and substantive justice considerations underlying the Constitutional Court's shift in position within Decision No. 62/PUU-XXII/2024, which invalidated the threshold norm based on the 1945 Constitution of the Republic of Indonesia.

## METHOD

This study is a normative or doctrinal legal research that focuses on analyzing legal norms, legal principles, and the consistency of judicial reasoning. To examine the legal issues, this article employs both a statutory approach and a conceptual approach. The legal sources collected are categorized into three classifications. Primary legal materials encompass the 1945 Constitution of the Republic of Indonesia, Law No. 7 of 2017 on General Elections, and relevant Constitutional Court decisions concerning presidential candidacy requirements. Secondary legal materials consist of constitutional law literature, academic journals, and scholarly legal opinions, whereas tertiary legal materials utilize legal dictionaries to clarify the operational definitions of constitutional terms.

Legal materials were gathered through library research and a systematic review of legal documents. Once compiled and classified, these materials are analyzed using a qualitative-descriptive method to objectively evaluate the development of jurisprudence. Legal reasoning is applied through a deductive method, drawing conclusions from general constitutional principles to assess the validity of specific, technical electoral administrative regulations. Utilizing systematic, teleological, and historical interpretation—specifically tracing the original intent—this analysis examines the shift in judicial lawmaking (*rechtsvinding*) by constitutional judges. This approach aims to provide conclusions and prescriptive legal alternatives for future regulatory restructuring.

## RESULTS AND DISCUSSION

### A. Open Legal Policy and Judicial Restraint in Constitutional Court Decisions

The Indonesian constitutional system, based on the principles of popular sovereignty and the rule of law, requires a balancing mechanism in inter-institutional relations. Judicial power, specifically exercised by the Constitutional Court, serves as the guardian of the constitution through its authority to conduct judicial review of statutes against the 1945 Constitution of the Republic of Indonesia. In performing this function, constitutional adjudication is confronted with the intersection between legal authority and the political authority inherent in the legislature. This constitutional relationship is regulated through constitutional boundaries, requiring the judiciary to uphold the fundamental rights of citizens without assuming the legislative role that constitutes the prerogative of the House of Representatives and the President. This context generates a discourse on the position of the court vis-à-vis political policies manifested as positive legal norms, particularly regarding dynamic technical regulations and electoral substance.

The doctrine of open legal policy and the approach of judicial restraint are interconnected concepts within constitutional jurisprudence, particularly in the realm of judicial review. An open legal policy refers to the latitude of the legislature to determine the substance and material content of statutory regulations without judicial intervention, provided that such policy does not contradict foundational constitutional principles (Arifin et al., 2025). Under this doctrine, the boundaries of authority among state institutions are delineated; policy formulation falls within the legislative domain, while the Constitutional Court confines its role to reviewing norms proven to violate constitutional limitations or infringe upon the fundamental rights of citizens (Arifin et al., 2025). The delegation of authority to the legislature to regulate specific material content or legal substance is applied when the constitutional foundation provides no limitative constraints on state instruments, thereby leaving further regulation to legislative authority (Baihaki et al., 2020). Designating a norm as an open legal policy grants discretionary space to the legislature in formulating regulations; notice must be taken, however, that constitutional practice requires caution to prevent interventions by political institutions that could diminish the independence of the judicial power (Baihaki et al., 2020).

The latitude within an open legal policy refers to the legislature's authority to select and formulate legal norms when the 1945 Constitution of the Republic of Indonesia does not explicitly govern the material content (Wibowo et al., 2017). This concept is classified into two forms: absolute and relative open legal policy (Wibowo et al., 2017). Absolute policy denotes the freedom to determine the regulatory object (the “what” or what is regulated), which is neutral in nature, thereby restricting the Constitutional Court from conducting a review (Wibowo et al., 2017). Conversely, relative policy pertains to the formulation of substance or the manner of regulating the object (the “how” or how it is regulated), the constitutionality of which can be reviewed against implicit constitutional norms or their subsequent elaborations to ensure no breach of constitutional limitations occurs (Wibowo et al., 2017). This legislative freedom encompasses the authority to determine legal subjects, objects, acts, events, or consequences

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when the 1945 Constitution of the Republic of Indonesia does not provide specific constraints regarding the material content (Wibowo, 2015). This latitude arises under two conditions: either when the constitution mandates regulation without detailed limitations, or when the constitution does not explicitly provide a regulatory mandate (Wibowo, 2015). Such legislative discretion is not absolute and may not devolve into arbitrariness. Consequently, its constitutional review is bounded by the parameters of fulfilling just demands as mandated by Article 28J Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, measured using a maximin strategy to minimize constitutional harm to the public (Wibowo, 2015).

The functional relationship between an open legal policy and the judicial role pertains to the approach adopted by judges, one of which is judicial restraint. This concept originally referred to a court's avoidance of providing answers that resolve legal ambiguities by narrowing the scope of its jurisprudence (Asaad, 2025). This approach is characterized by strict adherence to precedent (*stare decisis*) and the restriction of expansive interpretations of legal norms when applied to contemporary disputes, resulting in more predictable decisions and preventing courts from entering politically charged questions (Asaad, 2025). In the domestic context, judicial restraint requires judges to exercise caution and refrain from intervening in the policies of the lawmakers, both legislative and executive (Saragih et al., 2025). Unlike judicial activism, this approach positions judges as law appliers who adhere to the constitutional text and its original intent or originalism, thereby prioritizing legal certainty and showing reluctance to invalidate statutes (Saragih et al., 2025). In the practice of judicial review at the Constitutional Court, this approach is reflected when judges accord deference or respect to the authority of other institutions, such as by declaring a norm an open legal policy and refraining from expanding meaning, creating new norms, or interpreting beyond positive legal provisions (Saragih et al., 2025).

The principle of judicial restraint requires judges to refrain from interfering with democratic affairs, particularly from invalidating legislative products on the grounds of unconstitutionality (Carle, 2024). This concept emphasizes that courts must defer to the branches of government directly elected by the people and should only strike down legislation if the constitutional violation is clear and beyond a reasonable doubt (Carle, 2024). This principle stems from concerns that unelected judges might exceed their authority by imposing personal policy preferences or political views, risking the usurpation of legislative functions and undermining public responsibility and political participation within a republican system (Carle, 2024). From an international comparative law perspective, judicial restraint is conceptualized as a judicial approach associated with traditionalism and conservatism, wherein a court restricts its own powers (*self-restraint of its powers*) (Tulkens, 2022). In the context of the European Court of Human Rights, this approach represents a spectrum of legal hermeneutics that prioritizes tradition, legal certainty, and an ethics of responsibility to maintain the confidence of member states (Tulkens, 2022). This is achieved by respecting democratic legitimacy and the principle of state sovereignty to prevent the court from imposing new obligations beyond the original intent of the treaty instrument (Tulkens, 2022). Consequently, pairing the open legal policy doctrine with the judicial restraint approach provides an essential theoretical foundation for understanding constitutional limits and the dynamics of inter-institutional relations in maintaining the balance of legal and political authority.

A concrete implementation of pairing the open legal policy doctrine with the judicial restraint approach is observable in the history of judicial reviews concerning the constitutionality of the presidential candidacy threshold norm. Prior to the issuance of Decision No. 62/PUU-XXII/2024, the Constitutional Court maintained consistent jurisprudence in handling cases reviewing percentage support requirements for presidential and vice-presidential candidates. The repeated dismissal of judicial review petitions during this period was based on the legal rationale that determining the threshold figures falls within the open legal policy domain of the legislature. This legal stance was first affirmed in Constitutional Court Decision No. 51-52-59/PUU-VI/2008, which stated that the absence of detailed regulations concerning the method of nominating candidate pairs within the text of the 1945 Constitution of the Republic of Indonesia renders the percentage requirements for either parliamentary seats or national valid votes an open legal policy for the legislature. Within this context, the Court considered that the 1945 Constitution of the Republic of Indonesia, specifically the provisions of Article 6A Paragraph (2) and Paragraph (5), does not explicitly (*expressis verbis*) regulate the candidacy percentage, but rather delegates further regulation regarding the procedures for conducting presidential elections to organic laws. Based on this line of legal reasoning, determining the percentage figure lies within the political discretion of the legislature. This political authority is grounded in the representative mandate of the House of Representatives and the President to formulate policy choices aligned with the needs of the constitutional system at a given time. In this context, the Court applied a judicial restraint approach by limiting its role to that of a negative legislator. This theoretical choice aligns with the legal policy (*politik hukum*) concerning the judiciary's standing; the Court declined to enter the domain of legislative policy choice (*political*

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*expediency*) that falls outside the technical-judicial competence of the judicial institution (Mahfud MD, 2010: 18). Provided that the procedure for norm formulation satisfies formal requirements and does not violate constitutional prohibitions, the legislature's policy choices must be respected. Statutory restrictions on rights can be justified if they are directed toward interests of proportionality, public order, and the fulfillment of democratic values within a constitutional state.

Despite granting broad deference to legislative discretion, the Constitutional Court did not abdicate its function; instead, it continued to establish parameters limiting the application of the open legal policy doctrine. The freedom of the legislature is bounded by the principle that an open legal policy norm can be declared unconstitutional and invalidated if it is proven to violate public morality, contain irrationality, or cause an intolerable injustice to the legal community order (Wibowo, 2018: 210-211; Fathorrahman, F., Rambe, M. J., & Fahmi, A. A. (2024)). Regarding the review of Article 222 of Law No. 7 of 2017 on General Elections, prior decisions of the Court declared that the candidacy threshold of twenty percent of seats in the House of Representatives or twenty-five percent of national valid votes did not contradict constitutional parameters. This administrative-electoral regulation was deemed not to infringe upon constitutional public morality, possessed an acceptable rational basis, and held the status of valid law binding generally (*erga omnes*) upon political parties in building coalition consolidations.

The Court's consideration to maintain the validity of this presidential candidacy threshold was also based on the aspect of strengthening the presidential system within the national political structure. The threshold was interpreted as a necessary instrument of constitutional engineering to preserve and stabilize institutional relations between the executive and legislative branches of power. In a political structure adhering to an extreme multi-party system, parliamentary majority support is required to sustain governability and prevent political gridlock that could paralyze state service functions (Asshiddiqie, 2006: 405). The legislative seat requirement served as a preliminary screening mechanism for political parties to align visions and form coalitions before the presidential election occurs, ensuring the elected president possesses sufficient political capital in parliament to execute national work programs.

In line with this, the legal consideration related to the strategic objective of simplifying the party system in Indonesia. In its classical jurisprudence, the Constitutional Court assessed that high political party fragmentation in parliament resulted in slow decision-making processes at the national level due to protracted conflicts of interest. The presidential candidacy threshold was implemented as a forcing mechanism to integrate political parties and encourage them to align into coalition blocs based on shared work programs and ideologies (Lailam, 2019: 94). This constitutional consideration oriented toward the stability and order of the constitutional system through measurable administrative-electoral regulations. Thus, prior to the paradigm shift in the recent decision, pairing the open legal policy doctrine with judicial restraint at the Constitutional Court served as the basis for protecting the legislature's political choices to achieve stable, effective, and legally certain governance.

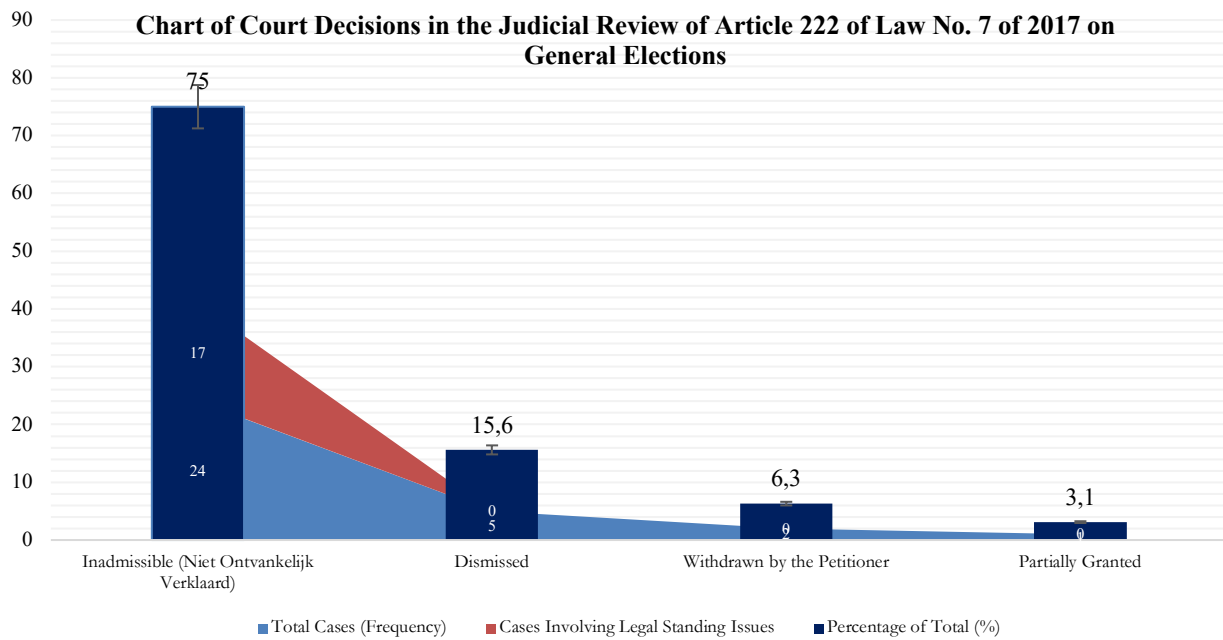
The paradigm shift within the development of jurisprudence demonstrates that the boundaries of an open legal policy are dynamic and influenced by the Court's interpretation of evolving substantive justice in society. When the balance between procedural legal certainty—safeguarded by the judicial restraint approach—conflicts with the protection of citizens' human rights and popular sovereignty, parameters of morality and irrationality serve as grounds for the judiciary to re-evaluate established doctrines. The obligation of constitutional judges to uncover the value of justice prevents the open legal policy doctrine from serving as a justification for the legislature to formulate regulations unrestrictedly; rather, it constitutes a qualified discretionary space subject to the fulfillment of constitutional justice principles.

## B. Paradigm Shift in Constitutional Court Decision No. 62/PUU-XXII/2024

The history of handling judicial review cases concerning Article 222 of Law No. 7 of 2017 on General Elections at the Constitutional Court notes a high accumulation of cases. This accumulation reflects the significant sociological and political attention toward the presidential candidacy threshold norm. The frequency of rulings within this category of cases is dominated by inadmissible verdicts (*niet ontvankelijk verklaard*), namely forty-two cases or equivalent to seventy-five percent of the total registered petitions. The primary factor underlying the high rate of inadmissible rulings is the failure of petitioners to meet legal standing requirements, which occurred in seventeen cases of these formal petitions. In addition, the Court recorded five dismissed petitions, accounting for fifteen point six percent of the total reviews, followed by two cases withdrawn by the petitioners, or six point three percent, and one partially granted case, equivalent to three point one percent of the total presidential threshold jurisprudence prior to the issuance of the latest legal assessment (data compiled from the petition grounds in Constitutional Court Decision No. 62/PUU-XXII/2024).

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Source: data compiled from the petition grounds in Constitutional Court Decision No. 62/PUU-XXII/2024.

The formal assessment regarding the requirements for the re-review of the presidential and vice-presidential candidacy threshold in Case No. 62/PUU-XXII/2024 is based on the provisions of Article 60 of the Constitutional Court Law and Article 78 of Constitutional Court Regulation No. 2 of 2021 (Constitutional Court Decision, 2024). These legal provisions provide an exception to the prohibition on re-reviewing articles that have acquired final and binding legal force (*ne bis in idem*), provided there are different grounds for review or petition arguments from prior cases. In the course of handling the norm in question, there are thirty-three past decisions and orders that did not examine the merits of the case due to a lack of legal standing, the petition being deemed vague (*obscuur libellum*) or premature, or the withdrawal of the petition by the petitioners themselves. The series of decisions and orders forming this formal record includes Decision No. 001/PUU-II/2004, Decision No. 054/PUU-II/2004, Decision No. 26/PUU-VII/2009, Order No. 101/PUU-X/2012, Order No. 118/PUU-X/2012, Decision No. 49/PUU-XII/2014, Decision No. 44/PUU-XV/2017, Decision No. 59/PUU-XV/2017, Decision No. 70/PUU-XV/2017, Decision No. 71/PUU-XV/2017, Decision No. 72/PUU-XV/2017, Decision No. 50/PUU-XVI/2018, Decision No. 58/PUU-XVI/2018, Decision No. 61/PUU-XVI/2018, Decision No. 92/PUU-XVI/2018, Order No. 35/PUU-XVIII/2020, Decision No. 74/PUU-XVIII/2020, Decision No. 44/PUU-XIX/2021, Decision No. 66/PUU-XIX/2021, Decision No. 68/PUU-XIX/2021, Decision No. 70/PUU-XIX/2021, Decision No. 5/PUU-XX/2022, Decision No. 6/PUU-XX/2022, Decision No. 7/PUU-XX/2022, Decision No. 8/PUU-XX/2022, Decision No. 11/PUU-XX/2022, Decision No. 13/PUU-XX/2022, Order No. 16/PUU-XX/2022, Decision No. 20/PUU-XX/2022, Decision No. 21/PUU-XX/2022, Decision No. 42/PUU-XX/2022, Decision No. 16/PUU-XXI/2023, and Decision No. 80/PUU-XXI/2023. Case No. 62/PUU-XXII/2024 satisfies the formal requirements for a re-review because the petition arguments focus on the existence of the candidate pair nomination threshold regime, rather than challenging the specific percentage of support as raised in previous cases.

This formal paradigm shift regarding the *ne bis in idem* doctrine in constitutional procedural law demonstrates a measured judicial flexibility to uphold substantive justice (*gerechtmatigheid*). This legal assessment aligns with the judicial reasoning in Paragraph 3.21. Within this section, the Court affirms the existence of a substantial difference in the *a quo* petition arguments. The Petitioners no longer challenge percentage variations; instead, they contend that the implementation of the threshold violates morality and rationality, and triggers an intolerable injustice for minor political parties in channeling public political aspirations (Constitutional Court Decision, 2024). Additionally, as asserted in Paragraph 3.23, the scope of this petition is deemed broader than other related cases because it rests on reviewing the constitutionality of the threshold regime's existence against universal principles of the rule of law. This phenomenon can be examined using the legal principle of *Res Judicata Pro Veritate Habetur* combined with the doctrine of judicial overruling. Under this doctrine, the binding nature of a past decision can be set aside if a fundamental conflict of norms is found that widely impacts the fundamental human rights of citizens (Prasetya, 2026; McGinnis & Rappaport, 2024).

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Prior to this shift in the Court's legal position, thirteen substantive decisions consistently dismissed reviews of the presidential candidacy threshold by declaring the norm an open legal policy of the legislature. This series of decisions includes Decision No. 56/PUU-VI/2008, Decision No. 51-52-59/PUU-VI/2008, Decision No. 4/PUU-XI/2013, Decision No. 14/PUU-XI/2013, Decision No. 46/PUU-XI/2013, Decision No. 56/PUU-XI/2013, Decision No. 108/PUU-XI/2013, Decision No. 53/PUU-XV/2017, Decision No. 49/PUU-XVI/2018, Decision No. 54/PUU-XVI/2018, Decision No. 52/PUU-XX/2022, Decision No. 73/PUU-XX/2022, and Decision No. 4/PUU-XXI/2023. The legal reasoning across this group of substantive decisions uniformly stated that the presidential threshold is required as an instrument of constitutional engineering to strengthen the presidential system, achieve governability through a parliamentary majority support, and simplify the party system from extreme multi-party fragmentation. Utilizing the results of vote acquisition or legislative election seats from the preceding period was interpreted as a valid baseline of support and was not deemed to conflict with the constitutional rights of political parties or citizens, as it was considered within the realm of legislative policy choice (*political expediency*).

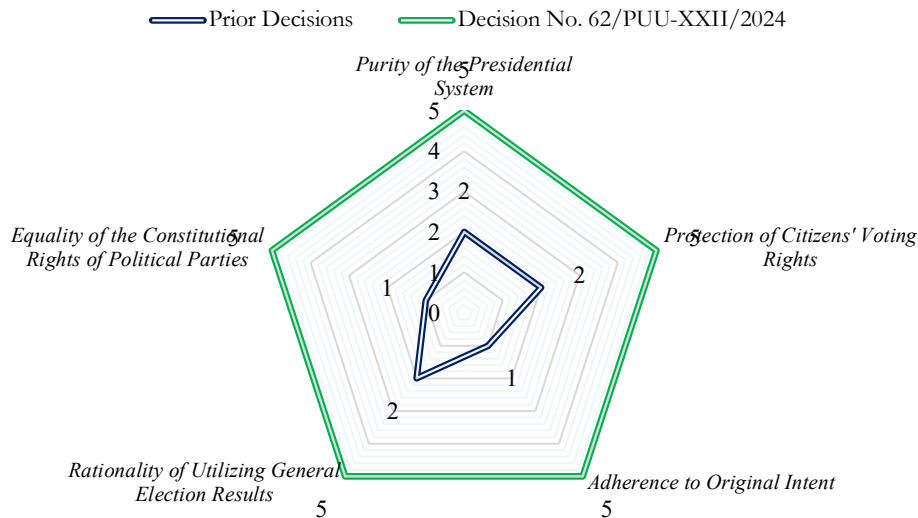
The judicial restraint approach in the thirteen prior substantive decisions positioned the Court as a negative legislator adhering to parliamentary supremacy, provided the formal procedures of lawmaking were satisfied (Saragih et al., 2025; Mahfud MD, 2010: 18). However, the substantive paradigm in Decision No. 62/PUU-XXII/2024 redefines the Court's view of the open legal policy doctrine by affirming that the legislature's freedom of action does not apply if the legislative product violates rationality, morality, and creates an intolerable injustice. This re-evaluation is based on the Court's position in Paragraph 3.25.1, which states that the legislature's open legal policy can be reviewed for constitutionality if it violates popular sovereignty, exceeds authority, or contradicts the 1945 Constitution of the Republic of Indonesia (Constitutional Court Decision, 2024). Consequently, the Court shifted from its prior stance. Through the affirmation in Paragraph 3.26, the Court declared that the entire threshold regime for nominating presidential and vice-presidential candidate pairs, regardless of the percentage figures, contradicts Article 6A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Wibowo, 2015; Wibowo et al., 2017).

This constitutional paradigm shift between the prior jurisprudence and the new legal position can be analyzed through a comparison of five constitutional dimensions, positioning Decision No. 62/PUU-XXII/2024 as a restoration of values distinct from the tendency toward restraint in earlier rulings. Regarding the dimensions of the purity of the presidential system and the protection of citizens' voting rights, the Court elevated its assessment of constitutional quality from a value index of two in past practice to a value index of five in the new decision. Correspondingly, a shift in interpretation is observable in the dimensions of adherence to the framers' original intent and the equality of the constitutional rights of political parties. Both dimensions stood at an index of one in the prior jurisprudence but were adjusted to an index of five in the a quo case (Prasetya, 2026; McGinnis & Rappaport, 2024). Concerning the dimension of the rationality of utilizing general election results, the Court also updated its perspective from a value index of two to a value index of five to assert that electoral law must rest on principles of logical, fair, and contextual reasoning.

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This substantive paradigm shift can be analyzed using the doctrine of Responsive Judicial Review (RJR), developed as a theoretical construct concerning representation-reinforcing judicial review to address obstacles to democratic responsiveness (Dixon, 2023; Kosar & Ouřednicková, 2023). This theoretical formulation positions judicial review as a catalyst to restore the proper functioning of the constitutional system by identifying three primary dysfunctions of the legislative process that require judicial intervention: anti-democratic monopoly power, democratic blind spots, and burdens of inertia triggered by coalition dynamics or unilateral political priorities (Dixon, 2023; Benítez-R. & Acosta-López, 2026). Within this responsive framework, the Court rectifies structural distortions of power resulting from the hegemony of major parties in parliament, which utilize the open legal policy doctrine to shield their self-interests (conflicts of interest) from deep-seated social disagreements (Wibowo, 2018: 210-211).

In this context, the constitutional paradigm shift in this decision is demonstrated through a theoretical alignment of executive-legislative relations (Rambe, M. J., Siregar, M. A. ., & Sembiring, D. . (2024). The Court rejected the legislature's argument that the candidacy threshold is necessary to secure legislative support for effective governance and to prevent political gridlock in parliament (Asshiddiqie, 2006: 405). The Court asserted that such reasoning is inconsistent with constitutional doctrine because it superimposes characteristics of a parliamentary system onto the practice of the Indonesian presidential system, whereas both branches possess separate mandates from the electorate. The logic of purifying the system of government is elaborated by the Court in Paragraph 3.25.5, explaining that within a presidential system, the legislative and executive branches derive distinct sovereignty from the people, even if general elections are held concurrently (Constitutional Court Decision, 2024). On the contrary, interactions wherein parliamentary election results dictate the formation or nomination of executive power characterize a parliamentary system. Consequently, maintaining the presidential threshold is deemed inconsistent with the original spirit of the amendments to the 1945 Constitution, which sought the purification of a democratic presidential system through the separation of powers (Saldi Isra, 2016: 142; Bagir Manan, 2003: 158).

Accordingly, the Court returned the interpretation of constitutional provisions to the original intent by tracing the original intent and the underlying context of the framers of the foundational document (framers' intent) when the legal norm was ratified (Ramdani, Harijanti, & Sungkar, 2025). By examining the minutes of the amendments to the 1945 Constitution, the Court identified a constitutional historical fact in Paragraph 3.24.2 showing that the sole restriction agreed upon by the framers of the 1945 Constitution of the Republic of Indonesia was the presidential election requirement set forth in Article 6A Paragraph (3), rather than a candidacy percentage requirement (Constitutional Court Decision, 2024). This assessment is reinforced in Paragraph 3.25.6, where the Court affirmed that the delegation in Article 6A Paragraph (5) concerning the phrase "implementation procedures" is directed at administrative-procedural regulations, and therefore cannot be used as a legal basis by the legislature to add a substantive prerequisite (numerical requirement) that reduces the nomination rights of political parties participating in the general election (Ramdani, Harijanti, & Sungkar, 2025; Eastland-Underwood, 2023). Through an *expressis verbis* affirmation, Article 6A Paragraph (2) establishes that provided a political party has been declared a valid

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participant in the current general election, the constitutional right to nominate a presidential and vice-presidential candidate pair is inherent to that party, free from percentage barriers.

Although in certain traditions the use of the historical debates of the framers to limit the meaning of contemporary norms is criticized as a form of interpretative anachronism that disregards the objective text ratified by the public (Powell, 1985), the Court in the *a quo* case grounded its analysis on identifying a consistent philosophical meaning. The addition of substantive requirements in the form of a percentage of past legislative seats or votes is deemed an act exceeding the constitutional mandate (*ultra vires*). The legislature lacks the constitutional authority to expand restrictions on fundamental rights beyond the established framework set by the framers of the foundational document (Eastland-Underwood, 2023). Such unilateral restrictive efforts reflect an elitist institutional tendency to expand its own political power; thus, the original intent method was utilized by the Court as a judicial check to uphold constitutional supremacy over deviant contemporary legislative products (Ramdani, Harijanti, & Sungkar, 2025).

To evaluate the sociological and academic justification for the existence of the presidential threshold, the Court applied a comparative analysis of countries adopting a presidential system with a multi-party structure, alongside the United States. The conclusion of this cross-jurisdictional comparative study is presented in the legal reasoning of Paragraph 3.24.5, demonstrating that democratic nations adhering to a multi-party presidential system, such as Brazil, Kyrgyzstan, Colombia, Mexico, Peru, and Uruguay, do not employ a threshold mechanism during the presidential nomination phase (Constitutional Court Decision, 2024). Percentage restriction rules in international jurisdictions are known exclusively as a minimum winning threshold to guarantee majority legitimacy. Based on this functional comparison, the Court concluded that the presidential threshold rule in Indonesia is an additional provision introduced by the legislature, grounded in sectoral political compromises among parliamentary parties rather than an established scientific theory of presidentialism (Fiala & Tungul, 2025; Lailam, 2019: 94).

The application of legal engineering in the form of past candidacy thresholds is deemed to lack strong logical reasoning and to violate the principle of electoral periodicity, given that the dynamics of public political preferences can shift between periods. The Court expanded the interpretation of individual petitioners' legal standing by considering the causal nexus (*causal verband*) between voters' injury and the implementation of the candidacy threshold. In this context, the Court assessed that restricting the rights of political parties to nominate candidate pairs consequently limits the voters' right to vote for a diverse selection of qualified national leadership candidates (Constitutional Court Decision, 2024). Utilizing data from previous legislative election results as a candidacy requirement in the current concurrent election is viewed as undermining the principle of electoral justice, as voters' ballots from a past period are employed for distinct political calculations (Saldi Isra, 2016: 142).

Considerations regarding national political sociology and the integrity of diversity were stated by the bench in Paragraph 3.24.4. The Court assessed that the restriction forcing the contest to be contested by only two candidate pairs—a consequence of high percentage requirements—has generated societal cleavages (*societal cleavage*) and polarization that threaten national integration. The threshold provision under Article 222 of Law No. 7 of 2017 potentially negates the meaning of the guarantee of popular sovereignty by increasing the likelihood of an uncontested candidate facing a blank box, as observed in regional head elections (Constitutional Court Decision, 2024). Consequently, the Court executed a paradigm shift in values by asserting that fulfilling the political rights of citizens to vote and run for office holds primary importance over the administrative simplification of the political party system.

The affirmation regarding the priority scale of democratic values is contained in Paragraph 3.25.3. Within this section, the Court declared its obligation as the guardian of the constitution to prioritize the fulfillment of citizens' political rights (the right to vote and the right to be a candidate) to secure a more diverse selection of leaders through fair and open contestation (Constitutional Court Decision, 2024). For the Court, the right of citizens to make substantive choices takes precedence over the intent to simplify political parties for short-term political stability. Providing a broad range of alternative candidates is a prerequisite for realizing popular sovereignty pursuant to Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia; hence, rules restricting this right contradict the constitution and lack binding legal force (*erga omnes*).

As a legal consequence of the invalidation of the presidential threshold, the Court provided new constitutional engineering guidelines to be observed by the legislature when revising the general election law. This new policy formulation is detailed by the Court in Paragraph 3.27 through five constitutional engineering mandates aimed at preventing practical implications of an excessive number of candidates without infringing upon the fundamental human rights of citizens (Constitutional Court Decision, 2024). These five elements comprise: (1) guaranteeing the right of all political parties participating in the current general election to nominate candidate pairs;

(2) prohibiting the use of candidacy threshold requirements based on a percentage of seat or vote acquisition; (3) permitting political parties to form coalitions, provided that such coalitions do not create a monopolistic dominance that restricts public choice; (4) imposing a sanction of disqualification in the subsequent general election for political parties that fail to nominate a candidate pair; and (5) requiring that the formulation of the new rules involve stakeholders through the application of the principle of meaningful public participation (Ali, Ben Hammou, & Powell, 2022; Editorial, 2006; Fiala & Tungul, 2025).

Correspondingly, the institutionalization of these new constitutional engineering guidelines triggers a discourse regarding the temporal dimension of enforcing constitutional court decisions vis-à-vis the principle of procedural legal certainty (*rechtmatigheid*). The Purcell Principle mandates judicial institutions to exercise judicial restraint by refraining from altering the election rules of the game abruptly or close to critical execution phases of a general election to avert a disruption of order (McGinnis & Rappaport, 2024; Prasetya, 2026). An analysis of the jurisprudence reveals an ambivalent approach between Decision No. 14/PUU-XI/2013, which applied prospective overruling for the technical readiness of the organizers, and Decision No. 60/PUU-XXII/2024, which enforced an immediate effect near the election registration period, thereby creating an administrative force majeure situation (*factum principis*) for the General Elections Commission (Prasetya, 2026). Although the restoration of citizens' fundamental rights in Decision No. 62/PUU-XXII/2024 constitutes an affirmation of popular sovereignty, the future integration of the prospective overruling principle is required to formulate an ideal constitutional cut-off zone, ensuring that the restoration of substantive justice is executed within a stable, secure, and legally certain electoral management framework.

### **C. Legal Implications and Mandates of Constitutional Engineering Post-Constitutional Court Decision No. 62/PUU-XXII/2024**

Understanding the constitution as the fundamental instrument of state governance is not limited to a rigid and static normative text. The constitution is a living document reflecting national compromise and guiding the division of power. Within modern constitutional law studies, an academic consensus recognizes that foundational legal rules are established to construct a balanced order of power, extending beyond a mere list of prohibitions and mandates for state institutions. This structuring demands caution in designing inter-organizational relations to prevent the concentration of power within a specific branch, which could lead to the paralysis of the constitutional system. The abstract characteristic of foundational legal texts provides a theoretical mandate for state institutions to translate these general principles into operational, accountable technical regulations oriented toward protecting citizens' human rights.

In this context, constitutional engineering positions the constitution as more than a static normative document containing a collection of power-regulating mandates and prohibitions. Constitutional engineering represents a structural design of constitutional texts and norms formulated to direct, shape, and regulate the behavior of state institutions by providing a framework of incentives, rewards, and deterrents (*incentivos, recompensas y factores disuasorios*) (Vela Ávalos, 2022: 185). Its implementation encompasses the division of institutional organic functions involving legislative, executive, and judicial aspects, alongside regulating inter-organic control mechanisms (checks and balances) (Vela Ávalos, 2022: 186). These inter-organic relations determine the character of interaction among branches of power, whether agonal—such as mutual blocking through the use of veto rights and norm invalidations—or dialogic, taking the form of collaborative relationships without an absolute final arbiter among the state institutions (Vela Ávalos, 2022: 188). Such choices in structural design affect the resilience and acceptance limits of the constitutional legal system toward reforms or legal transplantation processes from the outside.

Correspondingly, constitutional engineering is defined as a measure to restructure or redesign the constitutional system to resolve political crises within democracies (Editorial, 2006: 325). Such crises are characterized by a widening gap between the public and the rulers, unilateral dominance of the central executive power, and the inability of representative institutions to respond to the public will (Editorial, 2006: 325). This restructuring is executed through structural reforms of the state's foundational law, such as altering the general election system to enhance citizen representation, transferring certain authorities from the executive branch to parliament, and decentralizing power from the central government to regional levels (Editorial, 2006: 326). Although the constitutional engineering approach serves as a theoretical alternative to the decline of formal citizen participation, its effectiveness varies across nations (Editorial, 2006: 326). Engineering measures adopted across different countries are often contradictory and face risks of failure, since changes in positive legal rules do not automatically repair the sociological relationship between voters and their representatives in parliament (Editorial,

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2006: 327). Although constitutional engineering is ideally utilized to strengthen democratic foundations, within global constitutionalism, the concept can be employed as an instrument of legal manipulation by specific political actors to retain power. In post-coup or transitional contexts, constitutional engineering manifests as legal manipulation through the alteration, suspension, or revocation of specific constitutional provisions by authoritarian or military actors (Ali, Ben Hammou, & Powell, 2022: 327). Such actions do not aim to overhaul the state's institutional system, but rather exploit and modify existing legal rules to shift the balance of power, such as reducing the share of civilian representation in the legislature and the cabinet (Ali, Ben Hammou, & Powell, 2022: 329). These measures are intended to secure long-term control over administrative functions and dominate general election commissions (Ali, Ben Hammou, & Powell, 2022: 332). Through the capture of these electoral instruments, rules on candidacy policies are designed to benefit the ruling faction and restrict the mobility of political rivals, thereby ensuring that electoral victory yields formal legitimacy (ex-post legitimacy) for their power (Ali, Ben Hammou, & Powell, 2022: 333).

Consequently, the exploitation of formal legal channels for elitist interests gives rise to the concept of presidential constitutional engineering (Fiala & Tungul, 2025: 472). This concept refers to efforts by political elites, particularly incumbent presidents, ruling political parties, and their supporting coalitions, to modify constitutional rules and formal laws governing presidential authority, term limits, succession, and electoral competition (Fiala & Tungul, 2025: 472). Such engineering actions are implemented in the pre-election phase with the objective of consolidating, reinforcing, or extending the dominance of executive power over legal and procedural aspects within constitutional law texts (Fiala & Tungul, 2025: 473). The instruments employed include the removal or addition of presidential term limits, the extension of term durations, the enactment of a new constitution to reset the term count (point zero), the alteration of election systems to diminish the prospects of opposition coalitions, and discriminatory criteria restricting the rights of rival candidates based on age, lineage, or duration of residence (Fiala & Tungul, 2025: 475). This concept focuses on manipulative institutional and formal-legal changes, thereby distinguishing it from ordinary abuses of political power or unconstitutional coercive acts (Fiala & Tungul, 2025: 479). Regarding its relation to the legal implications post-Constitutional Court decision, understanding these various models of constitutional engineering serves to analyze how norm changes adjudicated by the judiciary are executed by political authorities to preserve the balance of state power while preventing the subversion of formal law.

These dynamics of constitutional engineering occurred in Indonesia through the invalidation of the presidential candidacy threshold norm regulated under the General Election Law. The invalidation of the presidential threshold norm via Constitutional Court Decision No. 62/PUU-XXII/2024 entails legal consequences in the form of a legal vacuum within technical electoral regulations. This condition necessitates a legislative response to ensure readiness for the 2029 General Election. The Court issued a constitutional mandate to the legislature to conduct regulatory restructuring or constitutional engineering. This directive aims to formulate an inclusive candidacy mechanism design while anticipating and mitigating potential obstacles within the constitutional system (Novita et al., 2025). The absence of new technical rules post-decision could disrupt procedural legal certainty; thus, the legislature is obligated to devise a proportional legal framework of restriction that does not conflict with the substance of the ruling.

The implication of the decision is the opening of equal access to political participation for all political parties participating in the general election. The constitutional right to nominate presidential and vice-presidential candidate pairs is no longer restricted by the prerequisite of seat or vote acquisition in the preceding general election. This alteration in candidacy provisions will transform party coalition patterns in Indonesia. Coalitions originally formed due to the forced fulfillment of mathematical percentages are projected to shift toward voluntary coalitions grounded in shared policy platforms and ideologies (programmatic coalitions) (Isra, 2010: 120). This development encourages political parties to focus on strengthening policy platforms rather than engaging in transactional politics aimed at meeting executive candidacy percentage requirements.

Although leading to the expansion of political inclusivity, the removal of the threshold introduces theoretical and practical challenges to constitutional stability. The absence of preliminary screening instruments risks triggering political fragmentation at the national level. A polarized multi-party system lacking simplification mechanisms carries vulnerabilities to governmental stability (Sartori, 1997: 150). An increased number of presidential candidates may fragment voter concentration, thereby elevating the potential for a second-round presidential election. This condition impacts state expenditures by inflating budgets and prolonging political uncertainty due to an extended electoral competition period.

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Within this context, an electoral design lacking candidacy thresholds raises concerns regarding the formation of a minority presidency, wherein the elected president is not sustained by a representative parliamentary support base. This imbalance of political power potentially affects the relationship between the executive and legislative branches during public policy deliberations. Such conditions can result in an executive-legislative deadlock that impedes national legislative and budgeting processes (Isra, 2016: 198). An elected president unsupported by a majority of seats in the House of Representatives will face obstacles in implementing work programs, as proposed policies are vulnerable to political rejection by parliament.

To balance participatory inclusivity with the effectiveness of presidential governance, constitutional engineering within the revision of the general election law requires applying incentive and disincentive mechanisms. One applicable instrument is mandatory nomination for political parties, enforced by administrative sanctions in the form of disqualification from participation in the subsequent period for parties failing to field a candidate pair. This policy is intended to establish responsible party institutional governance and prevent political uncertainty within a multi-party system (Asshiddiqie, 2006: 378). This proportional regulatory restructuring serves to restore the function of general elections as a mechanism for legitimate leadership circulation grounded in popular sovereignty (Budiardjo, 2008: 230). Through a combination of mandatory nominations and the prohibition of numerical restrictions, the party system is directed to operate accountably without sacrificing the fundamental rights of citizens.

This shift in constitutional positioning post-Constitutional Court Decision No. 62/PUU-XXII/2024 requires political actors and the legislature to re-examine the electoral engineering architecture in Indonesia. Within the context of a presidential system, strengthening the executive institution must not be achieved by restricting the constitutional rights of minor political parties or limiting alternative choices for voters in determining national leadership. The new structural design choices mandated by the Court are placed within a dialogic framework involving societal elements. Consequently, constitutional engineering is directed toward building democratic institutions that are healthy, rational, and adherent to the original intent of the constitutional framers.

## CONCLUSION

Constitutional Court decisions in the period prior to Decision No. 62/PUU-XXII/2024 maintained the constitutionality of the presidential candidacy threshold norm based on the doctrinal foundation that determining the support percentage constitutes an open legal policy. Under a judicial restraint approach, the Court positioned itself as a negative legislator that extended deference to the political discretion of the legislature to preserve constitutional stability, strengthen governability, and promote the simplification of the party system through administrative-electoral regulations. However, this legal paradigm shifted in Decision No. 62/PUU-XXII/2024 through the application of the responsive judicial review doctrine, which prioritizes substantive justice and popular sovereignty. The Court assessed that the open legal policy status of the threshold norm could not be maintained because it contradicts parameters of morality, rationality, and justice, while also triggering societal cleavages and the potential for uncontested candidates. The legal rationale for this shift is grounded in the interpretation of the framers' original intent regarding Article 6A of the 1945 Constitution of the Republic of Indonesia, the affirmation of the periodicity of concurrent elections, and the rejection of superimposing parliamentary logic onto the presidential system; consequently, the right to nominate presidential and vice-presidential candidate pairs is declared inherent to every political party participating in the current general election, unobstructed by past legislative seat or vote percentage requirements.

As a prescriptive measure, the legislature is recommended to revise Law No. 7 of 2017 on General Elections to address the technical legal vacuum prior to the conduct of the 2029 General Election. This revision must formulate a new constitutional engineering design by removing seat or vote percentage prerequisites for presidential candidacy, replacing them with a mandatory nomination mechanism for all political parties participating in the current general election. To mitigate risks of political fragmentation and the potential for a two-round election that burdens the state budget, the new regulation must include a disincentive clause in the form of an administrative sanction of disqualification from participation in the subsequent general election for political parties that fail to exercise their right to nominate a candidate pair. Correspondingly, the legislature, together with the General Elections Commission, is obligated to integrate the principle of meaningful public participation throughout all stages of drafting the election law to ensure that the resulting technical regulatory formulations rest upon the fulfillment of citizens' substantive voting rights and guarantee procedural legal certainty for the stability of a democratic presidential governance system.

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