

## Future *Parliamentary Threshold* after the Constitutional Court Decision and the Shadow of The Government's Grand Coalition



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**ABSTRACT:** *Parliamentary threshold* is the threshold of votes used to decide whether a political party gets a seat in the Indonesian House of Representatives. Historically, *parliamentary threshold* has experienced a change in numbers starting from 2.5% in the 2009 Election to 4% in the 2024 Election. This study uses normative legal research. Data was collected through literature studies (*library research*) and analyzed descriptively analytically. The Constitutional Court's decision stated *parliamentary threshold* conditionally unconstitutional results in the parliamentary threshold in the 2029 Election having to be reviewed. Changes to the parliamentary threshold are in the shadow of the current grand coalition in the Indonesian House of Representatives. So the parliamentary threshold that will be reviewed in the 2029 Election could remain at 4% or more than 4% in accordance with the agreement made in the grand coalition of the Indonesian House of Representatives for the 2024-2029 period. This is reinforced because the Constitutional Court's decision only ordered a review, but did not rigidly order the current parliamentary threshold to be lowered.

**KEYWORDS:** Constitutional Court, Indonesian House of Representatives, *Parliamentary Threshold*

### I. INTRODUCTION

General Elections (Pemilu) in Indonesia are held as an effort to implement Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD NRI). Article 1 paragraph (2) instructs the state that the highest sovereignty lies in the hands of the people. So that everything concerning the people's livelihood is determined and implemented for the greatest prosperity and welfare of the people.

The implementation of the highest sovereignty lies in the hands of the people through elections aimed at ensuring that stakeholders and public policy makers are directly elected by the people. In the election, the people will elect the presidential/vice presidential candidate pairs, the People's Representative Council of the Republic of Indonesia (DPR RI), the Provincial/District/City People's Representative Council (DPRD), and the Regional Representative Council (DPD). In the Indonesian election system, the people's votes are counted in the components *one man one vote* so that the selected participant is the participant who gets the highest number of votes.

Elections in Indonesia have been held since 1955 until the 2024 election. Since it was first held until now, there have been many substantial changes related to the participation of election participants to the direct participation of voters. One of the things that has changed from the election is the determination of *parliamentary threshold* to determine which political parties can sit in the Indonesian House of Representatives.

*Parliamentary threshold* is a mechanism for calculating the threshold for election participants which is calculated based on valid votes obtained nationally to be able to participate in the competition for seats in the Indonesian House of Representatives. The threshold is set based on the law on elections and was first introduced during the 2014 elections. The implementation of the parliamentary threshold aims to limit the number of political parties in the Indonesian House of Representatives. The limitation aims to minimize conflict in parliament so that parliamentary action can be effective and efficient. Limiting the number of political parties in parliament is not something new in the Indonesian constitutional system. Before the emergence of *parliamentary threshold* which was in effect in the 2009 Election, efforts to limit political parties in parliament have emerged with the existence of *electoral threshold* which applied to the 1999 General Election.

*Electoral Threshold* is an effort to limit the number of political parties in the election contest. In the concept *electoral threshold*, it was agreed that political parties that could compete in the next election were political parties that obtained 2% (two percent) of the vote in the election a *quo*. Efforts to simplify political parties through *electoral threshold* failed because political parties that did

## **Future *Parliamentary Threshold* after the Constitutional Court Decision and the Shadow of The Government's Grand Coalition**

not get 2% of the vote were still allowed to participate in the next election contest on the condition that they change their party's symbol and name. Because of this, it emerged *parliamentary threshold* the practice of which has been quite optimal in suppressing the number of political parties in parliament to date.

After parliamentary threshold quite successful in suppressing the number of political parties in parliament. There is concern that parliamentary threshold indirectly has eliminated the rights of voters in choosing their representatives in parliament.

This can be seen from legislative candidates who obtain quite a lot of votes in an electoral district but are unable to obtain a seat in the Indonesian House of Representatives because the party they are riding on does not reach 4% (four percent) of the vote.

One of the legislative candidates who received quite a lot of votes but did not pass to the Indonesian House of Representatives was Achmad Baidowi who was a legislative candidate from the United Development Party (PPP). Achmad Baidowi who received 359,000 votes in electoral district XI of East Java could not sit in parliament because PPP's national valid vote acquisition did not reach 4%. Finally, the 359,000 votes entrusted to Achmad Baidowi could not be represented because the elected representative was replaced by someone else.

Seeing this phenomenon, the Constitutional Court through Constitutional Court Decision Number 116/PUU-XXI/2023 determined that the parliamentary threshold of 4% was conditionally unconstitutional. The Constitutional Court's decision will only be enforced in the 2029 Election, so the 4% threshold in the *in quo* Election Law must be reviewed by the Government and the DPR.

The Constitutional Court considered that the determination of the 4% threshold figure could not be tested for its rationality. In the academic text of Law Number 7 of 2017 concerning Elections, the focus of discussion was only on the importance of determining the parliamentary threshold without creating a rational method so that a figure of 4% could be produced. So in the next election, the Constitutional Court determined that the determination of the parliamentary threshold must be reviewed and changed. The Constitutional Court did not provide a rigid decision regarding the parliamentary threshold figure. So that the parliamentary threshold in the 2029 election will be regulated in the amendment law on the Election to accommodate the decision of the Constitutional Court.

The contents of the changes to the parliamentary threshold regulated through changes to the Election Law are feared to not be able to accommodate the interests of the people. This can be seen from the composition of the Indonesian House of Representatives, which is mostly in a coalition with the Government. The large coalition that is not balanced by the strength of the opposition will result in strategic decisions being completed during the "lunch break" and agreed upon together at the plenary meeting of the Indonesian House of Representatives.

We have seen such political conditions for the past 5 (five) years where the majority of seats in the Indonesian House of Representatives are in coalition with the Government. Minimal opposition resulted in opposition from the opposition not resulting in changes to decisions in the Indonesian House of Representatives meetings. In the 2019-2024 period, the parties in the coalition were PDI-P, Gerindra, Nasdem, PKB, PPP, PAN, Golkar and the only remaining opposition parties were PKS and Demokrat. However, the Demokrat party finally joined the coalition for the remaining period and left PKS as the opposition.

In the 2024-2029 government, the number of coalitions in the Indonesian House of Representatives (DPR RI) is increasing. All parties that passed the DPR RI parliamentary threshold have declared their coalition in the Advanced Indonesia Coalition (KIM) Plus. In 2019-2024, only PKS remains as the opposition, while in the 2024-2029 period, PDI-P is the only party that is not part of the coalition. Seeing the things as the author describes above, the author is interested in writing an article entitled the future *parliamentary threshold* post-constitutional court ruling and the shadow of a grand coalition government.

This writing uses a normative legal writing method using a case approach and analysis of statutory regulations. The data obtained by the author is data originating from literature studies (*library research*) be it from scientific articles, books, journals, dictionaries, and so on. The article will analyze and describe how the shadow of the grand coalition affects the future *parliamentary threshold* in Indonesia after the Constitutional Court decision.

## **II. RESEARCH METHOD**

The research method used by the author is normative legal research. Research using normative legal research is based on the approach and analysis of legislation. This approach is used by the author in this study is by means of literature study (library research). The data collected comes from scientific works such as scientific journals, books, dictionaries and so on. The writing that has been analyzed will be described to see the relationship between variables. In this case, it is the relationship between legal politics and decisions dissenting opinion by the constitutional court.

## **III. RESULT AND DISCUSSION**

### ***Parliamentary threshold* in Indonesia**

*Parliamentary threshold* in the dictionary *Oxford Advanced Learner's Dictionary* separated into words *parliamentary* and *threshold*. *Parliament* interpreted as *the group of people who are elected to make and change the laws of a country*. Whereas

## Future *Parliamentary Threshold* after the Constitutional Court Decision and the Shadow of The Government's Grand Coalition

*threshold* interpreted as *the level at which something starts to happen or has an effect*. According to the dictionary, *parliamentary threshold* can be interpreted as a certain limitation for people to be able to enter a group that can change or create a law in a country.

Practice *parliamentary threshold* not only implemented in Indonesia. It is noted that many countries with a presidential or parliamentary system of government also set a threshold to be able to get a seat in parliament. The countries that set a parliamentary threshold are as follow:

**Table 1.1. Parliamentary Threshold Percentage in Other Countries**

No.	Country	Percentage
1.	Türkiye	10%
2.	Finland	5.4%
3.	German	5%
4.	Belgium	4.8%
5.	Sweden	4%
6.	Greece	3.3%
7.	Austria	2.6%
8.	Italy	2%
9.	Denmark	1.6%
10.	Dutch	0.7%

**Source:** Author's Processed Results

Percentage *parliamentary threshold* in various countries it is very diverse and there is no official benchmark for determining the percentage. The percentage is very dependent on the political culture of the country and the agreement of the political elite in power at that time until it is formulated in the law regarding *parliamentary threshold*.

The determination of the parliamentary threshold in Indonesia is also quite different in each election edition. Efforts to reduce the number of political parties in parliament have occurred since 1999 through *electoral threshold*. In the 1999 Election, it was stipulated that political parties must obtain a minimum of 2% of the national valid votes to be able to participate in the contest in the next Election. Then in the 2004 Election *electoral threshold* increased to 3% as a condition for participating in the next election.

Efforts to simplify parties in parliament through *electoral threshold* it turned out to fail because there were still many parties that emerged in the 2009 Election. To overcome this, it was determined *parliamentary threshold* as a requirement for political parties to get a place in parliament. The journey of post-reform party simplification will be described in the table below:

**Table 1.2. Party Simplification Efforts in Election Edition**

No.	Election Edition	Effort
1.	1999	Determination electoral threshold by 2% to participate in the 2004 election
2.	2004	<i>Electoral threshold</i> increased to 3% as a condition for participating in the 2009 Election
3.	2009	<i>Parliamentary threshold</i> enforced to gain seats in parliament. <i>Parliamentary threshold</i> set at 2.5%
4.	2014	<i>Parliamentary threshold</i> increased from the initial 2.5% to 3.5%
5.	2019	<i>Parliamentary threshold</i> raised again to 4%
6.	2024	No changes <i>parliamentary threshold</i> by 4%
7.	2029	The Constitutional Court through decision No. 116/PUU-XXI/ 2023 instructed that <i>parliamentary threshold</i> re-examined.

**Source:** Author's processed results

Efforts to establish *parliamentary threshold* by 4% is an effort to streamline the composition of parties in the Indonesian House of Representatives. Too many parties in the Indonesian House of Representatives are suspected of being an obstacle to carrying out legislative functions and making the Indonesian House of Representatives run ineffectively and efficiently.

The statement that the large number of party compositions in the legislature makes legislative performance more effective and efficient does not have strong evidence. This can be seen from the determination *parliamentary threshold* only exists for the legislative elections of the Indonesian House of Representatives and does not apply to the elections of the Provincial/District/City

**Future Parliamentary Threshold after the Constitutional Court Decision and the Shadow of The Government's Grand Coalition**

DPRD. Through the decision of the Constitutional Court Number 52/PUU-X/ 2012, the implementation of *parliamentary threshold* of 3.5% as regulated in Law Number 8 of 2012 concerning the General Election of Members of the People's Representative Council, Regional Representative Council, and Regional People's Representative Council is declared unconstitutional. So that *parliamentary threshold* only applies to the legislative elections of the Indonesian House of Representatives.

Efforts to streamline the composition of parties in parliament should also be implemented in the Provincial/District/City DPRD if the reason for determining this is...*parliamentary threshold* is for the effectiveness of parliamentary performance. However, what happened was only a monopoly of power wrapped in a streamlining of the composition of the DPR RI and the goal of effectiveness and efficiency. Furthermore, if we look at the legislative function as the main function of the DPR RI, it was found that streamlining the composition of parties in the DPR RI was not a solution to make the DPR RI's performance more effective and efficient. The effectiveness of the DPR RI's performance can be seen from how many DPR RI in one period passed laws. Unfortunately, since the *parliamentary threshold* there was no correlation found between streamlining party composition and making the performance of the Indonesian House of Representatives more effective.

The performance of the Indonesian House of Representatives in carrying out its legislative function since it was established *electoral threshold* and *parliamentary threshold* which has undergone changes 3 (three) times can be seen from the number of laws passed. The following is a description of the performance of the Indonesian House of Representatives in passing laws as follows:

**Table 1.3. Legislative Performance of the Indonesian House of Representatives from Time to Time**

No.	Period	Legislative products	Number of Parties	ET/PT
1.	1999	189 Law	21 parties	2%
2.	2009	126 Law	9 parties	2.5%
3.	2014	84 Law	10 parties	3.5%
4.	2019	91 Law	9 parties	4%
5.	2024	126 Law	9 parties	4%

**Source:** Author's Processed Results

Through the description in the table above, it can be seen that in the period 1999-2004 the numbers of laws passed was more than the entire period in the DPR RI until 2024 even through the number of political parties in the DPR RI was 21 political parties. The decrease in the number of political parties from 21 political parties in the DPR RI to 9 political parties did not have a significant effect on the performance of legislation in the DPR RI, and even tended to decline.

Due to this, the statement that streamlining the composition of political parties in the Indonesian House of Representatives is to realize the effectiveness and efficiency of the performance of the Indonesian House of Representatives can be refuted. The emergence of *parliamentary threshold* instead of making the performance of the Indonesian House of Representative more effective, it actually creates a monopoly of power by a handful of parties in power in the Indonesian House of Representatives.

**Future Parliamentary Threshold and the Shadow of the Grand Coalition**

Enforcement *parliamentary threshold* according to research conducted by Bryon Moraski and Gerhard Loewenberg, it will only benefit parties that win the majority of votes. The advantage gained by the majority party is the guarantee to remain in parliament because the party's votes have exceeded the threshold determined by law.

This can be analyzed through the increase in the figures in the determination *electoral threshold* and *parliamentary threshold* since it was implemented. In the context *parliamentary threshold*, this figure actually increased drastically within a period of 10 (ten) years from the 2.5% agreement in the 2009 Election then increased drastically to 4% in the 2019 Election.

The monopoly of power that occurred was driven by the compactness of the coalitions in the Indonesian House of Representatives to pass the law on increasing *parliamentary threshold*. The coalition that is too large and dominant in the Indonesian House of Representatives has in fact made the rules that are to be ratified actually more or less benefit the party groups that are part of the coalition. The discourse to increase *parliamentary threshold* has emerged in 2020. The discourse was initiated by the Indonesian Democratic Party of Struggle (PDI-P). PDI-P agreed to raise *parliamentary threshold* which was previously 4% to 5%. In addition, the Golkar party actually wants to increase *parliamentary threshold* from the previous 4% to 7.5% and applies to the 2024 Election.

Apart from the discourse initiated by PDI-P and Golkar, the increase *parliamentary threshold* also proposed by the Nasdem party. The Nasdem party proposed that *parliamentary threshold* increased from the previous 4% to 7% in the 2024 Election. The grand coalition in the Indonesian House of Representatives for the 2019-2024 period makes it possible for political elites to agree to increase *parliamentary threshold*. The large number of coalitions that are not balanced by the opposition actually makes the discourse in the Indonesian House of Representatives not run optimally. Discourses as initiated by several political parties ultimately never happened along with the emergence of the Constitutional Court's decision regarding the review *parliamentary threshold*.

## Future *Parliamentary Threshold* after the Constitutional Court Decision and the Shadow of The Government's Grand Coalition

The Constitutional Court's decision has momentarily provided a breath of fresh air for democracy with people's sovereignty in Indonesia. However, the Constitutional Court's decision only ordered a review of the determination of the threshold figures currently regulated in the Election Law. This is different from the Constitutional Court's Decision Number 60/PUU-XXII/2024 concerning the threshold for regional head nominations. In this decision, the Constitutional Court immediately revised the political party vote acquisition figures in the form of a percentage (%) so that it immediately created a new norm in its decision.

Although the Constitutional Court's decision regarding *parliamentary threshold* provides a breath of fresh air, but the Constitutional Court's decision does not provide instructions for the 4% figure in *parliamentary threshold* must be reviewed and reduced. The Court only ordered that the percentage figure be determined at *parliamentary threshold* carried out in accordance with in-depth rational theories and studies. Therefore, if the figures in the studies and theories used still produce 4% or more, then this can still be constitutional.

Because of that, then *parliamentary threshold* for the 2029 Election is facing a real challenge due to the existence of a large coalition in the Indonesian House of Representatives. The large coalition, which currently consists of 7 (seven) parties in the Indonesian House of Representatives, has the potential to create studies and theories that seem rational for reestablishing *parliamentary threshold* by 4% or even more than 4%. This is very possible considering that the party that is not part of the grand coalition is PDI-P, which in the last 3 election editions has always received more than 15% of the vote. So that *parliamentary threshold* which is later set at 4% or more than that will not have an effect and will prevent PDI-P from sitting again in the DPR-RI.

### IV. CONCLUSION

*Parliamentary threshold* in Indonesia was established due to the failure *election threshold* in creating sufficient boundaries to improve the simple multi-party system in the Indonesian House of Representatives. Historically, *parliamentary threshold* several changes have been made from the initial 2.5% to 4% in the 2024 election.

Determination *parliamentary threshold* it turns out that it does not have in-depth studies and theories as well as clear rationality. Therefore, the Constitutional Court ordered a review to be conducted using clear theories and studies and implemented in the 2029 Election. However, seeing how *parliamentary threshold* in Indonesia which is not produced through clear studies and theories, then *parliamentary threshold* which will be regulated in the 2029 Election as mandated by the Constitutional Court's decision could remain at 4% or more because the Constitutional Court has never ordered it to be regulated at less than 4% for the 2029 Election. The size of the coalition in the Indonesian House of Representatives makes it increasingly possible that *parliamentary threshold* which will be regulated in the 2029 Election will remain at 4% or more than 4%.

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