

INTISARI

Penelitian ini mengkaji implikasi putusan Mahkamah Konstitusi dalam penentuan konstitusionalitas presidensial tersebut terhadap sistem kepartaian. Sejak tulisan ini dibuat, terdapat 30 putusan Mahkamah Konstitusi dalam kurun waktu 2008 hingga 2022 mengenai *presidential threshold* yang merupakan objek kajian dari penelitian ini. Penelitian ini bertujuan: pertama, untuk menganalisis secara kualitatif kecenderungan putusan MK mengenai *presidential threshold* dari waktu ke waktu; kedua, menganalisis implikasi dari putusan MK terkait *presidential threshold* terhadap sistem kepartaian di Indonesia.

Penelitian ini merupakan penelitian hukum normatif dengan menggunakan 2 (dua) jenis pendekatan, yakni: pendekatan perundang-undangan (*statute approach*), dan pendekatan konseptual (*conceptual approach*). Cara pengumpulan bahan hukum dilakukan dengan cara studi pustaka, serta studi dokumen hukum yang relevan.

Terdapat dua hasil dalam penelitian ini, diantaranya adalah: *Pertama*, dalam Putusan Mahkamah Konstitusi terkait *presidential threshold*, kerap kali MK: 1) menggunakan pertimbangan *Open legal policy* dalam mempertahankan konstitusionalitas *presidential threshold*; 2) penggunaan jenis penafsiran originalisme oleh MK dalam memutuskan konstitusionalitas *presidential threshold*; 3) pengklasifikasian antara pemohon yang menginginkan Untuk membatalkan *presidential threshold*, serta permohonan yang menghendaki MK untuk membuka peluang calon independen berdasarkan Pasal 6a ayat (2) UUD NRI 1945; 4) terdapat kecenderungan MK untuk menolak legal standing pemohon dengan kedudukan pemilih perseorangan sejak putusan nomor 74/PUU-XVIII/2020 hingga pada putusan 11/PUU-XX/2022. Keempat hal tersebut menunjukkan kecenderungan MK yang bersikap restraint (*Judicial restraint*) dalam penentuan konstitusionalitas *Presidential threshold*; *Kedua*, terdapat tiga hal yang merupakan implikasi dari putusan MK terkait *presidential threshold* terhadap penyederhanaan partai politik: 1) praktik penyederhanaan partai politik dalam kurun waktu 2008 hingga 2022, dengan diberlakukannya *presidential threshold* tidak menunjukkan signifikansi untuk melakukan pengurangan partai politik peserta pemilu. 2) paradigma penyederhanaan partai politik dalam *judicial order* putusan MK menghendaki agar penyederhanaan partai politik tersebut dilakukan secara alamiah, disamping memperhatikan kesamaan platform atau garis perjuangan partai politik yang tidak bersifat kepentingan taktis strategis jangka pendek. 3) putusan MK terkait *presidential threshold* juga berpotensi menjerumuskan sistem presidensial kepada sistem yang otoriter.

Penelitian ini memiliki saran agar Mahkamah Konstitusi untuk kedepannya dapat lebih mengutamakan hak setiap partai politik peserta pemilu untuk mencalonkan presiden dan wakil presiden, sehingga norma *presidential threshold* perlu dibatalkan.

Kata Kunci: *Presidential threshold*, Penafsiran Konstitusional, Judicial Review.

ABSTRACT

This study examines the implications of the Constitutional court's decision in determining the constitutionality of the presidency for the party system. Since this writing, there have been 30 constitutional court decisions in the period from 2008 to 2022 regarding the presidential threshold which is the object of study of this study. This study aims to: first, to qualitatively analyze the tendency of the Constitutional court's decisions regarding the presidential threshold from time to time; second, analyzing the implications of the Constitutional court's decision regarding the presidential threshold on the party system in Indonesia.

This research is a normative legal research using 2 (two) types of approaches, namely: a statute approach, and a conceptual approach. The way of collecting legal materials is carried out by means of a literature study, as well as the study of relevant legal documents.

There are two results in this study, including: First, in the Constitutional court's decision regarding the presidential threshold, often the Constitutional court: 1) uses open legal policy considerations in maintaining the constitutionality of the presidential threshold; 2) the use of this type of interpretation of originalism by the Constitutional court in deciding the constitutionality of the presidential threshold; 3) classification between the petitioner who wishes to overturn the presidential threshold, as well as an application that wants the Constitutional court to open up opportunities for independent candidates under Article 6a paragraph (2) of the 1945 NRI Constitution; 4) there is a tendency of the Constitutional court to reject the legal standing of the applicant with the position of individual voter from decision number 74/PUU-XVIII/2020 to decision 11/PUU-XX/2022. These four things show the tendency of the Constitutional court to be restraint (Judicial restraint) in determining the constitutionality of the Presidential threshold; Second, there are three things that are the implications of the Constitutional court's decision regarding the presidential threshold for the simplification of political parties: 1) the practice of simplifying political parties in the period from 2008 to 2022, with the enactment of the presidential threshold showing no significance for reducing political parties participating in elections. 2) the paradigm of simplification of political parties in the judicial order of the Constitutional court ruling requires that the simplification of political parties be carried out naturally, in addition to paying attention to the similarity of platforms or lines of struggle of political parties that are not of short-term strategic tactical importance. 3) the Constitutional court's ruling on the presidential threshold also has the potential to plunge the presidential system into an authoritarian one.

This research has a suggestion that the Constitutional court in the future can prioritize the right of every political party participating in the election to nominate the president and vice president, so that the presidential norm threshold needs to be overturned.

Keywords: *Presidential threshold, Constitutional Interpretation, Judicial Review.*