

# Indonesian Presidential Election on Presidential Threshold Policy: Evidence from Various Countries



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## ABSTRACT

The study develops a constitutional design to regulate the number of presidential and vice-presidential candidates following the Constitutional Court's annulment of the presidential threshold. It observes that the absence of a model framework from the Court creates a regulatory vacuum that may expose the presidential election to political fragmentation, heightened polarization, and procedural inefficiencies. To address this issue, the research aims to construct a constitutional framework capable of enhancing electoral stability while sustaining democratic competitiveness. The study employs a normative juridical method supported by statutory analysis, case studies, and comparative assessment to identify feasible regulatory alternatives. The analysis demonstrates that the most effective approach to limiting the number of candidates is to regulate the number of political parties eligible to participate in general elections, given their role as the primary gatekeepers of nomination. The findings propose several regulatory instruments, including a moratorium on the establishment of new political parties, stricter requirements for party formation, enhanced eligibility criteria for electoral participation, a minimum age requirement for political parties, a maximum threshold for the number of qualified parties, and the disqualification of previously registered parties that fail to meet revised standards. The study concludes that these mechanisms collectively form a coherent constitutional strategy for maintaining a manageable number of presidential candidates and ensuring the continuity, integrity, and effective governance of the electoral process.



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## 1. Introduction

The Indonesia Constitutional Court, through Decision No. 62/PUU-XXII/2024, annuls the provision governing the electoral threshold as a prerequisite for nominating presidential and vice-presidential candidates. This ruling marks a significant shift in the Court's jurisprudence, as it departs from its longstanding position in earlier decisions in which the Court consistently refused to invalidate the presidential threshold on the grounds that its formulation constituted an



exercise of open legal policy.<sup>1</sup> Article 222 of Law No. 7 of 2017 on General Elections (hereinafter the Election Law), which requires presidential and vice-presidential candidates to be nominated by a political party or coalition holding at least 20 percent of seats in the House of Representatives (DPR) and/or obtaining 25 percent of the valid national vote in the previous DPR election, has been challenged before the Constitutional Court on 33 separate occasions. The Court rejected all but one petition, with Decision No. 62/PUU-XXII/2024 standing as the sole case granted and formally delivered on 2 January 2025. This decision assumes a landmark position in Indonesia's constitutional jurisprudence, as it reorients the constitutional democratic framework toward a trajectory deemed more consistent with foundational constitutional principles.<sup>2</sup>

This outcome was unexpected, given that the Constitutional Court had consistently rejected all 33 prior petitions challenging the presidential threshold provision. In several decisions, including Decision No. 53/PUU-XV/2017, No. 49/PUU-XVI/2018, No. 74/PUU-XVIII/2020, and No. 66/PUU-XIX/2021, the Court repeatedly affirmed that the determination of the threshold constituted an open legal policy of the legislature, namely the House of Representatives and the President. In other instances, the Court dismissed petitions as inadmissible due to formal deficiencies, particularly the applicant's inability to demonstrate legal standing.<sup>3</sup> Decision No. 62/PUU-XXII/2024 expands the opportunity for small political parties to participate directly in the presidential and vice-presidential nomination process. By eliminating the restrictive threshold, the ruling broadens the scope of political competition and reduces the structural dominance previously held by large party coalitions. As a result, the decision strengthens the constitutional democratic process by fostering a more inclusive and competitive electoral landscape.

This decision may align with the broader democratic trends in several countries that do not impose an electoral threshold for presidential elections.<sup>4</sup> Countries such as the United States, Brazil, Mexico, Argentina, and the Philippines have purely presidential systems of government, like Indonesia, but do not implement a presidential threshold. The presidential candidacy process is more open and does not depend on the results of previous legislative elections. These nations, including

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<sup>1</sup> Sholahuddin Al-Fatih, 'Interpretation of Open Legal Policy by the Constitutional Judges in Judicial Review of Parliamentary Thresholds', *Diponegoro Law Review*, 6.2.2 (2021), 231–46 <https://doi.org/https://doi.org/10.14710/dilrev.6.2.2021.231-246>

<sup>2</sup> Djayadi Hanan, Tri Sulistianing Astuti, and Luthfi Widagdo Eddyono, *Electoral Reform Through the Indonesian Constitutional Court: Constitutionality of Presidential Candidacy Threshold in Indonesia*, *Jurnal Konstitusi*, 2025, XXII <https://doi.org/10.31078/jk2223>

<sup>3</sup> Imawan Sugiharto and Erwin Aditya Pratama, 'Examining the Legal Impact of Presidential Threshold Implementation in the 2024 Presidential Election', *Jurnal Dinamika Hukum*, 22.2 (2022), 430 <https://doi.org/10.20884/1.jdh.2022.22.2.3429>

<sup>4</sup> Abdul Ghoffar, 'Problematisasi Presidential Threshold: Putusan Mahkamah Konstitusi Dan Pengalaman Di Negara Lain', *Jurnal Konstitusi*, 15.3 (2018), 480 <https://doi.org/10.31078/jk1532>

the United States, often cited as a model of a mature democracy, have removed such thresholds to enable broader public participation in presidential elections, both as candidates and as voters. Several countries have proven that democracy can still function effectively without a threshold, even in multi-party systems. A two-round (run-off) system provides a way to ensure the elected president has majority legitimacy without restricting who can run.<sup>5</sup>

On the other hand, the decision may also be seen as a potential misstep, as it could lead to an excessive number of presidential and vice-presidential candidates, far beyond the desirable limit. This is because the decision opens the possibility for every political party to independently nominate a candidate pair, potentially resulting in as many as 30 candidate pairs, as previously cautioned by the Constitutional Court.<sup>6</sup> In other words, while the Court seeks to overcome the overly restrictive number of candidate pairs seen in previous elections, it equally warns against an excessive spread of candidates. Accordingly, the Court recommends that the legislature engage in constitutional modification to introduce regulatory mechanisms that limit the number of presidential and vice-presidential candidates.<sup>7</sup>

The Court's suggestion calls for various proposals regarding the nature of such regulatory design, especially as the Court did not specify an ideal minimum or maximum number of candidate pairs. Therefore, it is necessary to develop ideas or conceptual proposals for designing candidate limitations that are established in constitutional principles, rather than being derived from manipulative legislative interests. Based on an in-depth review, no prior studies have yet proposed a scientific approach to the design of limitations on the number of presidential and vice-presidential candidates following the Constitutional Court's recent decision. This is confirmed by several studies conducted over the past three years, which discuss the presidential threshold within Indonesia's electoral system. These studies include; (1) Yasinta Dyah Paramitha Hapsari and Retno Saraswati, who examined the impact of implementing the presidential threshold in simultaneous elections on democratic processes in Indonesia. The presidential threshold is seen as an instrument that is still necessary; however, to minimize the negative impact in the context of simultaneous elections, it is proposed to lower the presidential

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<sup>5</sup> Gianluca Passarelli and Matthew Bergman, 'Runoff Comebacks in Comparative Perspective: Two-Round Presidential Election Systems', *Political Studies Review*, 21(3) (2023), 608–24 <https://doi.org/https://doi.org/10.1177/14789299221132441>

<sup>6</sup> Hedwig Adianto Mau, 'Constitutional Implications of Abolishing the Presidential Threshold on Democracy and the Electoral System in Indonesia', *Legal Standing : Jurnal Ilmu Hukum*, 9.3 (2025), 669–78 <https://doi.org/https://doi.org/10.24269/lis.v9i3.11579>

<sup>7</sup> Navis Yusrizal and Ririn Nuraini, 'The Abolition Of The Presidential Threshold From The Perspective Of Fikih Siyasah (A Study Of Constitutional Court Decision No. 62/Puu-Xxii/2024)', 25.1 (2025), 103–16 <https://doi.org/http://dx.doi.org/10.24014/hi.v25i1.36672>

threshold requirements.<sup>8</sup> The weakness is that it does not explain how and by what figures the presidential threshold should be reduced.; (2) Songga Aurora Abadia and Fitra Arsilb, who explored the mechanism for determining electoral thresholds and its effect on the stability of the presidential system and the development of a simplified multiparty system in Indonesia.<sup>9</sup> This study provides a fairly good picture, especially in terms of the development of the threshold mechanism and the determination of requirements in the electoral system in Indonesia. The threshold is seen as an important instrument in simplifying the party system and strengthening presidentialism. However, this narrative often contradicts other critical findings that say the threshold undermines proportionality, wastes voters' voices, and violates the principles of open democracy. (3) Fawzi Ali Akbar Rasfanjani, et al, who addressed the challenges associated with the presidential threshold system from the perspective of Indonesia's presidential system.<sup>10</sup> Indonesian presidential system. Some of the impacts of the presidential threshold are outlined by examining the 2019 election, but are not accompanied by suggestions for future improvements and the analysis is not yet in-depth enough.; and (4) Arifudin and Susi Dian Rahayu discuss the redesign of the presidential threshold system following the constitutional court decision Number 62/PUU-XXII/2024.<sup>11</sup> Carrying the concept of legal prismatic and the integration of democratic values according to Pancasila in redesigning the presidential threshold. Because it is a theoretical concept, the design proposal is weak because it is not technical.

Existing research has yet to engage with the most recent Constitutional Court ruling. This highlights the need for research on the design of candidate limitations in the post-decision context. Such research is vital to respond to and provide an academic contribution to the constitutional engineering measures for limiting presidential and vice-presidential candidates, as mandated by the Constitutional Court. This comprehensive proposal can be achieved by investigating the following questions: what is the ratio decidendi and the implications of the Constitutional Court's shift in its ruling on the presidential threshold, how is the presidential threshold practiced in several presidential system countries, and how should the

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<sup>8</sup> Yasinta Dyah Paramitha Hapsari and Retno Saraswati, 'Dampak Pelaksanaan Presidential Threshold Pada Pemilu Serentak Terhadap Demokrasi Di Indonesia', *Jurnal Pembangunan Hukum Indonesia*, 5.1 (2023), 70–84 <https://doi.org/10.14710/jphi.v5i1.70-84>

<sup>9</sup> Songga Aurora Abadi, 'Mekanisme Penetapan Ambang Batas (Threshold) Terhadap Stabilitas Sistem Presidensial Dan Sistem Multipartai Sederhana Di Indonesia', *Jurnal Konstitusi Dan Demokrasi*, 2.1 (2022), 10–35 <https://doi.org/10.7454/jkd.v2i1.1202>

<sup>10</sup> Fawzi Ali Akbar Rasfanjani, Jumadi, and Tri Suhendra Arbani, 'Problematisasi Sistem Presidential Threshold Dalam Pemilihan Presiden Dan Wakil Presiden Dalam Perspektif Sistem Presidensial Di Indonesia', *Alauddin Law Development Journal*, 5.1 (2023), 24–32 <https://doi.org/10.24252/aldev.v5i1.20297>

<sup>11</sup> Arifudin and Susi Rahayu, 'Redesign of The Presidential Threshold System Following The Constitutional Court Decision Number 62/PUU-XXII/2024.', *The Digest: Journal of Jurisprudence and Legisprudence*, 6.1 (2025), 107–32 <https://doi.org/https://doi.org/10.15294/digest.v6i1.29019>

constitutional design for limiting presidential and vice-presidential candidates be structured in accordance with constitutional principles. Through this design offering, it is hoped that this article can provide a constructive contribution to the revision of the Election Law that will be carried out by lawmakers in the future.

## 2. Research Method

This study utilizes a normative legal research approach. Normative legal research within legal science examines legal matters via prescriptive evaluation or what is considered ideal.<sup>12</sup> Through this normative legal research method, the main approaches used are the statutory regulatory approach, the contextual approach, and the case approach.<sup>13</sup> This study identifies the problematic nature of the presidential election threshold and the legal developments that emerged after Constitutional Court Decision No. 62/PUU-XXII/2024 as its primary objects of analysis. It applies a statutory approach to examine the legal framework governing presidential elections in Indonesia, ranging from the Election Law to technical regulations issued by the General Elections Commission, in order to determine how these instruments regulate candidacy requirements and whether they contain normative conflicts or legal constraints. The research employs a conceptual approach to analyse the theoretical foundations and principles relevant to presidential elections, particularly those associated with the presidential threshold. Constitutional democracy theory, the principles of the presidential system, and the fundamental norms of electoral governance serve as analytical lenses for evaluating existing issues and formulating the proposed constitutional design. These theoretical frameworks are used because they directly correspond to the core problems addressed in the study. The research also adopts a case approach to review the practice of presidential elections across different electoral periods, with specific attention to the evolving jurisprudence of the Constitutional Court concerning judicial review of the presidential threshold. The legal materials consist of statutory regulations, Constitutional Court decisions, scholarly books, and academic journal articles. The analysis is conducted using descriptive and prescriptive techniques to systematically interpret legal norms and propose coherent regulatory recommendations.

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<sup>12</sup> Tunggal Ansari Setia Negara, 'Normative Legal Research in Indonesia: Its Origin and Approaches', *Audito Comparative Law Journal (ACLJ)*, 4.1 (2023), 2023 <https://doi.org/https://doi.org/10.22219/acjl.v4i1.24855>

<sup>13</sup> Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia* (UMM Press, 2023) [https://books.google.co.id/books/about/Perkembangan\\_Metode\\_Penelitian\\_Hukum\\_di.html?hl=id&id=EObiEAAAQBAJ&redir\\_esc=y](https://books.google.co.id/books/about/Perkembangan_Metode_Penelitian_Hukum_di.html?hl=id&id=EObiEAAAQBAJ&redir_esc=y)



### 3. Results and Discussion

#### *The Implications of the Constitutional Court Decisions Regarding Presidential Threshold*

The implementation of the presidential threshold, set at 20% of seats in the DPR and/or 25% of the national valid vote, has sparked extensive debate.<sup>14</sup> Since its introduction in the 2009 presidential election, it has led to a decline in the number of candidates running for the presidency.<sup>15</sup> The 2009 election featured only three candidates, the 2014 and 2019 elections were contested by only two candidates, and the 2024 election saw three candidates. This contrasts with the 2004 election, which was contested by five candidates. A limited number of candidates will only strengthen political oligarchies and cartel coalitions.<sup>16</sup> It will also exacerbate political and social polarization due to the disparity in the choice of only two or three candidates.<sup>17</sup>

Efforts to annul the presidential threshold provision have been made repeatedly through judicial review at the Constitutional Court. However, in 33 decisions, the Court consistently maintained that the presidential threshold falls under the category of open legal policy, meaning that it is a matter within the discretion of the legislature and not a constitutional issue.<sup>18</sup> In other words, the numerical threshold is viewed as a technical matter rather than a constitutional one. Through Decision No. 62/PUU-XXII/2024, the Constitutional Court not only changed its legal position regarding the legal standing of the Petitioner but also its legal position fundamentally regarding the unconstitutionality of the presidential nomination threshold. The Constitutional Court stated that the minimum threshold percentage of candidate pair proposals regulated in Article 222 of the Election Law not only contradicts political rights and people's sovereignty but also violates morality, rationality, and is an intolerable injustice, and is contrary to the 1945 Constitution of the Republic of Indonesia. Therefore, there are strong and

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<sup>14</sup> Mahesa Rannie, Retno Saraswati, and Fifiana Wisnaeni, 'Does the Reform of the Parliamentary and Presidential Threshold Strengthen the Presidential System in Indonesia?', *Sriwijaya Law Review*, 8.1 (2024), 133–51 <https://doi.org/10.28946/slrev.Vol8.Iss1.3157.pp133-151>

<sup>15</sup> Alex Cahyono and others, 'Analisis Kritis Terhadap Penerapan Presidential Threshold Dalam Pemilihan Umum 2024: Perspektif Hukum Normatif Di Indonesia', *Jurnal Supremasi*, 13.2 (2023), 1–14 <https://doi.org/https://doi.org/10.35457/supremasi.v13i2.3041>

<sup>16</sup> Rahmat Muhajir Nugroho, 'Implications of the Presidential Threshold Implementation on the Formation of Cartel Coalitions', 24.1 (2024), 14–20 <https://doi.org/10.30595/kosmikhukum.v24i1.14521>

<sup>17</sup> Rafiqqa Sari and others, 'Polarisasi Presidential Threshold Dalam Sistem Presidensial Di Indonesia: Polarization of the Presidential Threshold in the Presidential System in Indonesia', *Japhtn-Han*, 3.2 (2024), 133–48 <https://doi.org/https://doi.org/10.55292/japhtnhan.v3i2.162>

<sup>18</sup> Al Mas'udah, 'The Presidential Threshold As An Open Legal Policy In General Elections In Indonesia', *Prophetic Law Review*, 2.1 (2020), 37–58 <https://doi.org/10.20885/plr.vol2.iss1.art3>

fundamental reasons for the Constitutional Court to shift from the position in its previous decisions.<sup>19</sup>

The Constitutional Court's shift in stance on the presidential threshold occurred due to a reconfiguration of judges' decision-making. In Decision No. 62/PUU-XXII/2024, two Constitutional Justices, Ridwan Mansyur and Arsul Sani, had never previously ruled on a presidential threshold case, having only begun their duties at the Constitutional Court on December 9, 2023, and January 18, 2024, respectively. Justices Suhartoyo and Saldi Isra were the two Constitutional Justices who consistently held the view that the presidential threshold provision was unconstitutional and should be removed from the presidential election candidacy requirements since the judicial review of Article 222 of the Election Law between 2017 and 2023. Meanwhile, Constitutional Justices Arief Hidayat, Enny Nurbaningsih, and M. Guntur H. Hamzah were the three Justices who changed their legal stance in ruling on the threshold case. In their previous decisions, they considered the presidential threshold to be an open legal policy. Two other judges, Anwar Usman and Daniel Yusmic P. Foekh, expressed a dissenting opinion. They argued that the Constitutional Court should declare the Petitioners as having no legal standing and therefore their petition cannot be accepted (*niet ontvankelijke verklaard*). The reason was that the Constitutional Court, in its previous decisions on the threshold, had emphasized that the parties with legal standing to file a petition are: (i) political parties or coalitions of political parties participating in the election; and (ii) individual citizens who have the right to be elected and supported by political parties or coalitions of political parties participating in the election to nominate themselves or be nominated as presidential and vice-presidential candidates or to include supporting political parties to jointly file a petition.<sup>20</sup>

The Court's steady stance on legitimizing the presidential threshold as a prerequisite for political parties to nominate presidential and vice-presidential candidates was overturned in Decision No. 62/PUU-XXII/2024, delivered on Thursday, 2 January 2025, in which the Court declared the application of the presidential threshold to be unconstitutional.<sup>21</sup> The Constitutional Court's shift in stance regarding the presidential threshold undoubtedly reflects a significant change in judicial reasoning, likely grounded in critical constitutional considerations, given the potential impact of such a decision on the Court's

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<sup>19</sup> Muhammad Ashari, Ardiansah Ardiansah, and Andrizal Andrizal, 'Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024 Terhadap Mekanisme Pencalonan Presiden Dan Wakil Presiden Di Indonesia', *AKADEMIK: Jurnal Mahasiswa Humanis*, 5.3 (2025), 1437–45 <https://doi.org/10.37481/jmh.v5i3.1615>

<sup>20</sup> Ummu Hanie, Sidik Adi Purnama, and Faiz Rahmanto, 'Examining the Constitutional Court ' s Changing Approach to the Presidential Threshold', *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang*, 8.193 (2025), 245–65 <https://doi.org/10.33474/yur.v8i2.23836>

<sup>21</sup> Asri Eka Mutiara, 'Demokratisasi Pemilu Dan Penguatan Partisipasi Publik Pasca Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024', *Jurnal Yustisiabel*, 9.April (2025), 38–51 <https://doi.org/https://doi.org/10.32529/yustisiabel.v9i1.3921>

credibility and public trust.<sup>22</sup> When the Court moves from rejecting to granting a petition, it naturally invites public scrutiny regarding the reasoning and consistency of constitutional justices.<sup>23</sup> It must be acknowledged that the judicial review of Article 222 of the Election Law has gained substantial public attention, both because it is one of the most frequently challenged provisions and because it directly concerns the regulation of competition for the highest executive offices in the state, particularly the election of the President and Vice President, or in other words, the process by which the first and second highest offices in the Republic of Indonesia are determined.<sup>24</sup>

The Court's shift in perspective regarding the presidential threshold rests on several principal considerations. First, from a textual interpretation, the phrase "nominated by a political party or a coalition of political parties participating in the general election" does not contain any requirement that such parties must secure a particular percentage of seats or votes in the DPR to nominate presidential and vice-presidential candidates. Second, from a substantive standpoint, when examined in relation to Article 6A of the 1945 Constitution, the presidential threshold contradicts the constitutional engineering reflected in Article 6A paragraph (3), which implicitly accommodates the possibility of more than two candidate pairs. The threshold restricts political rights and diminishes popular sovereignty by narrowing voter choice and limiting the spectrum of candidates available in the electoral process. For this reason, the Court considers it necessary to prioritise the protection of citizens' constitutional rights, particularly the electorate's right to access a broader and more diverse pool of candidates nominated by political parties or coalitions participating in the election. Third, a close review of recent political developments in Indonesia reveals a discernible trend toward structuring presidential elections to produce only two candidate pairs, thereby reinforcing concerns about reduced electoral competitiveness.<sup>25</sup> However, Indonesia's historical experience with direct presidential and vice-presidential elections demonstrates that a binary electoral contest frequently produces deep social polarisation. If this condition remains unmitigated, the resulting divisions may threaten social cohesion and undermine the nation's pluralistic foundations. Continued dependence on a two-candidate format also

<sup>22</sup> Nur Faisyah, Muchamad Ali Safa'at, and Riana Susmayanti, 'Constitutional Parameters of Judicial Activism in the Indonesian Constitutional Court', *International Journal of Business, Law, and Education*, 6.1 (2025), 724–38 <https://doi.org/10.56442/ijble.v6i1.1073>

<sup>23</sup> Saiful Risky, Sholahuddin Al-Fatih, and Mabarroh Azizah, 'Political Configuration of Electoral System Law in Indonesia from State Administration Perspective', *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.1 (2023), 119–30 <https://doi.org/10.24090/volkgeist.v6i1.7940>

<sup>24</sup> Abdul Ukas Marzuki, Harmono Harmono, and Solichin Solichin, 'The Role of the Constitutional Court in Testing the Presidential Threshold Law for the 2024 Presidential Election', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 22.2 (2024), 1–12 <https://doi.org/10.31941/pj.v22i2.4336>

<sup>25</sup> Achmad Zuhdi, Serhii Ablamskyi, and Arya Anggara, 'Judicial Review of Presidential Threshold Decisions: The Dynamics of Constitutional Injury', *Kosmik Hukum*, 25.1 (2025), 48–65 <https://doi.org/10.30595/kosmikhukum.v25i1.24476>



creates a serious risk that future presidential elections may involve only a single candidate pair. This pattern has already appeared in several regional elections, where single-candidate contests or so-called “empty box” elections, in which voters choose between one candidate and a blank option, have become increasingly prevalent.<sup>26</sup>

In addition to removing the threshold, the Constitutional Court also issued a judicial order to lawmakers, allowing ‘constitutional engineering’ to be implemented in the revision of the Election Law. This order took into account the following: first, all political parties participating in the election have the right to propose presidential and vice-presidential candidates. Second, the nomination of candidate pairs by political parties or coalitions of political parties participating in the election is not based on the percentage of seats in the House of Representatives or the number of valid votes nationally. Third, in proposing candidate pairs, political parties participating in the election may combine all coalitions of political parties participating in the election without causing dominance of political parties or coalitions of political parties, thus limiting the number of candidate pairs and limiting voter choices. Fourth, political parties participating in the election that do not propose candidate pairs will be subject to sanctions in the form of a ban on participating in the next election period. And fifth, the formulation of the intended constitutional engineering includes amendments to Election Law that involve the participation of all parties concerned with the implementation of the election, including political parties that do not obtain seats in the House of Representatives, by implementing the principle of meaningful public participation.<sup>27</sup>

In the subsequent phase, the Indonesia Constitutional Court’s decision may lead to a substantial surge in the number of presidential and vice-presidential candidates, potentially multiplying several times over.<sup>28</sup> This potential increase can be mapped as follows: First, with the annulled of the presidential threshold, political parties are no longer required to secure a specific percentage of votes to nominate presidential and vice-presidential candidates. Consequently, political party in Indonesia may independently nominate its own candidate pair, resulting in a situation where parties propose different candidates for one another. Second, the Constitutional Court’s decision does not oblige political parties to form coalitions. Rather, it frames coalition-building as an option. The Constitutional

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<sup>26</sup> Firdaus Arifin, ‘Legal Implications of Regional Head Elections With a Sole Candidate: A Perspective of State Administrative Law’, *Cepalo*, 8.2 (2025), 145–56 <https://doi.org/10.25041/cepalo.v8no2.3673>

<sup>27</sup> M Afandi, F Yudhi Priyo Amboro, and Triana Dewi Seroja, ‘Reconstruction of the Election Simultaneity Model through the Constitutional Court Decision Number 135 / PUU-XXII / 2024 : Constitutional or Unconstitutional?’, *Journal of Law, Politic and Humanities*, 6.1 (2025), 221–36 <https://doi.org/https://doi.org/10.38035/jlph.v6i1.2446>

<sup>28</sup> Aditya Andela Pratama and others, ‘Revitalisasi Konstitusional Berbasis Pancasila Dalam Penghapusan Presidential Threshold’, *Pancasila: Jurnal Keindonesiaan*, 5.1 (2025), 73–88 <https://doi.org/https://doi.org/10.52738/pjk.v5i1.725>

Court mentioned that political parties involved in the election are allowed to create coalitions, as long as such coalitions do not lead to the domination of certain parties or coalitions, which could result in a limited number of candidate pairs and reduce voter choice. Thus, the decision only prohibits coalition formations that would restrict the number of presidential and vice-presidential candidates able to compete in the election. Third, the ruling stating that “political parties that do not nominate a presidential and vice-presidential candidate shall be barred from participating in the next election” introduces a punitive dimension. This provision effectively compels all political parties to put forward their own candidate pairs to avoid disqualification from future electoral participation.<sup>29</sup>

Fourth, the potential increase in the number of candidates may also be attributed to Indonesia's large population. The disparity between population size and the minimum membership requirements for establishing a political party means that Indonesia's population could, in theory, support the formation of dozens of new parties. This demographic reality may be exploited by political figures seeking to establish new parties as vehicles for their presidential or vice-presidential ambitions. Fifth, the rise in the number of candidates is further supported by the historical context of political party formation in Indonesia, where parties are often established not based on shared ideology or long-term political vision, but out of personal grievances or pragmatic interests. For example, Partai Nasional Demokrat (NasDem) was founded by Surya Paloh following his defeat in Golongan Karya's (Golkar) leadership contest, while Partai Gelombang Rakyat (Gelora) was established by Anis Matta after he was no longer selected as President of Partai Keadilan Sejahtera (PKS).<sup>30</sup> Sixth, Indonesia currently has no legal framework to limit the number of political parties. This indicates that anyone can establish a political party at any time, provided they meet the formal requirements outlined in existing legislation.<sup>31</sup> The absence of such restrictions makes it difficult for lawmakers to prevent a surge in presidential and vice-presidential candidates, as the more political party exist, the more candidates may be nominated. Limiting the number of parties can only occur organically, such as when a party fails to meet the eligibility criteria to participate in an election.

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<sup>29</sup> Cecilia Cecilia and Faonaso Harefa, 'Model of State Defense Strengthening Responding to the Impact of Eliminating the Presidential Threshold in Order to Realize Inclusive Democracy', *Eduvest - Journal of Universal Studies*, 5.9 (2025), 11471–86 <https://doi.org/10.59188/eduvest.v5i9.52175>

<sup>30</sup> Sulistyani Eka Lestari and Ahmad Siboy, 'The Alternative Designs Effort to Simplify The Number of Political Parties in Indonesia', *Jurnal Pembaharuan Hukum*, 8.2 (2021), 257–72 <https://doi.org/10.26532/JPH.V8I2.16147>.

<sup>31</sup> Lingga Zalfa Adhiba and Bayangsari Wedhatami, 'Juridical Review of The Term Limitation of Political Party Chairman to Realize Constitutional Democracy in Indonesia', *Jurnal Daulat Hukum*, 8.2 (2025), 120 <https://doi.org/10.30659/jdh.v8i2.45595>

Table 1: A Total of Political Parties in Every Election

No.	Election Year	The Number of Political Parties
1	1955	172
2	1971	10
3	1977-1997	3
4	1999	48
5	2004	24
6	2009	38
7	2014	12
8	2019	14
9	2024	24

Source: Author(s), 2025

Based on the table, that any political party taking part in the general election can nominate presidential and vice-presidential candidates, it is not inconceivable that the number of political parties in Indonesia could return to levels seen in the 1955 general election, which featured 172 political parties,<sup>32</sup> or resemble the post-reform era elections, where the number of parties reached as many as 48.<sup>33</sup>

The surge in the number of presidential and vice-presidential candidates resulting from the removal of the Presidential Threshold, on the other hand, will open up the potential for new problems. Political fragmentation poses a threat due to the large number of presidential and vice-presidential candidate pairs running in a single election period. This fragmentation will divide the public vote into various narrow factions, preventing a single candidate from securing majority support in a single round. This could increase the need for two-round elections and potentially create political threats during the transition period. Furthermore, the increased number of presidential and vice-presidential candidates will also increase overall political costs, such as campaign costs, additional logistical burdens for organizing elections, network consolidation, and so on. Furthermore, although considered more representative because voters can find candidates who may more closely align with their vision and preferences, the increased number of presidential and vice-presidential candidates still carries the risk of public confusion due to the large number of presidential and vice-presidential candidates.<sup>34</sup> This problem could weaken the quality of democracy and undermine the essence of direct presidential and vice-presidential elections by the people.

In Decision No. 62/PUU-XXII/2024, the Constitutional Court considered this threat, particularly regarding the increasing number of presidential and vice-

<sup>32</sup> Sholahuddin Al-Fatih, 'Electoral Regulation in Indonesia: Is It Modern Law?', *Unnes Law Journal*, 6.2 (2020), 205–16 <https://doi.org/https://doi.org/10.15294/ulj.v6i2.41627>

<sup>33</sup> Syahrul Ibad, Fakultas Sosial, and Universitas Ibrahimy, 'Partai Politik : Tinjauan Strategi Dalam Meraih Dukungan Massa', *Publik (Jurnal Ilmu Administrasi)*, 8.2 (2020), 89–100 <https://doi.org/https://doi.org/10.31314/pjia.8.2.89-100.2019>

<sup>34</sup> Mohammad Mahmudi and Fathor Rahman, 'Rekonstruksi Sistem Pemilu Presiden Pasca Putusan MK No. 62/PUU-XXII/2024 Tentang Ambang Batas Pengusulan Calon Presiden Dan Wakil Presiden', *HUNILA: Jurnal Ilmu Hukum Dan Integrasi Peradilan*, 3.62 (2025), 100–116 <https://doi.org/10.53491/hunila.v3i2.1685>

presidential candidates due to the removal of the presidential threshold. Therefore, the Court provided five guidelines for constitutional engineering in the revision of the Election Law, as explained previously. Systemic risks such as political fragmentation, increased political costs, and public confusion due to the large number of presidential and vice-presidential candidates were not explicitly considered in the decision.<sup>35</sup> Responding to these challenges, this paper will provide a design for steps to ensure the efficiency of presidential and vice-presidential elections and maintain government stability. A description of the proposed design will be provided at the end of the discussion.

### *A Comparative Analysis of Presidential Threshold Regulations in Several Countries*

In a presidential system of government, the presidential nomination mechanism is a crucial aspect that influences a country's political dynamics and the quality of democracy.<sup>36</sup> This section will compare presidential threshold regulations in several countries with presidential systems. The presidential system serves as a limitation because Indonesia uses that system. The comparison is conducted to identify best practices and the legal and political implications arising from these differences in thresholds.

First, the United States. As a country with a long history of democracy, the United States does not implement a presidential threshold.<sup>37</sup> Article II of the American Constitution - The Executive Branch stipulates that every eligible citizen (at least 35 years old, born in the United States, and residing in the United States for at least 14 years) can run for office, either through a major party, a minor party, or as an independent candidate.<sup>38</sup> However, the nomination process through a major party is very complex and depends on the primaries in each state. In practice, there is a consistent dominance of two major parties the Democratic and Republican parties. In the 2024 presidential election, there are 24 candidates appearing on the ballot in various states in the United States in the 2024 presidential election. In addition to Kamala Harris (Democrat) and Donald Trump (Republican), there are third parties or other candidates being considered, such as Jill Stein (Green Party), Chase Oliver (Libertarian Party), and candidates from other parties and

<sup>35</sup> Thalia Christine, 'Analisis Yuridis Tentang Penghapusan Presidential Threshold Dan Dampaknya Terhadap Sistem Pemilihan Presiden Republik Inodnesia (Studi Kasus: Putusan MK Nomor 62/PUU-XXII/2024)', *Jurnal Hukum Lex Generalis*, 4.8 (2024), 1-17 <https://doi.org/https://doi.org/10.56370/jhlg.v5i8.961>

<sup>36</sup> Thomas Poguntke and Paul Webb, 'The Presidentialization of Politics in Democratic Societies : A Framework for Analysis', 2002, 1-25 <https://doi.org/10.1093/0199252017.003.0001>

<sup>37</sup> Muhammad Ali Farhan, 'Application of Presidential Threshold in Indonesia And Comparison With Several Countries', *Yurisdiksi: Jurnal Wacana Hukum Dan Sains*, 18.1 (2022), 56-67 <https://doi.org/https://doi.org/10.55173/yurisdiksi.v18i1.124>

<sup>38</sup> Harvey C. Mansfield, '"The American Election: Towards Constitutional Democracy?"', *Government and Opposition*, 16.1 (1981), 3-18 <https://doi.org/https://doi.org/10.1111/j.1477-7053.1981.tb00297.x>.

independents. However, no third-party or independent candidate dominated or won a single state in the 2024 United States presidential election.<sup>39</sup> The dominance of these two parties began in the 19th century (starting in 1828) because the two-party system (Democrat vs. Whig/Republican) was newly established at that time. Since the 1828 presidential election, no other party has ever won an election other than the Democratic and Republican parties.<sup>40</sup>

Second, Brazil. The Brazilian Constitution and its derivative regulations do not regulate the presidential threshold. Article 77 of the Brazilian Constitution stipulates that the President and Vice President are elected directly by the people, through general elections, with direct and secret ballot, and with a single ticket of candidates.<sup>41</sup> If no candidate pair receives more than 50% of the valid votes (absolute majority) in the first round, then the two candidate pairs with the most votes will advance to the second round or "*segundo turno*" in Portuguese.<sup>42</sup> In several presidential elections in Brazil, especially starting in 2002 when Luiz Inácio Lula da Silva of the Workers' Party (Partido dos Trabalhadores – PT) became President, there has been quite strong dominance by the Workers' Party/PT, which has always won the presidential elections from 2006, 2010, 2014, and 2022, except in 2018, which was won by another party, namely the Partido Social Liberal. In the 2022 Brazilian presidential election, 12 candidates from 12 parties, either a single party or a coalition, officially ran. In the first round, no candidate received more than 50% of the vote. Luiz Inácio Lula da Silva of the Workers' Party (PT) defeated incumbent Jair Bolsonaro of the Social Liberal Party in the second round with 50.9% of the vote, while Bolsonaro received 49.1%, a margin of approximately 2 million votes.<sup>43</sup>

Third, Mexico. The Mexican Constitution (*Constitución Política de los Estados Unidos Mexicanos*) does not apply a Presidential Threshold. Article 82 of the Mexican Constitution stipulates that the President is elected through direct popular vote. Since the constitutional reform of 1917 and thereafter, Mexico has not had a Vice President. Mexico does not use a two-round electoral system. Its system is simple plurality (First-Past-The-Post-FPTP), meaning the candidate with the most

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<sup>39</sup> Nishiyama Takayuki, 'Analysis of the 2024 US Presidential Election', *Asia-Pacific Review*, 32.1 (2025), 16–34 <https://doi.org/https://doi.org/10.1080/13439006.2025.2513201>

<sup>40</sup> Jo Freeman, 'The Political Culture of the Democratic and Republican Parties', *Olitical Science Quarterly* 101, 1986, 327–56 <https://doi.org/https://doi.org/10.2307/2151619>.

<sup>41</sup> Antonio Moreira Maués, 'Right to Vote and Electoral Judiciary in Brazil', *Latin American Law Review*, 2024, 25–43 <https://doi.org/https://doi.org/10.29263/lar12.2024.02>

<sup>42</sup> Fernando Guarnieri, 'Vote Estratégique et Coordination Électorale: Test de La Loi de Duverger Au Brésil', *Revista Brasileira de Ciências Sociais*, 30 (2015), 77–92 <https://doi.org/https://doi.org/10.17666/308977-92/2015>

<sup>43</sup> Mario Fuks and Gabriel Avila Casalecchi, 'When Democracy Divides the Electorate: Voting in the 2022 Brazilian Presidential Election', *Brazilian Political Science Review*, 19.2 (2025) <https://doi.org/https://doi.org/10.1590/1981-3821202500020003>



votes wins the election, without needing to achieve an absolute majority (50%).<sup>44</sup> In the 2024 election in Mexico, there are three candidates with a total of around 7 political parties participating, either independently or in coalitions.<sup>45</sup> The number of candidates in the 2024 election has decreased compared to previous periods. Since 2000, the number of candidates in Mexican elections has ranged from 4 to 7 candidates. The 2024 election made history with the victory of Claudia Sheinbaum from the National Regeneration Movement (MORENA) party from the *Sigamos Haciendo Historia* coalition, elected as Mexico's first female President with 59.8% of the vote. Furthermore, the third party, the Movimiento Ciudadano party, recorded its best results compared to the previous election. In the 2024 presidential election, Jorge Álvarez Máynez, candidate for the *Movimiento Ciudadano* (MC) party, received 10.57% of the vote, or 6.2 million votes. This vote acquisition marked a significant increase compared to the 2018 election, where MC only received around 1 million votes. Thus, MC experienced an increase of around 500%.<sup>46</sup>

Fourth, Argentina. The Argentine Constitution, or *Constitución de la Nación Argentina*, only regulates general matters related to elections, such as mandating that the president and vice president be elected directly by the people. The Argentine Constitution does not regulate the presidential threshold.<sup>47</sup> The presidential election system in Argentina is almost the same as Brazil, implementing a two-round (runoff) system regulated in its Election Law. This system is known as '*ballotage*' where a presidential candidate can win outright in the first round if they receive more than 45% of the vote, or obtain at least 40% of the vote with a 10% margin over the second candidate. In addition, there is a primary elections mechanism or PASO (*Primarias Abiertas Simultáneas Obligatorias*) as simultaneous and mandatory open primaries.<sup>48</sup> In the 2023 Argentine presidential election, there were 19 candidate pairs (*binomios presidenciales*) participating in the primary elections (PASO), and only coalitions that received  $\geq 1.5\%$  of the vote were allowed to advance to the first round of the election (*turno general*). Based on the PASO results, there were 5 candidate pairs from various parties and coalitions who could participate in the first round of the election.

<sup>44</sup> Mark Thompson and Ian Roxborough, 'Union Elections and Democracy in Mexico: A Comparative Perspective', *British Journal of Industrial Relations*, 20.2 (1982), 201 <https://doi.org/10.1111/j.1467-8543.1982.tb00098.x>

<sup>45</sup> Javier Martin Reyes, 'Democracy Dismantled: Mexico's Constitutional Path to Autocracy', *Comparative Constitutional Studies*, 3.1 (2025), 24–30 <https://doi.org/https://doi.org/10.4337/ccs.2025.01.04>

<sup>46</sup> Sergio I. Garcia-Rios and others, 'The 2024 Presidential Election Through Latino Lenses: Priorities and Vote Choice', *The Forum* 22, 2024, 369–91 <https://doi.org/https://doi.org/10.1515/for-2025-2006>

<sup>47</sup> Gabriel L. Negretto, 'Constitution-Making and Institutional Design. The Transformations of Presidentialism in Argentina', *European Journal of Sociology*, 40.2 (1999), 199–233 <https://doi.org/10.1017/S0003975600007451>

<sup>48</sup> Santiago Alles, Tiffany D Barnes, and Carolina Tchintian, *The Representational Consequences of Electronic Voting Reform: Evidence from Argentina* (Cambridge University Press, 2023) <https://doi.org/10.1017/9781108973960>

Because no candidate achieved  $\geq 45\%$ , or  $\geq 40\%$  with a lead of  $>10$  points in the first election, a run-off was held between the top 2 candidates, namely presidential candidates Sergio Massa & Agustín Rossi (Union for the Patria coalition) vs. presidential candidates Javier Milei & Victoria Villarruel (La Libertad Avanza coalition). The second round, results were won by Javier Milei with 55.7% of the vote, while Sergio Massa obtained 44.35%.<sup>49</sup> From each election period in Argentina, the dynamics and number of candidates or candidate pairs are quite large and varied.

After comparing countries in the United States and Latin America, it's worth discussing countries in the Asian region. One Asian country that implements a presidential system is the Philippines. Article VII (Executive) of the 1987 Constitution of the Republic of the Philippines does not regulate the presidential threshold, only the general principles of elections within it. The presidential and vice-presidential election system in the Philippines is similar to Mexico's, employing a First-Past-The-Post (FPTP) plurality system, where the candidate with the most votes wins even if they don't reach 50%+.<sup>50</sup> In the 2022 Philippine elections, 97 people initially registered as presidential candidates. However, after the verification process by the Philippine Elections Commission (COMELEC), only 10 candidates, with diverse party and coalition backgrounds, officially qualified as candidates. Several factors contributed to their failure to pass verification, including failure to meet the legal, administrative, and ethical requirements for competing in the election. Looking at previous election periods, no party has dominated the election for a long time, as in many other countries. Victory is determined more by the candidate's popularity, political support, and strong coalition.<sup>51</sup> There is even a "*balimbing*" strategy (a local term for politicians who jump parties) as a personal political move to see opportunities based on party electability. In the 2022 Philippine elections, Ferdinand "Bongbong" Marcos Jr. & Sara Duterte won the presidential and vice presidential. Election with a total of 58.8% of the vote, affiliated with the Partido Federal ng Pilipinas (PFP), which is classified as a new party formed in 2018. However, their victory was greatly influenced by the support of a large coalition called the "UniTeam" coalition in the 2022 elections.

By comparing these countries, it can be seen that the majority of countries in the world with presidential systems do not implement a presidential threshold. The Constitutional Court also considered this in Decision No. 62/PUU-XXII/2024,

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<sup>49</sup> Juan Bautista Lucca and others, 'The 2023 Elections in Argentina, Mexico and Paraguay in Comparative Perspective', *Springer*, 2025, 217–34 [https://doi.org/https://doi.org/10.1007/978-3-031-83105-8\\_10](https://doi.org/https://doi.org/10.1007/978-3-031-83105-8_10)

<sup>50</sup> Richard Javad Heydarian, 'The Philippines' Dynastic Democracy', *Journal of Democracy*, 36.3 (2025), 146–55 <https://doi.org/10.1353/jod.2025.a964570>

<sup>51</sup> Ronald A. Pernia and Rogelio Alicor L. Pano, 'Electing the Dictator's Son: The 2022 Philippine Election in an Era of Authoritarian Nostalgia and Democratic Decline', *Asian Affairs: An American Review*, 52.1 (2025), 1–22 <https://doi.org/https://doi.org/10.1080/00927678.2025.2461822>

stating that "after studying presidential systems in multi-party countries such as the United States, Brazil, Kyrgyzstan, Colombia, Mexico, Peru, and Uruguay, no minimum threshold for the percentage of presidential and vice-presidential candidate nominations (presidential threshold) was found." Even without a threshold, these countries still have stable governments. This experience shows that a presidential threshold is not an absolute requirement for political stability. Although without a presidential threshold, some countries essentially impose restrictions through various mechanisms, such as the United States and France with state primaries, or Argentina with its primary elections or PASO (*Primarias Abiertas Simultáneas Obligatorias*). Nevertheless, these primaries pose the greatest challenge when compared to the existing system in Indonesia. Therefore, this article will focus more on limiting the number of presidential and vice-presidential candidates as the instrument primarily discussed in the Constitutional Court's ruling.

### ***Indonesian Presidential and Vice-Presidential Election on Presidential Threshold Policy***

The Constitutional Court itself considered the implications of decision regarding the potential increase in the number of presidential and vice-presidential candidates following the annulled of the presidential threshold were taken into consideration by the Court itself. In other words, the Court acknowledged that its ruling could make it more difficult to control the number of candidates exceeding what is considered ideal. The Court stated that "even though the presidential threshold norm has been declared unconstitutional and thus no longer holds binding legal force, as a country that adopts a presidential system operating within the framework of a multiparty model, it remains necessary to anticipate the potential that the number of presidential and vice-presidential candidate pairs may equal the number of political parties participating in the election. In this regard, for instance, if 30 political parties engaged in the election, there is a corresponding potential for 30 presidential and vice-presidential candidate pairs to be nominated. Although the Court affirmed in its legal reasoning that the nomination of presidential and vice-presidential candidates is a constitutional right of all political parties declared as election participants, it also emphasised that the legislature may regulate this matter to prevent an excessive number of candidate pairs, which could undermine the fundamental purpose of holding direct presidential and vice-presidential elections.<sup>52</sup>

From the Constitutional Court reasoning, it is evident that the Court does not support an excessively large number of presidential and vice-presidential candidates. The Constitutional Court concern is entirely understandable. For

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<sup>52</sup> Munawir Harahap and Mhd Yadi Harahap, 'Analisis Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024 Tentang Penghapusan Presidential Threshold Perspektif Siyasaq Qadhaiyyah', *SENTRI: Jurnal Riset Ilmiah*, 4.7 (2025), 331-49  
<https://doi.org/https://doi.org/10.55681/sentri.v4i7.4221>

instance, fifty political parties would result in 50 candidate pairs. Such a high number of candidates would not only undermine the essence of direct elections by the people but would also pose significant technical issues. For example, in the organisation of presidential and vice-presidential debates, it would be extremely difficult to manage and structure a debate involving 50 candidate pairs. At the same time, it would also be nearly impossible for the public to comprehensively understand the vision, mission, and programs of each pair.

This concern and the accompanying dilemma have prompted the Constitutional Court to seek a middle ground by allowing the legislature to undertake constitutional modification to limit the number of presidential and vice-presidential candidates. In the Court's view, setting a limit on the number of candidates through legislation is necessary to achieve a proportional number of contenders, neither too many nor too few. This middle-ground approach reflects what the Court considers an ideal design for regulating the number of candidates for president and vice president. However, this middle-ground idea was not accompanied by a proposed model or framework from the Court. That is, the Court has left it entirely to the legislature to devise its own alternatives for limiting the number of candidates following the annulled of the presidential threshold. This lack of guidance contrasts with other decisions by the Constitutional Court, where the Court has suggested specific models for lawmakers to consider.<sup>53</sup>

For example, in its ruling that legislative and presidential elections must be held simultaneously, the Court proposed several models of electoral arrangements, including simultaneous elections for DPR, Regional Representative Council (DPD), President/Vice President, and Regional People's Representative Assembly (DPRD); simultaneous elections for DPR, DPD, President/Vice President, Governors, and Regents/Mayors; simultaneous elections for DPR, DPD, President/Vice President, DPRD, Governors, and Regents/Mayors;<sup>54</sup> a national simultaneous election for DPR, DPD, and President/Vice President followed by local simultaneous elections for provincial DPRD members and provincial heads (Governors), and subsequently, simultaneous elections for district/city DPRD members and regional heads (Regents/Mayors).<sup>55</sup>

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<sup>53</sup> Lutfi Nur Lana and Muhammad Ngazis, 'Study Putusan Mahkamah Konstitusi MK Nomor 62/PUU-XXII/2024 Penerapan Ambang Batas Presidensial (Presidential Threshold) Sebagai Kebijakan Hukum Terbuka Dalam Pemilihan Umum Di Indonesia', *Jurnal Ilmiah Sultan Agung*, 4.2 (2025), 172–79 <https://jurnal.unissula.ac.id/index.php/JIMU/article/view/46828>

<sup>54</sup> Sirajuddin, Febriansyah Ramadhan, and Ilham Dwi Rafiqi, 'Urgensi Pemisahan Penyelenggaraan Pemilihan Umum Serentak Nasional Dan Lokal', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 4.2 (2021), 233–47 <https://doi.org/10.24090/volksgeist.v4i2.5232>

<sup>55</sup> Rizki Bagus Prasetio and Febri Sianipar, 'The Relevance of the Application of the Presidential Threshold and the Implementation of Simultaneous Elections in Indonesia', *Jurnal Penelitian Hukum De Jure*, 21.2 (2021), 267–84 <https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.267-284>

In the absence of a proposed model from the Court regarding the limitation of presidential and vice-presidential candidates, the design of such constitutional engineering is treated as an open legal policy, where a matter is left to the discretion of the legislature. This means the legislature must give serious thought to devising an anticipatory framework to prevent an overabundance of candidates. Lawmakers must develop a formula capable of limiting the number of candidates to a reasonable threshold. The directive to engineer such a limitation is embedded in the Constitutional Court legal reasoning, which serves not only as interpretive commentary but also as a binding requirement attached to the Court's decision to grant the petition for the annulled of the presidential threshold. Therefore, the legislature must establish a design to limit the number of presidential and vice-presidential candidates before the 2029 election takes place. Naturally, any legislative design formulated to implement this policy must align with the principles of constitutional modification outlined by the Constitutional Court. The design for limiting the number of presidential and vice-presidential candidates must be established in the following principles: (1) Every political party taking part in the general election has the authority to put forward a duo of presidential and vice-presidential candidates; (2) The nomination of presidential and vice-presidential candidates by political parties or coalitions of political parties participating in the election must not be based on a threshold of parliamentary seats or the percentage of valid national votes; (3) In nominating candidates, political parties may form coalitions as long as such coalitions do not result in the domination of one or more parties, which could restrict the number of candidate pairs and limit voter choice; (4) Political parties that fail to nominate a pair of presidential and vice-presidential candidates shall be subject to sanctions in the form of disqualification from participating in the next general election; and (5) The formulation of constitutional modification, including amendments to Law No. 7 of 2017, must involve the participation of all stakeholders concerned with electoral governance, including political parties without seats in the DPR, and must adhere to the principle of meaningful public participation.<sup>56</sup>

Of course, the idea of limiting the number of presidential and vice-presidential candidates as part of the constitutional engineering must be in line with and must not conflict with the political rights and sovereignty of the people as mandated in the 1945 Constitution of the Republic of Indonesia and the spirit of Constitutional Court Decision No. 62/PUU-XXII/2024. Through the guidelines of constitutional engineering, the Constitutional Court has essentially provided limitations, such as the requirement for sanctions in the form of prohibition from participating in the next general election for political parties that do not nominate presidential and vice-presidential candidates. However, the method or mechanism for this will be

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<sup>56</sup> Muhammad Kholis Harahap, 'Berubahnya Pendirian Hakim Mahkamah Konstitusi Tentang Presidential Threshold', *Buletin Konstitusi*, 5.2 (2024), 91–115  
<https://doi.org/https://doi.org/10.30596/konstitusi.v5i2.23306>



determined by the legislators. To prevent potential "misconstitutionalities," it is necessary and important to discuss the design of these restrictions.<sup>57</sup>

What, then, is the appropriate mechanism for constitutional modification that is consistent with both the Constitutional Court's ruling and the provisions of the 1945 Constitution of the Republic of Indonesia? From a constitutional perspective, limitations on the number of presidential and vice-presidential candidates may only be achieved through two primary channels: (1) limiting the number of political parties participating in elections, and (2) tightening the individual eligibility requirements for persons nominated as presidential and vice-presidential candidates. The party-related provisions are outlined in Article 6A of the 1945 Indonesia Constitution, which requires that presidential and vice-presidential candidates must be nominated by political parties or alliances of political parties engaged in the general election, prior to its implementation. Based on Article 6A, the requirements for presidential and vice-presidential nominations include the following: (1) The President and Vice President must be nominated as a pair; (2) Candidate pairs may be nominated by a single political party; (3) Candidate pairs may also be nominated by a coalition of political parties; (4) Only political parties that are officially recognised as election participants may nominate candidate pairs; and (5) Presidential and vice-presidential candidates may not be nominated through an individual (independent) path.<sup>58</sup>

Given these provisions, the primary gateway for limiting the number of presidential and vice-presidential candidates lies in restricting the number of political parties eligible to participate in the general election. The fewer the number of participating parties, the fewer candidate pairs will be nominated. Several legal policy options may be considered in pursuit of this goal, including; first, a moratorium is a process through which the government temporarily suspends the creation of new political parties. This mechanism is typically used to assess the number of existing parties and determine whether the formation of new parties is necessary. Limiting the emergence of new political parties through a moratorium is a legal policy choice that is certain to provoke debate. This is because such a moratorium may be perceived as a restriction on the right to associate and to participate in governance, as guaranteed under Article 28 of the 1945 Constitution

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<sup>57</sup> Titon Slamet Kurnia, 'Presidential Candidacy Threshold and Presidentialism Affirmation in Indonesia Ambang Batas Pencalonan Presiden Dan Penegasan Presidensialisme Di Indonesia A . Introduction This Article Aims to Discuss Legal Issues on the Constitutionality of the President', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 7.3 (2020), 353–79 <https://doi.org/https://doi.org/10.22304/pjih.v7n3.a4>

Juang Intan Pratiwi, Neneng Salama, and Siti Ulfah, 'Pembatasan Masa Jabatan Presiden Di Indonesia', *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia*, 3.1 (2021), 18–26 <https://doi.org/https://doi.org/10.52005/rechten.v3i1.23>

of the Republic of Indonesia, potentially leading to the view that a moratorium on new party formation constitutes a violation of human rights by the government.<sup>59</sup>

In essence, however, a moratorium on the establishment of political parties should not be classified as a restriction of the right to associate or as a human rights violation. The restriction of individual rights is a condition that is recognised and permitted by the Constitution. Article 28J of the 1945 Constitution stipulates that: "While exercising their rights and freedoms, every individual shall be limited by laws that exist solely to guarantee the acknowledgment and respect for the rights and freedoms of others, as well as to address legitimate demands grounded in moral considerations, religious values, security, and public order in a democratic society".<sup>60</sup>

Thus, a moratorium on the establishment of political parties may be imposed by the government, provided that it is deemed to meet the necessary qualifications. In simple terms, such a moratorium does not constitute a violation of human rights, as the restriction it entails is a form of constitutional modification undertaken by the government to implement the ruling of the Constitutional Court. In other words, when a moratorium is imposed as a means of limiting the number of presidential and vice-presidential candidates, as requested by the Constitutional Court in Decision No. 62/PUU-XXII/2024, it inherently fulfils the criteria for a legitimate restriction of individual rights, given that it is based on a Constitutional Court decision.<sup>61</sup> In the principle of proportionality, there are three limitations that must be met in implementing a moratorium on the establishment of political parties; (1) Restrictions are only valid if regulated by law; (2) Restrictions must be justified fairly and proportionally; and (3) Restrictions must take into account morals, religion, security and public order within a democratic framework.

A restriction on individual rights established in a Constitutional Court decision is equivalent to a restriction imposed by statute, as reflected in Article 28J (2) of the 1945 Constitution, which states: "In exercising his rights and liberties, each person has the duty to accept the limitations determined by law." This is because Constitutional Court decisions hold the same legal standing as legislation; indeed,

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<sup>59</sup> Muhammad Abdi Sabri Budahu and others, 'Pemenuhan Hak Dipilih Dan Hak Memilih Sebagai Hak Konstitusional: Studi Komparatif Pasca Putusan Mahkamah Konstitusi.', *Tumou Tou Law Review*, 1.2 (2022), 88–99 <https://doi.org/https://doi.org/10.35801/tourev.v1i2.44641>

<sup>60</sup> Sulardi and Febriansyah Ramadhan, 'Presidential Threshold in the Presidential Election : A Democratic and Constitutional Study', *Proceedings of the 2nd International Conference on Indonesian Legal Studies (ICILS 2019) (Paris, France)*, 363.Icils (2019), 149–56 <https://doi.org/10.2991/icils-19.2019.27>

<sup>61</sup> Harimurti Adi Nugroho, O Djunaedi, and Ismail, 'Formulation of Coalition Threshold For Political Parties Based on Proportionality Principles In The Presidential Election Post Constitutional Court Decision No . 62 / PUU- XXII / 2024', *Asian Journal of Social and Humanities*, 3.5 (2025), 997–1009 <https://doi.org/https://doi.org/10.59888/ajosh.v3i5.496>

in certain respects, they may even carry greater authority, as the Court has the power to annul statutory provisions.<sup>62</sup>

The second option for limiting the number of political parties participating in elections is to tighten the eligibility requirements for political parties. This tightening can be implemented in two layers: by increasing the requirements for establishing a political party and by strengthening the conditions for political parties to qualify as participants in general elections. It is well understood that not all registered political parties are eligible to participate in elections; there is a clear distinction between the requirements for forming a political party and those for becoming an electoral participant. In the most recent general election, held in 2024, 40 political parties were registered with the Ministry of Law and Human Rights, but only 24 qualified to participate in the election.<sup>63</sup>

The tightening of eligibility requirements for election participation can be achieved through various mechanisms, one of which is to raise the minimum threshold for party structure and membership. In other words, the number of administrators and members that a political party must have at the sub-district, regency/municipal, provincial, and national levels can be increased. This regulatory design would make it more difficult for parties to qualify and would effectively reduce the number of political parties eligible to participate in elections.<sup>64</sup> Accordingly, the provisions on party structure and membership currently regulated in Article 173 of Law No. 7 of 2017 concerning General Elections would need to be revised as follows:

Table 2: The Requirements of Political Party Structure and Membership

No	Region	Structure	Membership		
		Article 173	Planned Structure	Article 173	Planned Membership
1	Province	100 % of the total number of provinces	Unchanged	1/1.000	1/100.000
2	Regency/Municipality	75% of the total number of regencies/cities	100 % of the total number of regencies/cities	1/1.000	1/10.000
3	Sub-District	50% of the total number of sub-districts	100% of the total number of sub-districts	1/1.000	unchanged

Source: Election Law, 2017

<sup>62</sup> Sholahuddin Al-Fatih and Asrul Ibrahim Nur, 'Does the Constitutional Court on Local Election Responsive Decisions?', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 569–96 <https://doi.org/https://doi.org/10.53955/jhcls.v3i3.74>

<sup>63</sup> M. Miftahul Hidayat, 'The 2024 General Elections in Indonesia: Issues of Political Dynasties, Electoral Fraud, and The Emergence of A National Protest Movements', *IAS Journal of Localities*, 2.1 (2024), 33–51 <https://doi.org/https://doi.org/10.62033/iasjol.v2i1.51>

<sup>64</sup> Saiful Anwar and others, 'Multi-Political Parties Simplification Through Political Party Verification in Indonesia', *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)*, 2024, 482–89 [https://doi.org/https://doi.org/10.2991/978-2-38476-315-3\\_66](https://doi.org/https://doi.org/10.2991/978-2-38476-315-3_66).

Tightening the minimum requirements for party structure and membership serves as a middle ground between the fundamental right of every citizen to establish a political party and the state's interest in ensuring effective and efficient electoral administration through a proportional number of participating political parties. Such stricter requirements function as a filter to assess the eligibility of political parties seeking to contest in elections.<sup>65</sup> As these requirements become more stringent, it is expected that the number of qualified political parties will naturally decrease. Increasing the requirements for establishing political parties and strengthening the requirements for political parties to participate in elections have several positive impacts on strengthening the democratic system. With stricter requirements, only parties with a clear organizational structure, a strong support base, and a mature political vision can survive and compete. This encourages improvements in the quality and professionalism of political parties, including in terms of cadre development, decision-making, and internal transparency. Furthermore, tightening these requirements can also create a more stable political system and efficient election administration by avoiding participants after Decision No. 62/PUU-XXII/2024. Overall, this instrument can help establish a healthier, more structured, and public-interest-oriented democratic order.

The third option involves the minimum age limit of a political party eligible for election. The requirement concerning the minimum age of a political party as a condition for participating in general elections represents one alternative for reducing the number of political parties eligible to nominate presidential and vice-presidential candidates. The age in question refers to a mandatory interval between the date a political party is established and the point at which it becomes eligible to participate in elections. Currently, no such interval is stipulated, allowing newly established parties to contest elections immediately. This situation is akin to allowing a newborn to compete in a marathon.

The absence of an age requirement has contributed to the high number of political parties participating in elections despite failing to secure a significant share of the vote or to pass the parliamentary threshold. In the 2024 general election, no new political party succeeded in crossing the parliamentary threshold due to minimal vote acquisition, as seen with parties such as Partai Ummat and Partai Gelombang Nusantara. Imposing a minimum age requirement for political parties to qualify as election participants would function as a form of vetting, embedding several rationales: first, the age of a political party serves as an indicator that the party was not established merely as a temporary vehicle to support a specific individual's candidacy for president or vice president. It cannot be denied that some parties are founded close to election periods purely to provide

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<sup>65</sup> Ibnu Fanhar Nur Fadhillah, Anisa Herdiani, and Widi Astuti, 'Analisis Sentimen Berbasis Leksikon InSet Terhadap Partai Politik Peserta Pemilu 2019 Pada Media Sosial Twitter', *E-Proceeding of Engineering*, 6.3 (2019) [https://www.academia.edu/72582223/Analisis\\_Sentimen\\_Berbasis\\_Leksikon\\_InSet\\_Terhadap\\_Partai\\_Politik\\_Peserta\\_Pemilu\\_2019\\_Pada\\_Media\\_Sosial\\_Twitter](https://www.academia.edu/72582223/Analisis_Sentimen_Berbasis_Leksikon_InSet_Terhadap_Partai_Politik_Peserta_Pemilu_2019_Pada_Media_Sosial_Twitter).

a political ticket for certain elites, disregarding the fundamental purpose of forming a political party: an organisation built on shared vision, mission, ideology, and collective goals. Instituting a waiting period between the establishment of a political party and its eligibility to participate in elections can reinforce the principle that a political party is not merely an instrument for contesting high office but an institution responsible for performing broader democratic functions, including political education and citizen engagement. A party formed solely as a vehicle for individual political ambition is unlikely to develop organisational capacity or long-term commitment. Following an election, particularly when such a party fails to obtain meaningful electoral support, it will predictably lose relevance and eventually dissolve.<sup>66</sup>

Second, the gap between the founding of a party and its eligibility to contest elections can also serve as a test of the party's organisation resilience. In this context, resilience refers to the strength of internal relations among party leaders and between the leadership and the membership. Maintaining unity within a political party is no easy task. If the spirit of unity is driven only by short-term political interests, over time that unity may fade, leading to internal divisions or disintegration before the party even qualifies to participate in elections. Thus, this interval can serve as a mechanism for verifying the existence of a strong political bond among party members, enabling them to advance their collective vision and mission.

The 1945 Constitution neither prohibits nor specifically regulates the minimum age limit for political parties participating in elections. However, the Constitution authorizes legislation to regulate this matter. Therefore, the age limit for political parties can be regulated by law through revisions to the Election Law, provided it does not conflict with the principles of democracy and electoral fairness. The suggested minimum age is five to six years. The five-year benchmark is based on Indonesia's electoral cycle, which occurs every five years, meaning a newly established party would naturally experience one full electoral interval before becoming eligible to participate in a subsequent general election.

The fourth option concerns the upper limit on the number of political parties participating in an election. One possible means of limiting the number of political parties participating in elections is to set an upper limit on the total number of eligible parties. This approach would make it easier to predict the potential number of presidential and vice-presidential candidates. For example, if the number of political parties participating in the 2029 election were limited to 24, the maximum number of political parties would be fixed at 24, making it feasible to estimate that there would be approximately five candidate pairs, based on the assumption that party coalitions would form to nominate presidential and vice-presidential

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<sup>66</sup> Mohammad Akbar Maulana Rahman, Reinaldo Francisco Luis, and Ahmad Solikhin Ruslie, 'Indonesia ' s Presidential Threshold : An Analysis of Legal and Political Dynamics', *Jurnal Mengkaji Indonesia*, 2.2 (2023), 248–64 <https://doi.org/10.59066/jmi.v2i2.401>



candidates.<sup>67</sup> For instance, parties numbered 1–5 might form a coalition to support candidate pair A; parties 6–10 might support pair B; parties 11–15 might nominate pair C; parties 16–20 might support pair D; and parties 21–24 might support pair E.

However, implementing such a limitation through a “maximum number of political parties” is far from straightforward. It is extremely difficult to determine a precise formula or metric for setting the upper limit on the number of parties allowed to participate in elections. This challenge arises in part due to Indonesia’s large population, which creates the potential for the formation of numerous political parties, making it difficult to identify a reasonable or fair maximum. Moreover, Indonesian electoral history includes instances of elections with a relatively high number of participating parties—for example, the 1955 election had 172 parties, the 1999 election had 48, and the 2009 election featured 38.<sup>68</sup>

The difficulty in setting a maximum number is also closely tied to the likelihood of public controversy and new legal issues. Imposing such a cap may be seen as an artificial form of constitutional modification, drawing criticism for being arbitrary or discriminatory. Specifically, establishing a ceiling on the number of political parties may be perceived as a restriction on political freedom, particularly if a party that otherwise meets all the legal requirements is disqualified solely because the quota of allowed parties has already been filled. Furthermore, it can hinder the political participation of community groups with aspirations different from those of the major parties. This can marginalize minority voices and limit the diversity of ideas and political representation in parliament. Therefore, instruments limiting the number of parties participating in elections must be strictly and fairly formulated in accordance with election principles. Several countries, such as the Philippines, can emulate the mechanisms used to screen candidates and political parties through their election management bodies.

The last option concerns the disqualification of previously participating political parties from elections. The disqualification of previously participating political parties is a form of limitation that prohibits parties which have contested in multiple elections from participating again in subsequent electoral cycles. This disqualification is different from the restrictions made by the Constitutional Court by prohibiting political parties participating in the election who do not recommend a presidential and vice-presidential candidate pair from participating in the next election period.<sup>69</sup> In this context, disqualification is based on an evaluation of a party's electoral performance. Political parties that fail to obtain a significant share

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<sup>67</sup> Joseph Mario Monteiro, ‘Presidential Threshold and Parliamentary Threshold Setting in Elections’, *Journal of Progressive Law and Legal Studies*, 1.02 (2023), 75–87 <https://doi.org/https://doi.org/10.59653/jpills.v1i02.32>

<sup>68</sup> Thomas B Pepinsky, ‘Cleavages, Institutions, and Democracy in Indonesia: The 2024 Elections in Comparative Perspective’, *Journal of Current Southeast Asian Affairs*, 44.3 (2025), 345–65 <https://doi.org/10.1177/18681034251349467>

<sup>69</sup> Julien Van Ostaaijen and Sander Jennissen, ‘Reasons Political Parties Lose Their Representatives. Combining Party Death and Party Failure’, *Local Government Studies*, 2025, 1–21 <https://doi.org/https://doi.org/10.1080/03003930.2025.2508195>

of votes may automatically be disqualified from participating in the next general election. For example, if Party A receives less than 2% of the vote in the 2024 general election, it should be removed from the list of qualified parties for the 2029 election. This approach allows for a natural reduction in the number of political parties contesting elections. A party that repeatedly participates in elections but consistently fails to gain adequate support arguably does not reflect the preferences of the electorate. The mechanism of disqualifying parties based on insufficient electoral performance may produce several effects:

First, evaluating a party's vote share over several election cycles functions as a natural selection process that determines whether a political party retains or loses its eligibility to contest future elections. A party that meets the minimum vote threshold may justifiably continue as an election participant. Conversely, a party that repeatedly fails to secure the required level of support can be disqualified. This disqualification reflects the principle that the electorate no longer desires the party concerned. Such a mechanism, therefore, represents a form of limitation or disqualification based on the will of the Indonesian people. Second, a disqualification mechanism based on multi-cycle electoral performance also creates space for political parties to engage in self-reflection.

It discourages parties from claiming continued legitimacy based solely on the supposed will of the people. Repeated failure to obtain votes across successive elections provides valid confirmation that a party no longer merits participation, prompting party leaders to recognise their declining relevance. Consequently, such parties should refrain from political manoeuvring aimed at preserving their existence and instead acknowledge that the absence of electoral support reflects the people's will to deny them the authority to nominate presidential and vice-presidential candidates. Party leaders may begin to question the rationale for maintaining their party's political status when it is no longer supported by the electorate.<sup>70</sup>

The formulation of political party disqualification based on electoral performance is a concept that, if implemented, must be capable of addressing a range of inevitable technical challenges, including the following: (1) Disqualifying political parties from participating in future elections raises the question of how many opportunities a party should be given before it is disqualified from participating. This issue is far from straightforward. For instance, should a political party be disqualified if it fails to secure a significant number of votes in its very first election? Suppose a political party qualifies to contest the 2024 general election but receives minimal support should it then be barred from participating in the 2029 election. Under this scenario, each political party would be granted only one opportunity to participate in an election, and failure would result in immediate

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<sup>70</sup> Ana Fauzia and Ftiria Esfandiari, 'Political Party Deliberation : Mechanism for Safeguarding Constituent Rights against Vacancies in House of Representatives Affected by Political Party Dissolution', *Jambura Law Review*, 6.02 (2024), 452–81  
<https://doi.org/https://doi.org/10.33756/jlr.v6i2.24110>

disqualification. An alternative approach would be to allow two chances to participate. That is, a political party may contest two consecutive elections, and if it fails to obtain significant votes in both, it may be disqualified from the subsequent electoral cycle.

For example, a party might participate in the 2024 and 2029 elections, but if its electoral results in both are below expectations, it would be disqualified from participating in the 2034 election. Offering two election cycles as a probationary period is a relatively proportional approach, as it corresponds to a party's lifespan of over ten years, ample time for a political party to develop and test its legitimacy in the eyes of the electorate. (2) Another issue concerning disqualification based on electoral performance is the determination of the minimum vote percentage required for a party to qualify for participation in the next election. This percentage should differ from the current parliamentary threshold of 4%, which is used to allocate seats in the legislature. In other words, the threshold for disqualification should not be tied to the parliamentary threshold. The electoral performance threshold for continued participation could be set below the 4% mark, thereby allowing parties that do not pass the parliamentary threshold to remain eligible for future elections if they meet a minimum support level. If the 4% parliamentary threshold is used as a reference point, then the disqualification threshold must be set lower, 2% being a viable option. A 2% threshold would indicate that a party has established a basic level of grassroots support. In Indonesia's electoral context, particularly for new parties, it is highly challenging to achieve more than 2% of the national vote in just one or two election cycles. In the 2024 general election, for instance, only eight political parties surpassed the 4% parliamentary threshold, and only 10 received more than 2% of the vote. None of the newly formed parties met either of these benchmarks.

#### 4. Conclusion

This study concludes that the Constitutional Court's abolition of the presidential threshold has placed Indonesia at a critical juncture in the constitutional design of its presidential election system. The Court considers the removal of the threshold necessary to break the dominance of political parties over the nomination process, yet it simultaneously acknowledges the risk that eliminating the threshold may produce an excessive number of candidate pairs, leading to political fragmentation, rising electoral costs, and voter confusion, all of which threaten the quality and purpose of direct presidential elections. Although the Court urges the legislature to undertake constitutional modification to maintain an optimal number of candidates, it provides no model or substantive guidance on how such a design should be formulated. In response, this study proposes limiting the number of political parties eligible to participate in elections as a coherent constitutional mechanism, given that only these parties possess the authority to nominate candidates. Reducing the number of participating parties can be achieved through several measures, including a moratorium on new party formation, stricter eligibility requirements, a minimum age qualification for political parties, a cap on

the number of parties allowed to contest elections, and a performance-based disqualification system for parties that consistently fail to obtain electoral support. These mechanisms can be implemented through future amendments to the Election Law to ensure a stable, competitive, and constitutionally grounded presidential election framework.

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