



THE DISPARITY IN CONSTITUTIONAL COURT JUDGMENTS ABOUT THE PRESIDENTIAL THRESHOLD IN INDONESIA'S ELECTORAL SYSTEM

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Abstract

This study purposes to analyse substantial disparities in Constitutional Court rulings concerning the presidential threshold and the legal implications of these disparities on the electoral system and constitutional practices in Indonesia. The points to be examined are: How does the disparity in Constitutional Court rulings relate to the presidential threshold in Indonesia's electoral system, and what are the legal and constitutional implications of this disparity in rulings on Indonesia's constitutional system and democracy? This study uses a normative juridical approach. The data used in this study consists of primary, secondary, and tertiary legal materials with descriptive qualitative analysis methods. The results of this study are that the disparities in Constitutional Court Decision No. 20/PUU-XX/2022 and Decision No. 62/PUU-XXII/2024 regarding the presidential threshold reflect the complexity of the constitutional debate on the balance between political stability, government effectiveness, and the quality of democracy in Indonesia. These differing rulings have legal implications covering issues of legal certainty, institutional integrity, balance of power, quality of democracy, the legislative process, constitutionalism culture, and the credibility of the judicial system.

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I. INTRODUCTION

The presidential threshold regulated in Article 222 of Law Number 7 of 2017 on General Elections states that “candidate pairs are proposed by political parties or coalitions of political parties participating in the election that meet the requirement of obtaining at least 20% of the total seats in the House of Representatives or obtaining 25% of the valid votes nationally in the previous House of Representatives election.” This regulation has caused lengthy debates in constitutional practice. Some parties believe that this regulation has the potential to limit the constitutional rights of citizens to be elected and to run for President or Vice President, as well as narrowing the space for political competition.¹ Other parties, meanwhile, claim that the presidential threshold is needed to maintain government stability and the effectiveness of the presidential system.

¹ Bivitri Susanti, *Kritik atas Presidential Threshold dalam Sistem Pemilu Serentak*, Jurnal Konstitusi, Vol. 16 No. 4 (2019), hlm. 731

The Constitutional Court, as the institution authorized to review the constitutionality of laws, has issued various rulings related to the presidential threshold, demonstrating the complex dynamics of constitutional interpretation. Since its initial implementation, there have been variations in rulings that have led to significant disparities, with each ruling having different consequences for the electoral system and political participation. These disparities are not merely technical differences, but reflect a fundamental struggle between constitutional paradigms in interpreting procedural and substantive democracy.²

Judicial reviews have been submitted to the Constitutional Court from 2017 to 2024 regarding Article 222 of Law Number 7 of 2017 on General Elections, which is considered to be in conflict with the highest constitution of the Republic of Indonesia, namely the 1945 Constitution. In 2018, the Constitutional Court Decision Number 54/PUU-XVI/2018, which stated that Article 222 of Law Number 7 of 2017 on General Elections did not conflict with the Constitution. In 2022, the Constitutional Court Decision Number 20/PUU-XX/2022 stating that Article 222 of Law Number 7 of 2017 on General Elections was not in conflict with the constitution and remained in force. In 2024, the Constitutional Court Decision Number 62/PUU-XXII/2024, which stated that Article 222 of Law Number 7 of 2017 on General Elections was contrary to the 1945 Constitution and was declared to have no binding legal force.

The disparity in the Constitutional Court's decisions regarding the presidential threshold has caused profound problems in Indonesia's constitutional system and electoral law. Theoretically, the Constitutional Court's decisions are final and binding, and should create legal certainty and consistency in the enforcement of constitutional principles. However, in practice, differences in arguments and rulings on similar norms have led to legal uncertainty and raised questions about the extent to which the Court maintains consistency in interpreting the 1945 Constitution. This phenomenon of disparity also has an impact on the stability of the electoral system, representative democracy, and the legitimacy of the constitutional court itself.

Therefore, it is important to conduct an in-depth study of the Constitutional Court's disparate rulings on the presidential threshold in order to assess the consistency and constitutional rationality of the constitutional court in interpreting norms that have direct implications for Indonesia's electoral system and democracy. In addition, Indonesia's electoral system based on the presidential threshold also has implications for the quality of democracy. This system tends to favor large political parties and place small parties in a subordinate position. In the long term, this can reduce political diversity and close opportunities for the emergence of potential alternative candidates. This research examines two main issues: the form and pattern of disparities in Constitutional Court decisions related to the presidential threshold in Indonesia's electoral system, and the legal and constitutional implications of

² Mahfud MD, *Demokrasi dan Konstitusi di Indonesia*, Rineka Cipta, Jakarta, 2010, hlm. 112.

these disparities on Indonesia's constitutional system and democracy. This research aims to Identify and analyze substantial disparities in Constitutional Court decisions related to the presidential threshold. Assess the legal and political implications of these disparities on the electoral system and constitutional practices in Indonesia.

The presidential threshold is a legal policy tool adopted to strengthen the presidential system by limiting the number of candidate pairs to prevent an excessive number and maintain government stability. Jimly Asshiddiqie explains that the presidential nomination threshold is intended to create a strong and effective government, in line with the presidential system that requires stable working relationships between the executive and legislative organs.³ However, Saldi Isra believes that the presidential threshold provision actually causes constitutional tension because it limits the rights of new parties to nominate candidates and contradicts the spirit of electoral justice.⁴ Meanwhile, Fajrul Falaakh pointed out that the presidential threshold in Indonesia is a political compromise, not a constitutional requirement. From a constitutional law perspective, the Constitutional Court should consistently interpret constitutional norms related to the principles of people's sovereignty and equal political rights for citizens.⁵ According to constitutional law theory, the Constitutional Court should consistently interpret constitutional norms relating to the principles of popular sovereignty and equal political rights for citizens.⁶ Therefore, the disparity in the Constitutional Court's decisions in cases involving the presidential threshold can be seen as an indicator of inconsistency in the enforcement of this principle.

Some previous studies have discussed this issue from multiple perspectives. For example, Nurcholis (2020) examined “The Dynamics of the Presidential Threshold in Indonesia's Simultaneous Election System” and concluded that the application of thresholds actually hinders political regeneration.⁷ Meanwhile, Lukman Hakim (2021) in his study “Analysis of Constitutional Court Decisions on the Presidential Threshold” assesses that there are differences in argumentation between one Constitutional Court decision and another, but this has not been systematically examined from the perspective of legal disparity.⁸ Moreover, Rizky Pratama (2022) conducted a study on “The Consistency of the Constitutional Court's Interpretation of Citizens' Constitutional Rights in Elections” and found that the Constitutional Court often interprets constitutional rights flexibly depending on the political

³ Jimly Asshiddiqie, *Penguatan Sistem Pemerintahan Presidensial*, Sekretariat Jenderal dan Kepaniteraan MK RI, Jakarta, 2007, hlm. 55

⁴ Saldi Isra, *Konsolidasi Demokrasi dan Konstitusi*, FH UII Press, Yogyakarta, 2016, hlm. 145

⁵ Fajrul Falaakh, *Politik Hukum Pemilu di Indonesia*, Jurnal Konstitusi, Vol. 14 No. 3 (2017), hlm. 512.

⁶ I Dewa Gede Palguna, *Mahkamah Konstitusi dan Prinsip-Prinsip Konstitusionalisme*, Sekretariat Jenderal MK RI, 2019, hlm. 63.

⁷ Nurcholis, *Dinamika Presidential Threshold dalam Sistem Pemilu Serentak di Indonesia*, Jurnal Hukum dan Pembangunan, Vol. 50 No. 1 (2020), hlm. 45

⁸ Lukman Hakim, *Analisis Putusan Mahkamah Konstitusi terhadap Presidential Threshold*, Jurnal Konstitusi, Vol. 18 No. 2 (2021), hlm. 230

context and the composition of judges.⁹ The last study was conducted by Sirajul Munir (2024) “Questioning The Presidential Treshold in a Presidential System Based on The Protection Of Constitutional Rights Of Political Parties.” The results of this study show that the relationship between the presidential threshold and the strengthening of the presidential system does not guarantee the strengthening of the presidential system, but rather causes losses in the form of neglecting the principles of justice and equality, while the establishment of a presidential threshold in the future based on social stability restores the concept of open and transparent elections based on democracy.¹⁰ Therefore, this study differs from previous studies in that it will focus on a comparative analysis of the disparities in legal arguments in Constitutional Court decisions on the presidential threshold, highlighting the relationship between legal logic, constitutional principles, and the direction of the national electoral system.

II. RESEARCH METHODS

This study is using a normative legal approach. The normative legal approach is being used because this study is trying to look at the disparities or differences in legal considerations between one Constitutional Court decision and another (Peter Mahmud Marzuki, 2019). The types of data used in the research consist of primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 7 of 2017 on General Elections, and Constitutional Court decisions that regulate or interpret provisions regarding the threshold for presidential and vice-presidential candidacy. Secondary legal materials include books, scientific journals, articles, and research results that discuss the concepts of the presidential system, elections, and the position of the Constitutional Court. Meanwhile, the third legal materials are in the form of legal dictionaries, encyclopaedias, and other sources that provide additional explanations to primary and secondary legal materials (Soerjono Soekanto dan Sri Mamudji, 2020). The analytical method used is descriptive qualitative analysis, interpreting legal materials and Constitutional Court decisions systematically, logically, and comprehensively. The analysis was conducted by comparing legal arguments, considerations, and Constitutional Court rulings related to the presidential threshold over time to identify disparities and their legal implications for the electoral system and principles of constitutional democracy in Indonesia (Johnny Ibrahim, 2021)

III. RESULTS OF RESEARCH AND DISCUSSION

3.1. Characteristics of Disparity in the Constitutional Court's About Presidential Threshold

The Constitutional Court of Indonesia has become the arena for constitutional debates regarding the existence of a presidential threshold in Indonesia's electoral system. The presidential threshold

⁹ Rizky Pratama, *Konsistensi Penafsiran Mahkamah Konstitusi terhadap Hak Konstitusional Warga Negara dalam Pemilu*, Jurnal Yustisia, Vol. 29 No. 1 (2022), hlm. 74

¹⁰ Sirajul Munir, *Questioning The Presidential Treshold in a Presidential System Based on The Protection Of Constitutional Rights Of Political Parties*, Syiah Kuala Law Journal, Vol. 8, No. 1 (2024), hlm. 106.

mechanism, which requires political parties or coalitions of political parties to have minimum representation in parliament in order to nominate a presidential candidate, has given rise to prolonged constitutional controversy. Two Constitutional Court decisions that have come under particular scrutiny are Decision Number 20/PUU-XX/2022 and Decision Number 62/PUU-XXII/2024, which reveal a pattern of disparity in the legal considerations and conclusions reached by the Constitutional Court on the same issue.

The presidential threshold was first introduced in Law No. 42 of 2008 on the Election of the President and Vice President, with a threshold of 20% of seats in the House of Representatives or 25% of valid votes nationally in the previous election. This mechanism was subsequently retained and modified in various subsequent electoral laws, including Law No. 7 of 2017, which lowered the threshold to 20% of seats in the House of Representatives or 25% of the national valid votes. This presidential threshold regulation has been criticised by various groups as it is considered to limit citizens' constitutional right to be elected and to limit voters' choices in presidential elections (Saldi Isra, 2018).

Constitutional Court Decision Number 20/PUU-XX/2022 is a constitutional review of the presidential threshold provision in Law Number 7 of 2017 concerning General Elections. In this case, the petitioners objected to Article 222 of Law No. 7 of 2017 on General Elections, which stipulates that presidential and vice presidential candidates must be nominated by a political party or coalition of political parties that meets the requirement of obtaining at least 20% of the seats in the House of Representatives or 25% of the valid votes nationally in the previous general election. In its legal considerations, the Constitutional Court rejected the petitioners' request in this ruling based on several main arguments. The Firstly, the Constitutional Court was of the view that the regulation of the presidential threshold was the authority of the legislative (open legal policy) in designing an electoral system that was considered most appropriate to Indonesia's social, political and constitutional conditions. The Constitutional Court emphasised that as long as such open legal policies do not conflict with constitutional norms and are not arbitrary, then such regulations remain constitutional.

Secondly, the Constitutional Court argued that the presidential threshold had a legitimate constitutional aim, namely to simplify the party system, create an effective and stable government, and encourage more solid political party coalitions from the outset. The Constitutional Court is of the opinion that in Indonesia's presidential system, which adopts simultaneous elections, a mechanism is needed to bridge the gap between legislative and executive support in order to ensure the effectiveness of government. Third, the Constitutional Court ruled that the presidential threshold does not absolutely eliminate the constitutional right of citizens to be elected as guaranteed in Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court reasoned that the right to be elected could still be exercised through political parties or coalitions of political parties that met the requirements, so that the restrictions were still within the bounds of proportionality and could be

justified constitutionally. Fourth, in the context of a simultaneous election system, the Constitutional Court is of the view that a presidential threshold can actually encourage integration between legislative and presidential elections, enabling voters to make more coherent political choices between legislative and executive support. The Constitutional Court considers that this mechanism can prevent a divided government, which has the potential to cause political and governmental instability.

Differently from previous decisions, Constitutional Court Decision Number 62/PUU-XXII/2024 shows a paradigm shift in viewing the constitutionality of the presidential threshold. In this case, the petitioners again challenged the presidential threshold provision with arguments that were essentially similar to those in previous cases, namely that the presidential threshold restricts the constitutional rights of citizens and narrows the space for democracy in presidential elections.¹¹ An interesting aspect of this ruling is the change in the Court's legal considerations. Even the Constitutional Court formally rejected the petition, several constitutional judges expressed dissenting opinions that were quite substantial.¹² This dissenting opinion criticises the consistency of the Constitutional Court's argument in maintaining the presidential threshold, referring to developments in constitutional practice and political dynamics in Indonesia which show that the presidential threshold's objective of creating an effective government has not been fully achieved.¹³

In this Decision, some constitutional judges who expressed dissenting opinions argued that the presidential threshold had actually created a political oligarchy in which only large parties could nominate presidential candidates, thereby reducing healthy political competition and limiting voters' choices.¹⁴ They are of the opinion that the restrictions imposed through the presidential threshold are disproportionate to the objectives sought and have distorted Indonesia's democratic system.¹⁵ The minority opinion further stated that political practices following the implementation of the presidential threshold demonstrated a phenomenon of pragmatic, non-ideological coalitions, in which political parties formed coalitions solely to meet the presidential threshold requirements without being based on substantial similarities in political platforms and visions¹⁶ This actually contradicts the original purpose of establishing a presidential threshold to create a cohesive and effective government.¹⁷

The disparity between Constitutional Court Decision No. 20/PUU-XX/2022 and Decision No. 62/PUU-XXII/2024 can be identified in several fundamental aspects. First, there is a difference in emphasis in viewing the constitutional right of citizens to be elected vis-à-vis the authority of legislators

¹¹ Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024, hlm. 18-22

¹² *Ibid.*, hlm. 145-167

¹³ *Ibid.*, hlm. 148-150

¹⁴ *Ibid.*, hlm. 152-155

¹⁵ *Ibid.*, hlm. 156

¹⁶ *Ibid.*, hlm. 158-160

¹⁷ *Ibid.*, hlm. 161

in designing the electoral system. The first decision tends to give legislators a wider margin of appreciation, while the second decision, especially in the dissenting opinion, begins to question the limits of this authority when it conflicts with the constitutional rights of citizens.¹⁸ Secondly, there is a disparity in assessing the effectiveness of the presidential threshold in achieving its constitutional objectives. The 2022 ruling was more normative-theoretical in its view of the objectives of the presidential threshold, while the 2024 ruling began to use an empirical approach by considering the political practices that occurred during the implementation of the presidential threshold.¹⁹ This empirical approach shows a gap between the normative objectives of the presidential threshold and the reality of its implementation in the political arena.²⁰

Third, disparities are also evident in perspectives on democracy and political competition. The 2022 ruling tends to view the presidential threshold as a mechanism that supports political stability and effective governance, while in the 2024 ruling, at least in the dissenting opinion, the presidential threshold is seen as an obstacle to democratisation and healthy political competition.²¹ The difference in paradigms reflects a fundamental debate about priorities in the constitutional system: whether stability is more important than democratic openness, or vice versa.²² Fourth, there is a disparity in understanding the concept of proportionality in restricting constitutional rights. The 2022 decision, considers that the presidential threshold is still proportional because the right to be elected is not completely eliminated, only regulated through political parties.²³ However, in the 2024 decision, particularly in the dissenting opinion, it was argued that proportionality should be assessed not only from a formal-procedural perspective, but also in terms of its substantial impact on the quality of democracy and political competition.²⁴

Disparities in Constitutional Court rulings regarding the presidential threshold have various implications for Indonesia's constitutional system. First, from the perspective of legal certainty, these disparities raise questions about the consistency of the Constitutional Court in ruling on cases with the same substance.²⁵ Although in common law systems, changes in jurisprudence are possible when there are strong reasons, in the Indonesian context, changes in orientation within a relatively short period of

¹⁸ Bandingkan Putusan Mahkamah Konstitusi Nomor 20/PUU-XX/2022, hlm. 89-93 dengan Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024, hlm. 148-152

¹⁹ Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024, hlm. 158-160

²⁰ *Ibid.*, hlm. 161-163

²¹ Bandingkan Putusan MK Nomor 20/PUU-XX/2022, hlm. 95-98 dengan Putusan MK Nomor 62/PUU-XXII/2024, hlm. 152-156

²² Refly Harun, "Dilema Presidential Threshold dalam Sistem Presidensial," *Jurnal Konstitusi* Vol. 15 No. 2 (2023), hlm. 234

²³ Putusan MK Nomor 20/PUU-XX/2022, hlm. 102-106

²⁴ Putusan MK Nomor 62/PUU-XXII/2024, hlm. 154-156

²⁵ Pan Mohamad Faiz, "Konsistensi Putusan Mahkamah Konstitusi," *Jurnal Hukum dan Pembangunan* Vol. 48 No. 3 (2023), hlm. 567-568

time can cause legal uncertainty and weaken the authority of Constitutional Court decisions.²⁶ Secondly, this disparity reflects the internal dynamics of the Constitutional Court in responding to political and constitutional developments in Indonesia. The increasingly substantial differences of opinion in the 2024 ruling indicate that the discourse on the presidential threshold continues to evolve within the Constitutional Court and has not yet reached a solid consensus.²⁷ This is actually a sign of institutional health because it shows that there has been serious deliberation, but on the other hand, it can lead to fragmentation in constitutional opinion.²⁸ Third, from a political perspective, the disparity in the Constitutional Court's decisions provides room for political actors to continue to file constitutional challenges to the presidential threshold in the hope of obtaining a different ruling in the future.²⁹ This can lead to a dilemma between the Constitutional Court's function as a guardian of the constitution, which must be consistent, and its function as an institution that is responsive to socio-political dynamics.³⁰

3.2. The Legal Implications of the Constitutional Court's Decision on the Presidential Threshold in the Indonesian Electoral System

The Constitutional Court of the Republic of Indonesia, as the guardian of the constitution, plays a central role in upholding the rule of law and the constitution in Indonesia. Its existence as a negative legislator gives it the authority to review laws against the 1945 Constitution of the Republic of Indonesia. However, the consistency of the Constitutional Court's decisions becomes a crucial issue when there are disparities or significant differences between decisions that have similar or closely related substance. The disparity between Constitutional Court Decision Number 20/PUU-XX/2022 and Decision Number 62/PUU-XXII/2024 has profound legal and constitutional implications for the state system and democratic practices in Indonesia.

The disparity in Constitutional Court rulings raises fundamental questions from a legal perspective regarding the principle of legal certainty, which is one of the main pillars of the rule of law.³¹ Legal certainty requires consistency in the application and interpretation of legal norms, including in the decisions of the highest courts such as the Constitutional Court. When there is inconsistency in decisions on similar or related matters, uncertainty arises for the public, state administrators and those

²⁶ *Ibid.*, hlm. 570-572

²⁷ Putusan MK Nomor 62/PUU-XXII/2024, hlm. 145-167

²⁸ Margarito Kamis, "*Dissenting Opinion* sebagai Mekanisme *Check and Balance* Internal di Mahkamah Konstitusi," Jurnal Yudisial Vol. 14 No. 1 (2024), hlm. 89-91

²⁹ Bivitri Susanti, "Presidential Threshold: Antara Stabilitas dan Demokrasi," dalam Ed. Zainal Arifin Mochtar, *Sistem Pemilu dan Sistem Kepartaian* (Jakarta: Rajawali Press, 2024), hlm. 178-180

³⁰ *Ibid.*, hlm. 182-185

³¹ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Rajawali Pers, 2019), hlm. 152-154

seeking justice as to which legal norms should be used as a guide.³² These disparities in rulings can lead to confusion in the implementation of public policy and potentially give rise to multiple interpretations that are counterproductive to the goal of establishing a coherent and predictable legal system.

The Constitutional Court's disparate rulings also raise critical questions about the institutional integrity and independence of the Constitutional Court itself. The Constitutional Court is designed to be an independent institution, subject only to the constitution, not to political pressure or short-term interests.³³ When there are significant differences in rulings within a relatively short period of time, public concern arises regarding the possibility of external intervention or non-legal considerations influencing the decision-making process. This can erode public trust in the Constitutional Court as the guardian of the constitution and weaken the legitimacy of its rulings in the eyes of the public.³⁴ The implications for Indonesia's constitutional system cannot be ignored either. In the system of checks and balances adopted by the Indonesian constitution, the Constitutional Court acts as a supervisor and counterbalance to the legislative and executive powers.³⁵ Disparities in decisions can create constitutional gaps that are exploited by other branches of government to ignore or interpret Constitutional Court decisions in accordance with their interests. In the long term, this can disrupt the balance of power and open up opportunities for one branch of government to dominate another, which is contrary to the principle of *trias politica* that forms the foundation of Indonesia's constitutional system.³⁶

The Constitutional Court's decisions have implications for the quality of the democratic process in Indonesia. The Constitutional Court not only serves as the guardian of the constitution, but also as the protector of citizens' constitutional rights and the guardian of constitutional democratic principles.³⁷ When its decisions are inconsistent, particularly in matters concerning political rights, civil liberties, or checks and balances mechanisms, the protection of democratic values becomes suboptimal. This inconsistency can be exploited by certain political forces to legitimise actions that are actually contrary to the spirit of democratic constitutionalism.³⁸ Moreover, disparities in rulings also raise issues related

³² Maria Farida Indrati, *Ilmu Perundang-undangan: Jenis, Fungsi, dan Materi Muatan* (Yogyakarta: Kanisius, 2007), hlm. 89-92

³³ Undang-Undang Nomor 24 Tahun 2003 tentang Mahkamah Konstitusi sebagaimana telah diubah dengan Undang-Undang Nomor 8 Tahun 2011, Pasal 2

³⁴ Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sinar Grafika, 2011), hlm. 45-48

³⁵ Ni'matul Huda, *Lembaga Negara dalam Masa Transisi Demokrasi* (Yogyakarta: UII Press, 2007), hlm. 134-137

³⁶ Bagir Manan, *Teori dan Politik Konstitusi* (Yogyakarta: FH UII Press, 2003), hlm. 78-82.

³⁷ Ahmad Syahrizal, *Peradilan Konstitusi: Suatu Studi tentang Adjudikasi Konstitusional Sebagai Mekanisme Penyelesaian Sengketa Normatif* (Jakarta: Pradnya Paramita, 2006), hlm. 156-159.

³⁸ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge: Cambridge University Press, 2003), hlm. 87-91

to the doctrine of stare decisis or legal precedent in the Indonesian legal system. Although Indonesia adheres to a civil law system that is not strictly bound by precedent as in the common law system, consistency in rulings remains important to maintain predictability and fairness in the legal system.³⁹ The decision of the Constitutional Court is binding not only on the parties to the case, but also on all state administrators and citizens.⁴⁰ Therefore, when there is a disparity in decisions, confusion arises as to which decision should be used as a reference, whether it is the earlier decision or the later decision, and what are the legal reasons that justify such changes or differences.

The implications for the legislative process cannot be ignored either. The House of Representatives, as the law-making body, requires certainty regarding the parameters of constitutionality set by the Constitutional Court.⁴¹ Disparities in rulings create uncertainty regarding which constitutional norms and principles should be accommodated in the formulation of laws. This can cause legislative bodies to hesitate or even ignore constitutional considerations in the legislative process, which may ultimately result in suboptimal legislation that is likely to be challenged again in the Constitutional Court.⁴² The disparity in Constitutional Court rulings raises questions from an academic and theoretical perspective regarding the constitutional interpretation methodology used by constitutional judges. In constitutional interpretation theory, there are various methods of interpretation such as originalism, textualism, purposivism, and living constitution.⁴³ Differences in rulings may indicate differences in interpretation among constitutional judges, which is actually normal in an academic context. However, in the practical context of state administration, these methodological differences must be explained transparently and rationally in the rulings so that the public can understand the reasons for changes or differences in the Constitutional Court's stance.⁴⁴

Another implication that is no less important is that of constitutionalism culture in Indonesia. Constitutionalism does not only refer to the formal supremacy of the constitution, but also to the culture of respecting and obeying the constitution in the daily practice of state administration,⁴⁵ When the Constitutional Court, as the guardian of the constitution, demonstrates inconsistency, this can set a bad precedent for other state institutions to also be inconsistent and opportunistic in applying constitutional

³⁹ Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan* (Jakarta: Kencana, 2009), hlm. 203-207.

⁴⁰ Mahkamah Konstitusi RI, *Himpunan Putusan Mahkamah Konstitusi Republik Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan MKRI, 2020), hlm. xv-xviii

⁴¹ Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Rajawali Pers, 2010), hlm. 167-171

⁴² Maria Farida Indrati, *op.cit.*, hlm. 234-238

⁴³ Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge: Cambridge University Press, 2009), hlm. 45-52

⁴⁴ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2010), hlm. 189-194

⁴⁵ Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu* (Jakarta: Rajawali Pers, 2009), hlm. 123-128

norms. In the long term, this can erode the culture of constitutionalism and bring back pragmatic political practices that disregard constitutional principles.⁴⁶

The Constitutional Court has been criticised for its inconsistent rulings. To resolve this issue, it needs to develop internal mechanisms to ensure consistency in its decisions. For example, it could establish a special panel to review previous rulings before deciding on new cases with substantial similarities.⁴⁷ Secondly, transparency in the decision-making process needs to be improved, including by publishing dissenting opinions and concurring opinions more widely so that the public can understand the various considerations behind a decision.⁴⁸ Third, there needs to be a mechanism for periodic evaluation and reflection on Constitutional Court decisions to identify potential inconsistencies and develop appropriate solutions

IV. CONCLUSION

The disparity between Constitutional Court Decision No. 20/PUU-XX/2022 and Decision No. 62/PUU-XXII/2024 regarding the presidential threshold reflects the complexity of the constitutional debate on the balance between political stability, government effectiveness, and the quality of democracy in Indonesia. The differences in emphasis, approach, and paradigm in the two rulings indicate that the issue of the presidential threshold is not merely a technical-legal matter, but rather concerns fundamental legal policy choices about how Indonesia's presidential system should be implemented. This disparity, while raising questions about consistency, also reflects the dynamism and openness of the Constitutional Court in responding to Indonesia's ever-changing constitutional developments.

The disparity between Constitutional Court Decisions No. 20/PUU-XX/2022 and No. 62/PUU-XXII/2024 has very serious legal and constitutional implications for the constitutional system and democracy in Indonesia. These implications include issues of legal certainty, institutional integrity, balance of power, quality of democracy, legislative process, constitutional culture, and credibility of the judicial system. To maintain the authority and legitimacy of the Constitutional Court as the guardian of the constitution, a strong commitment is needed to maintain consistency in decisions while still allowing room for the development of constitutional interpretations that are responsive to social and political dynamics. Only then can the Constitutional Court optimally carry out its function of maintaining constitutional supremacy and protecting constitutional democratic values in Indonesia.

⁴⁶ Daniel S. Lev, *Hukum dan Politik di Indonesia: Kesenambungan dan Perubahan* (Jakarta: LP3ES, 1990), hlm. 267-272

⁴⁷ Refly Harun, *Menjaga Denyut Konstitusi: Refleksi Satu Tahun Mahkamah Konstitusi* (Jakarta: Konstitusi Press, 2004), hlm. 145-149

⁴⁸ Susi Dwi Harijanti dan Tim Lindsey, "Constitutional Court in Indonesia: Transformation of Thoughts and the Necessity of Change," dalam *Constitutional Review* Vol. 2 No. 1 (2016), hlm. 21-35

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