

# PERGESERAN PENDIRIAN MAHKAMAH KONSTITUSI DALAM MENILAI KONSTITUSIONALITAS AMBANG BATAS PENCALONAN

## PRESIDEN DAN WAKIL PRESIDEN

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### INTISARI

Penelitian ini dilatarbelakangi diskursus mengenai pengujian konstitusionalitas norma ambang batas pencalonan presiden dan wakil presiden (*presidential threshold*). Sepanjang dua dekade Mahkamah Konstitusi, MK telah memutus perkara pengujian ambang batas pencalonan presiden sebanyak 47 kali dengan melalui tiga rezim pengaturan pemilihan umum presiden mulai dari UU 23/2003, UU 42/2008, dan UU 7/2017. MK dalam perjalanannya sebanyak 46 putusan tetap berpegang teguh bahwa ambang batas pencalonan presiden merupakan norma yang konstitusional. Namun, pada tahun 2024 tepatnya pada Putusan MK Nomor 62/PUU-XXII/2024, MK menggeser pendiriannya dengan menyatakan norma ambang batas pencalonan presiden inkonstitusional karena melanggar prinsip moralitas, rasionalitas dan ketidakadilan yang tidak dapat ditoleransi. Sehingga penelitian ini mengarahkan bagaimana pertimbangan hukum MK dalam rentang waktu 2004 hingga 2023, alasan MK menggeser pendiriannya pada Putusan MK Nomor 62/PUU-XXII/2024, dan bagaimana sikap pembentuk undang-undang terhadap penghapusan ambang batas pencalonan presiden. Metode penelitian yang digunakan adalah penelitian hukum normatif, dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual, pendekatan konten analisis dan pendekatan historis. Hasil penelitian ini menunjukkan bahwa dalam rentang waktu 2004 hingga 2023, MK dalam pertimbangannya mengkristalisasi terhadap dua hal yakni pertama, MK memperketat kedudukan hukum pemohon di mana yang dapat menguji ambang batas pencalonan presiden hanya partai politik peserta pemilu dan kedua, MK menyatakan penentuan ambang batas pencalonan presiden adalah kewenangan pembentuk undang-undang (*open legal policy*). Pada rumusan kedua, alasan pergeseran MK adalah adanya perbedaan komposisi hakim, pada komposisi hakim saat ini terdapat tiga hakim yang sebelumnya memegang teguh kebijakan hukum terbuka akan tetapi pada Putusan MK Nomor 62/PUU-XXII/2024 beralih arah kepada pemenuhan hak konstitusional warga negara. Selanjutnya, MK melakukan praktik *overruling* pada kedudukan hukum pemohon yang mana memberikan kedudukan hukum kepada perorangan untuk menguji konstitusionalitas ambang batas pencalonan presiden dan melakukan *overruling* pada pertimbangan hukum di mana menyatakan kebijakan hukum terbuka terbukti melanggar moralitas, rasionalitas dan ketidakadilan yang intoleable. Pada rumusan ketiga, dengan sifat putusan MK final dan mengikat, pembentuk undang-undang wajib untuk mematuhi putusan MK dan tercermin melalui tindakan pembentuk undang-undang mendaftarkan revisi undang-undang pemilu di Prolegnas jangka menengah.

**Kata Kunci:** Mahkamah Konstitusi, Ambang Batas Pencalonan Presiden, *overruling*, Pengujian Undang-Undang.

***THE SHIFTING STANCE OF THE CONSTITUTIONAL COURT IN ASSESSING  
THE CONSTITUTIONALITY OF PRESIDENTIAL THRESHOLD***

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***ABSTRACT***

*This research is based on a discussion of the constitutionality of the presidential threshold norm. Throughout two decades of the Constitutional Court, the Constitutional Court has decided 47 cases of presidential threshold testing through three presidential general election regulatory regimes starting from Law 23/2003, Law 42/2008, and Law 7/2017. In 46 decisions, the Constitutional Court has maintained that the presidential threshold is a constitutional norm. However, in 2024, precisely in Constitutional Court Decision Number 62/PUU-XXII/2024, the Constitutional Court shifted its stance by declaring the presidential threshold norm unconstitutional because it violated the principles of morality, rationality and intolerable injustice. Therefore, this research directs how the legal considerations of the Constitutional Court in the span of 2004 to 2023, the reason for the Constitutional Court to shift its stance in Constitutional Court Decision Number 62/PUUXXII/2024, and the attitude of the legislators towards the elimination of the presidential threshold. The research method used is normative legal research, using a statutory approach, conceptual approach, content analysis approach and historical approach. The results of this study show that in the span of 2004 to 2023, the Constitutional Court in its consideration crystallised two things, namely first, the Constitutional Court tightened the legal position of the applicant where only political parties participating in the election could test the presidential threshold and second, the Constitutional Court stated that the determination of the presidential threshold was the authority of the legislator (open legal policy). In the second formulation, the reason for the Court's shift is the difference in the composition of judges, in the current composition of judges there are three judges who previously upheld an open legal policy but in Constitutional Court Decision Number 62/PUUXXII/2024 switched direction to fulfil the constitutional rights of citizens. Furthermore, the Constitutional Court carried out the practice of overruling the legal position of the applicant, which gave legal standing to individuals to test the constitutionality of the presidential threshold and overruling the legal considerations, which stated that the open legal policy was proven to violate morality, rationality and intoleable injustice. In the third formulation, with the final and binding nature of the Constitutional Court's decision, lawmakers are obliged to comply with the Constitutional Court's decision and this is reflected through the lawmakers' action of listing the revision of the electoral law in the mid-term National Legislation.*

**Keywords:** *Constitutional Court, Presidential Threshold, Overruling, Judicial Review.*