

ANALYZING THE ELIMINATION OF THE PRESIDENTIAL THRESHOLD THROUGH THE FRAMEWORK OF FIQH SIYASAH

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Abstract

This research explores whether the Constitutional Court Decision No. 62/PUU-XXII/2024—which removes the presidential threshold for presidential and vice-presidential candidates—conforms to the principles of fiqh siyasah (Islamic political jurisprudence). Employing a qualitative library research design with a descriptive-analytical approach, the study applies the fiqh siyasah framework to examine the Court's reasoning. The findings indicate that the abolition of the threshold embodies the principle of al-Musawah—the equality of rights among citizens—which constitutes a fundamental tenet of Islamic political thought. This concept encompasses both civil and constitutional equality, ensuring that every citizen has fair and inclusive access to political participation. The study further notes that many scholars consider the hadith limiting leadership to the Quraysh tribe no longer relevant in contemporary governance. Accordingly, the Court's ruling is consistent with Islamic jurisprudence, as it seeks to uphold equal constitutional rights for all citizens, free from lineage or social hierarchy. In essence, the decision reflects the objectives of fiqh siyasah by fostering equality, inclusivity, and justice within the democratic framework in harmony with Islamic political ethics.

Keywords *Fiqh Siyasah; Constitutional Equality; Presidential Threshold; Islamic Political Thought; Democratic Participation*

Abstrak

Penelitian ini mengkaji kesesuaian Putusan Mahkamah Konstitusi Nomor 62/PUU-XXII/2024—yang menghapus ambang batas pencalonan presiden dan wakil presiden—dengan prinsip-prinsip dalam fiqh siyasah (fikih politik Islam). Dengan menggunakan metode penelitian kualitatif berbasis kepustakaan dan pendekatan deskriptif-analitis, analisis dilakukan melalui kerangka fiqh siyasah untuk menilai argumentasi hukum putusan tersebut. Hasil penelitian menunjukkan bahwa penghapusan ambang batas mencerminkan prinsip al-Musawah, yaitu persamaan hak bagi seluruh warga negara, yang merupakan elemen pokok dalam pemikiran politik Islam. Prinsip ini meliputi kesetaraan hak sipil dan konstitusional, yang mendorong partisipasi politik yang inklusif bagi semua warga negara. Penelitian ini juga menyoroti pandangan ulama yang menyatakan bahwa hadis tentang pembatasan kepemimpinan hanya untuk suku Quraisy tidak lagi relevan dalam konteks pemerintahan modern. Dengan demikian, putusan Mahkamah Konstitusi tersebut sejalan dengan hukum Islam karena menjamin kesetaraan hak konstitusional tanpa diskriminasi keturunan atau status sosial. Kesimpulannya, putusan ini merefleksikan tujuan fiqh siyasah dalam menegakkan prinsip kesetaraan, inklusivitas, dan keadilan dalam proses demokrasi sesuai dengan nilai-nilai politik Islam.

Keywords: *Fiqh Siyasah; Kesetaraan Konstitusional; Ambang Batas Pencalonan Presiden; Pemikiran Politik Islam; Partisipasi Demokratis*

INTRODUCTION

The Constitutional Court occupies a critical position within Indonesia's constitutional system, primarily responsible for conducting constitutional reviews. Its authority, as stipulated in Article 24C paragraph 1 of the 1945 Constitution, enables it to assess the legality of laws against the 1945 Constitution, thereby upholding popular sovereignty and ensuring governmental accountability.¹ The Court recently exercised this power by accepting a material test petition filed by four students from the State Islamic University of Sunan Kali Jaga Yogyakarta,² challenging Article 222 of Law Number 7 of 2017, which pertains to the presidential threshold. This case was officially registered under the number 62/PUU-XXII/2024.

Article 222 of Law Number 7 of 2017 specifies that "Candidate Pairs are proposed by Political Parties or Coalition of Political Parties Participating in the Election that meet the requirements to obtain at least 20% of the number of seats in the House of Representatives or obtain 25% of the valid votes nationally in the Election of Members of the House of Representatives in the previous period."³ This provision establishes prerequisites for electoral eligibility, effectively limiting passive political rights and, consequently, narrowing the democratic arena, disproportionately affecting smaller parties within the legislature.⁴

Furthermore, the presidential threshold is argued to curtail the electoral participation rights of smaller parties and the general populace.⁵ This restriction potentially impedes the emergence of highly qualified national candidates and reduces the diversity of options available to voters.⁶ While several parties have declared the presidential threshold unconstitutional, others advocate for its retention, asserting its role in maintaining governmental stability.⁷ In addition,

¹ Marwan Mas, *Constitutional and Institutional Law of the State* (Depok: Rajawali Pers, 2008), p. 141-142; Ahmad Fadlil Sumadi, Achmad Edi Subiyanto, and Anna Triningsih, *Procedural Law of the Constitutional Court* (Depok: Rajawali Pers, 2022), p. 44.

² Nurhadi Suchahyo, "Four Students of UIN Sunan Kalijaga Change the Political Landscape of Indonesia," VOA (blog), accessed April 24, 2025, <https://www.voaindonesia.com/a/empat-mahasiswa-uin-sunan-kalijaga-ubah-lansekap-politik-indonesia/7925488.html>.

³ "Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections," t.t., 147, <https://www.mkri.id/public/content/pemilu/UU/UU%20No.7%20Tahun%202017.pdf>.

⁴ Eko Supriatno and Achmad Rozi, "THE EFFECT OF THE ELIMINATION OF THE PRESIDENTIAL THRESHOLD ON THE INDONESIAN POLITICAL SYSTEM," *KALODRAN (Journal of Communication Sciences)* 3, no. 1 (2024): 1–9.

⁵ Satrio Nugroho, "Analysis of Article 222 of Law Number 7 of 2017 concerning Elections related to the Presidential Threshold in the Election System in Indonesia," *Maleo Law Journal* 7, no. 1 (30 April 2023): 75, <https://doi.org/10.56338/mlj.v7i1.3141>.

⁶ Umarwan Sutopo, Achmad Hasan Basri, dan Hilman Rosyidi, "Presidential Threshold in The 2024 Presidential Elections: Implications for The Benefits of Democracy In Indonesia," *Islamic Justice* 21, no. 1 (25 Juni 2024): 156, <https://doi.org/10.21154/justicia.v21i1.7577>.

⁷ Abdul Ghoffar, "The Problem of the Presidential Threshold: Constitutional Court Decisions and Experiences in Other Countries," *Constitution Journal* 15, no. 3 (2018): 497.

several parties stated that *the presidential threshold* was unconstitutional.⁸ Some parties also support the existence of a *presidential threshold*, they stated that it is in order to maintain government stability. *The presidential threshold* must be maintained.⁹

The concept of leadership restrictions, akin to the presidential threshold, is not exclusive to Indonesia.¹⁰ Within *fiqh siyasah*, certain conditions or limitations also apply. For instance, Imam al-Mawardi, in his work *al-Ahkam al-Sulthaniyah*, outlines seven prerequisites for a caliph: 1) justice, 2) knowledge pertaining to legal *ijtihad*, 3) sound judgment, 4) freedom from disabling conditions, 5) adoption of beneficial policies, 6) courage and heroism in defending the community and engaging in *jihad* against adversaries, and 7) lineage, specifically requiring descent from the Bani Qurays.¹¹

Prior research on the presidential threshold has indicated parallels between Article 222 of Law Number 7 of 2017 and Imam al-Mawardi's perspective, particularly his emphasis on leadership originating from the Banu Qurays. Similarly, some studies suggest the presidential threshold aligns with *siyasah syar'iyah*, where *ahl al-halli wa al-aqd* possess the authority to determine prospective leaders.¹²

Despite the established discourse on leadership nomination restrictions in both *fiqh siyasah* and Indonesia, and existing research on the presidential threshold from a *siyasah* jurisprudence perspective, a notable gap persists concerning the implications of Constitutional Court Decision Number 62/PUU-XXII/2024 for the elimination of the presidential threshold. Therefore, this study seeks to explore how Islamic constitutional principles, or *fiqh siyasah*, interpret the abolition of the presidential candidacy threshold subsequent to this pivotal Constitutional Court decision.

⁸ Titon Kurnia, "Presidential Candidacy Threshold and Presidentialism Affirmation in Indonesia," *Journal of Law* 07, no. 03 (January 2021): 353–79, <https://doi.org/10.22304/pjih.v7n3.a4>.

⁹ Antoni Putra, "Why is the 'Presidential Threshold' Maintained Even though It Is Considered Irrelevant to Simultaneous Elections?," accessed June 26, 2025, <https://pshk.or.id/blog-id/mengapa-presidential-threshold-dipertahankan-pada-dinilai-tak-relevan-dengan-pemilu-serentak/>.

¹⁰ Denny Indra Sukmawan and Syaugi Pratama, "Critical Review of the Constitutional Court's Decision on the Presidential Threshold," *Constitution Journal* 20, no. 4 (1 December 2023): 564, <https://doi.org/10.31078/jk2041>.

¹¹ Imam al-Mawardi, *al-Ahkam al-Sulthaniyah* (Cairo: Dar al-Hadis, 2009), 20.

¹² Iqbal Katrino dan Yus Afrida, "People's Sovereignty in The System Presidential Threshold in The Perspective *Siyasah al-Syar'iyah*," *El-Mashlahah: Scientific Journal of Sharia Faculty IAIN Palangka Raya* 11, no. 2 (2 December 2021), <https://doi.org/10.23971/elma.v11i2.3259>.

METHOD

This study employs a normative legal research methodology, specifically a library-based approach.¹³ Its analytical framework is descriptive-analytical, involving a meticulous description of primary data sources and their subsequent analysis through relevant legal resources to achieve a profound understanding of the research subject.¹⁴ Data sources for this study are categorized into primary and secondary. The primary data consists solely of Constitutional Court Decision Number 62/PUU-XXII/2024, serving as the core object of this investigation. Secondary data encompasses supporting literature, including fiqh books, scholarly articles from academic journals, and information from credible websites. All gathered data will undergo descriptive analysis, applying the fiqh siyasah approach to formulate pertinent arguments and evaluate the decision's alignment with fiqh siyasah principles.

RESULTS AND DISCUSSION

Democracy is widely regarded as the paradigmatic political system globally¹⁵ aligning with Ni'matul Huda's assertion that it represents the optimal framework for governance and statehood.¹⁶ In democratic nations, including Indonesia, ultimate authority resides with the populace, a principle enshrined in Article 1 Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which declares, "Sovereignty is in the hands of the people, and is carried out according to the Law."¹⁷

However, the implementation of the presidential candidacy threshold, as stipulated in Article 222 of Law Number 7 of 2017 concerning Elections, has consistently drawn significant scrutiny and criticism from various sectors regarding its implications for democratic principles and substance in Indonesia. A key instance of this dissent is the material test petition, registered under Number 62/PUU-XXII/2024, filed by four university students with the Constitutional Court.

The petitioners presented at least three primary arguments challenging Article 222 of Law Number 7 of 2017. Their first argument was that the Constitutional Court, despite previously categorizing the presidential threshold as an open legal policy (thereby delegating

¹³ "Your Excellency, Your Excellency, *Legal Research in Practice* (Jakarta: Sinar Grafika, 2002), 13–14.

¹⁴ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2009), 223.

¹⁵ Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia* (Jakarta: Sinar Grafika, 2018), p. 116.

¹⁶ Ni'matul Huda, *Indonesian Constitutional Law* (Depok: Rajawali Pers, 2018), p. 259.

¹⁷ Khairul Fahmi, "The Principle of People's Sovereignty in the Determination of the General Election System of Legislative Members," *Journal of the Constitution*, Volume 7, no. 3 (June 2010): 119–60.

its regulation to competent lawmakers and making it subject to political will), had effectively transgressed fundamental principles of open legal policy¹⁸, morality, rationality, and egregious injustice.¹⁹ They argued that the Constitutional Court permitted the continued enforcement of Article 222 without thoroughly examining its impact on democratic principles and citizens' constitutional rights.

Secondly, the petitioners asserted that Article 222 of Law Number 7 of 2017 contravenes the principle of periodic elections, as mandated by Article 22E paragraph 1 of the 1945 Constitution, which stipulates elections every five years. Jimly Asshiddiqie underscored the imperative of regular elections, highlighting that public aspirations and societal conditions are inherently dynamic. Such electoral periodicity is crucial for accommodating changes in demographics and ensuring a systematic transfer of state leadership.²⁰

Furthermore, the presidential threshold is criticized for distorting representation, thereby contradicting the principle of "one person, one vote, one value."²¹ This contentious issue has been a central point of debate during discussions on the Election Bill. The current provision links the presidential threshold to the outcomes of the preceding legislative election—even when elections are held simultaneously. This means that prior legislative results disproportionately influence presidential and vice-presidential nominations, a setup that demonstrably distorts representation and conflicts with Article 22E paragraph 1 of the 1945 Constitution.²²

The third objection raised by the petitioners centered on the presidential threshold's perceived infringement upon the fundamental rights of voters. This policy effectively constrains the public's ability to elect their preferred leaders, as political parties are compelled to form coalitions to secure the requisite 20% support for presidential and vice-presidential nominations. This limitation curtails voter choice, potentially fostering political apathy. Benny K Harman explicitly argued that such thresholds restrict the emergence of alternative

¹⁸ Bagus Surya Prabowo, "Initiating Judicial Activism in the Presidential Threshold Decision at the Constitutional Court," *Constitution Journal* 19, no. 1 (March 28, 2022): 073, <https://doi.org/10.31078/jk1914>.

¹⁹ Ni Putu Sintya Lestari, I Nyoman Suandika, and Ida Bagus Anggapurana Pidada, "Juridical Review of the Age Limit of Vice Presidential Candidates in the Constitutional Court Decision," *CONSENSUS : Journal of Defense, Law and Communication Sciences* 1, no. 14 (August 2024): 52, <https://doi.org/10.62383/konsensus.v1i4.232>.

²⁰ Jimly Asshiddiqie, "Political Parties and General Elections as Instruments of Democracy," *Constitution Journal* 3, no. 4 (December 2006): 1–29.

²¹ Sip Lawfirm, "Abolition of the Presidential Threshold through the Constitutional Court's Decision," accessed April 24, 2025, <https://siplawfirm.id/presidential-threshold/?lang=id>.

²² Rahmat Muhajir Nugroho, *Presidential Candidacy Thresholds in the Electoral System: Legal Politics, Implications, and Reconstruction* (Depok: Rajawali Pers, 2024), p. 9.

candidates, contending that electoral laws should ideally foster a broader array of leadership options to enhance competition, participation, and the overall quality of leadership.²³

The presidential threshold is also deemed to violate the ethical foundations of democracy by treating citizens as mere objects rather than active subjects in the democratic process. This stance undermines the very essence of democracy, which posits popular sovereignty. While general elections are intended to actualize a democratic system, the presidential threshold is perceived as restricting democratic movement, particularly for smaller parties that might possess highly qualified presidential candidates and innovative policy proposals for national leadership. This inevitably has negative implications for the purported effectiveness of the presidential system in Indonesia, which the threshold was initially designed to bolster.²⁴

In a similar vein, Refly Harun contended that the presidential threshold's efficacy in strengthening the presidential system remains unproven. He posited that the policy governing the nomination of presidential and vice-presidential candidates primarily serves as a political maneuver by larger parties.²⁵ Although the initial intent behind the presidential threshold in Indonesian elections was to reinforce the presidential system—thereby enhancing governmental effectiveness through a more selective candidate pool for quinquennial elections—its practical outcome is to narrow the field of potential candidates. Critically, the provisions of the presidential threshold are perceived as indirectly perpetuating the dominance of established political parties and compelling nascent political entities to align with larger factions.²⁶

The petitioners additionally argued that the 33 rejected applications concerning Article 222 of Law Number 7 of 2017 served as evidence of its unconstitutionality. They underscored that constitutional rights include the right to vote, the right to run for office, and the right to nominate candidates.²⁷ However, as previously outlined, the presidential threshold policy

²³ Ghoffar, "Problematika presidential threshold."

²⁴ Dwi Wahyu Nugroho, "Analysis of the Impact of the Presidential Threshold System in Presidential and Vice Presidential Elections in Indonesia on Political Inclusivity and Democratic Representation," *Proceedings Series on Social Sciences & Humanities* 17 (2024): 211–18.

²⁵ Indah Virginia Antamaeng, "The Implications of the Presidential Threshold for Elections According to Law Number 7 of 2017," *Lex Administratum* 7, no. 3 (2019), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/27563>.

²⁶ Ni'matul Huda dkk., *Realizing People's Sovereignty Through Quality Elections* (Yogyakarta: Student Library, LP3M UMY, Center for Constitutional and Government Studies FH UMY, 2019).

²⁷ Abdul Majid and Anggi Novita Sari, "Analysis of the Presidential Threshold in the Interests of Oligarchs," *Rechten Journal: Legal and Human Rights Research* 5, no. 2 (2023): 8–15.

constrains smaller or newly established parties from nominating presidential and vice-presidential candidates unless they form coalitions.²⁸

The applicants further incorporated expert legal opinions from figures such as Jimly Asshidqie, Hamdan Zoelva, and Bivitri Susanti, all of whom have critically assessed the presidential threshold. These experts deemed the 20% threshold illogical for simultaneous elections, arguing that it diminishes democratic space and restricts political rights, thereby impeding smaller parties from advancing their candidates and potentially excluding competent individuals. The petitioners also affirmed that their application was free from external influence or interests, asserting that their plea was purely based on academic engagement and constitutional advocacy.²⁹

The granting of this application stands in stark contrast to numerous previous rejections of challenges to Article 222 of Law Number 7 of 2017. The petitioners in case Number 62/PUU-XXII/2024 argued that these rejections occurred because the Constitutional Court traditionally viewed the public as mere objects rather than active subjects of democracy, leading to the failure of many submitted applications. Consequently, the plaintiffs underscored their legal standing as subjects of democracy, reiterating that the 33 rejected applications signified the unconstitutionality of Article 222 of Law Number 7 of 2017. Based on the presented facts, descriptions, and arguments, the petitioners primarily requested the Constitutional Court to fully grant their application and declare Article 222 of Law Number 7 of 2017 concerning General Elections unconstitutional and devoid of binding legal force.

Subsequently, the Constitutional Court, in its ruling, acceded to all the applicants' requests, declaring that the provisions of Article 222 of Law Number 7 of 2017 contradict the 1945 Constitution of the Republic of Indonesia and thus lack binding legal force. This decision was met with dissenting opinions from two constitutional judges, Daniel Yusmic P. Foekh and Anwar Usman. The removal of the requirement for presidential and vice-presidential candidates to be nominated by political parties or coalitions holding at least 20% of House of Representatives seats or 25% of the national valid votes from the previous legislative election is expected to significantly increase the number of contenders in the 2029 election.

²⁸ Alex Cahyono et al., "Critical Analysis of the Application of the Presidential Threshold in the 2024 General Election: A Normative Legal Perspective in Indonesia," *Journal of Supremacy*, 2023, 1–14.

²⁹Novianti Setuningsih, "Gen Z Who 'Shake' Indonesia Because Their Material Test Was Granted by the Constitutional Court," accessed April 24, 2025, <https://nasional.kompas.com/read/2025/01/06/08070011/para-gen-z-yang-mengguncang-indonesia-karena-uji-materinya-dikabulkan-mk?page=all>.

The abolition of the presidential threshold represents a progressive stride towards restoring Indonesia's democratic system by ensuring equitable rights and opportunities for all political entities. Minority parties can now nominate presidential and vice-presidential candidates without being constrained by seat percentages. This normative shift towards greater freedom expands the rights and equality provided by the state. However, while promoting political equality, it carries the potential risk of increased political fragmentation and societal polarization due to candidates emerging from diverse interest backgrounds. This raises questions regarding the quality of presidential candidates, necessitating rigorous selection mechanisms to ensure that nominees are highly qualified and deserving.³⁰

Notwithstanding these potential risks, the adverse implications of the threshold requirement were evident in past elections,³¹ where several political parties, such as PSI with Giring Ganesha³² the party associated with Tommy Soeharto,³³ PKPI with Gatot Nurmantyo,³⁴ and PBB with Yusril Ihza Mahendra, were unable to nominate their candidates.

This outcome aligns with the democratic morality encapsulated in Article 21 of the Universal Declaration of Human Rights, which stipulates: 1) Everyone possesses the right to participate in their country's government, either directly or through freely elected representatives. 2) Everyone has the right to equal access to public services in their country. 3) The will of the people must constitute the basis of governmental authority, expressed through periodic, genuine elections conducted under universal and equal suffrage, by secret ballot or an equivalent free voting procedure.³⁵

The principles outlined in Article 21 of the Universal Declaration of Human Rights reinforce the inclusive rights and equality of individuals to participate in the democratic process, including elections. It is evident that candidacy thresholds of 20% or 25% impede public participation in electoral competition, which is a fundamental aspect of democracy.

³⁰ Supriatno and Rozi, "THE EFFECT OF THE ELIMINATION OF THE PRESIDENTIAL THRESHOLD ON THE INDONESIAN POLITICAL SYSTEM."

³¹ Supriatno and Rozi.

³² Elza Astari Retaduari, "Giring Ganesha Announces Ready to Advance to the 2024 Presidential Election," accessed April 24, 2025, <https://news.detik.com/berita/d-5144623/giring-ganesha-umumkan-siap-maju-pilpres-2024>.

³³ CNN Indonesia, "Partai Berkarya: Snatched from Tommy Soeharto, Threatened to Miss Elections," accessed April 24, 2025, <https://www.cnnindonesia.com/nasional/20220819114909-617-836451/partai-berkarya-direbut-dari-tommy-soeharto-terancam-absen-pemilu>.

³⁴ Joko Panji Sasongko and RZR, "Gatot Nurmantyo Contacts PKS President regarding the 2019 Presidential Election," accessed April 24, 2025, <https://www.cnnindonesia.com/nasional/20180412203725-32-290458/gatot-nurmantyo-kontak-presiden-pks-terkait-pilpres-2019>.

³⁵ United Nations, "Universal Declaration of Human Rights," diakses 24 April 2025, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

In Indonesia, Article 28D paragraph 3 of the 1945 Constitution guarantees that "Every citizen has the right to equal opportunities in government." This constitutional right to participate in government is a fundamental human right. The phrase "Every citizen" specifies that this right is accorded exclusively to Indonesian citizens. In contrast, the broader concept of human rights often extends to "everyone," regardless of nationality, suggesting that constitutional rights are a subset of human rights.³⁶

The right to participate in government encompasses two dimensions: active rights, which pertain to the right to vote, and passive rights, which refer to the right to be elected. Thus, the 1945 Constitution safeguards the constitutional rights of its citizens in this regard. The concept of "*Musawah*," or equal rights for all individuals, is also supported within Islamic Sharia. Historical accounts consistently emphasize the equality of all humans, stemming from a common origin, with piety being the sole differentiator. This principle of *musawah* is deemed absolute and universally applicable, extending across individuals, communities, genders, legal proceedings, and leadership roles.³⁷

The emphasis on "Leaders and those who are led" within the concept of *musawah* is substantiated by Surah al-Hujurat verse 13 of the Qur'an, which states: "O humans, We have created you from a male and a female. Then We made you into nations and tribes so that you might know one another. Indeed, the most noble among you in the sight of Allah is the most pious. Indeed, Allah is All-Knowing, All-Knowing."³⁸

From the statement of the *concept of musawah*, what needs to be underlined is "Leaders and those who are led". This argument is based on the Qur'an surah *al-Hujurat* verse 13 which explains that the difference between humans is the element of piety which reads as follows:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ
أَتْقَىٰكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

³⁶The Drafting Team of the Directorate General of Human Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, *The Right to Participate in Government* (Directorate General of Human Rights, Ministry of Law and Human Rights of the Republic of Indonesia, 2013), 9–10.

³⁷Abdul Qadir Audah, *al-Tasyri' al-Jina'i al-Islami Muqarinan bi al-Qanuni al-Wadh'i* (Beirut: Dar al-Kutub, 2010), 316.

³⁸Audah, 316.

O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted [al-Hujarat 49:13].³⁹

According to al-Tafsir al-Muyassar, verse 13 of Surah al-Hujurat refers to Adam and Eve as the progenitors of humanity, stressing that lineage does not confer superiority among humans. The diversity of nations and tribes is intended for mutual acquaintance, and piety, rather than lineage, is established as the sole criterion for nobility in the sight of Allah.⁴⁰ Apart from al-Hujurat verse 13, the hadith of the prophet explains that the level of a human being is the same as a comb's teeth. The hadith reads:

عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: النَّاسُ كَأَسْنَانِ الْمِشْطِ

According to Sahl bin Sa'd al-Saa'idi, the Prophet stated that "Man is like a combed tooth." Abu Sulaiman offers two interpretations of this hadith. The first posits that all humans possess equal standing, akin to the uniform length of comb teeth, implying universal equality before the law. The second perspective suggests the hadith serves as a satirical critique of those who denigrate other tribes, likening such individuals to donkeys' teeth, which lack uniformity.⁴¹ Beyond Surah al-Hujurat and the hadith from Sahl bin Sa'd, another foundational Islamic principle emphasizes that Allah created humanity from earth, thereby rendering claims of lineage-based superiority unfounded.

Despite these principles, a particular group maintains that leaders must originate from the Banu Qurays, citing the prophetic hadith "الْأَمَةُ مِنْ قُرَيْشٍ" meaning "The leader comes from the Quraish." They argue that "leader" in this context is broad, encompassing state, religious, and other forms of leadership. Furthermore, Imam Bukhari and Imam Muslim supported this hadith, contending that scholarly groups rejecting the Qurayshi leadership requirement are incorrect. This position is reinforced by the consensus of the companions during the Saqifah event, who accepted the Prophet's statement regarding the Qurayshi origin of leaders.⁴²

Conversely, scholars opposing the requirement for leaders to be from the Banu Qurays argue that this hadith was later abrogated. They refer to a hadith from Anas during the Hajj

³⁹ Foundation for Translators/Interpreters of the Qur'an Translation Revision by Lajnah Pentashih Mushaf al-Qur'an Ministry of Religion of the Republic of Indonesia, *Department of Religion of the Republic of Indonesia Al-Qur'an and Its Translation* (Jakarta: PT Syaamil Cipta Media, 2005), 517.

⁴⁰ A Collection of Scholars, *al-Tafsir al-Muyassar* (Saudi Arabia: Majma' Malik Fahd Li Thibaah Mushaf Syarif, 2009), 517.

⁴¹ Abu Sulaiman al-Bisti, *al-Uzlah li al-Khatthabi* (Cairo: Matba'ah al-Salafiyah, 1920), 54.

⁴² Abdul Rauf al-Manawi, *Faydh al-Qadir Syarh al-Jami' al-Shagir* (Egypt: Maktabah Tijariah al-Kubro, 1937), 189.

Wada', which commands obedience even to an Abyssinian slave as a leader, thereby superseding the prior stipulation regarding Qurayshi descent. The substance of the Hajj Wada' sermon itself, which includes the principle of musawah among Muslims, also acts as a prerequisite for nullifying postulates that restrict leadership to the Banu Qurays.⁴³ Additionally, several early scholars believed that the Qurayshi leadership requirement was conditional, subject to at least two considerations: it is permissible for a non-Qurayshi to lead if a Qurayshi leader lacks the necessary capabilities or other leadership qualifications; and the hadith "The leader must be from the Banu Qurays" is an ikhbar, not an al-amru. Historically, the vast expansion of the Islamic state under the Umayyad and Abbasid caliphates made it impractical for all leaders across various regions to be from the Banu Qurays, thus allowing non-Qurayshis to be appointed as governors.⁴⁴

Abdul Wahhab al-Khallaf, in his work *al-Siyasah al-Syar'iyyah fi al-Syuun al-Dusturiyah wa al-Kharijiah wa al-Maliyah*, further elaborates on the concept of musawah, asserting that fiqh siyasah supports the constitutional rights granted by the state to all citizens based on Islamic legal principles. This includes civil and constitutional rights, emphasizing that Islam does not differentiate between individuals regarding adherence to laws and regulations, regardless of social status. All individuals are considered equal before the law.⁴⁵

In the Indonesian context, the right to participate in government is a fundamental constitutional right, recognized under Article 28D paragraph 3 of the 1945 Constitution and Law No. 39 of 1999 concerning Human Rights.⁴⁶ This underscores the constitution's commitment to equal rights for all citizens to run for public office in democratic elections. This constitutional right aligns with Quranic verses and prophetic hadiths advocating equality as well as the arguments of scholars who do not restrict leadership to the Banu Qurays,⁴⁷ Abdul Wahhab al-Khallaf's perspective further supports the notion that citizens are entitled to their constitutional rights.⁴⁸

This position is consistent with Article 28D paragraph 3 of the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights, and it aligns with the rationale behind

⁴³Najmuddin al-Hanafi, *Tuhfah al-Tarki is more of a Ya'mala than al-Malik*, ed. by Abdul Karim Muhammad Muti' al-Hamdawi, 2010, 18.

⁴⁴Nasir bin Abdul Karim al-Ali al-Aql, *at-Ta'liq ala Sharh al-Sunnah lil al-Barbahari* (Maktabah Syamilah, t.t.), 16, <https://shamela.ws/book/37718/52>.

⁴⁵Abdul Wahhab Khallaf, *al-Siyasah al-Syar'iyyah fi al-Syuun al-Dusturiyah wa al-Kharijiah wa al-Maliyah* (Dar al-Qalam, 1988), 46.

⁴⁶Ministry of Law and Human Rights of the Republic of Indonesia, *The Right to Participate in Government*, 9.

⁴⁷ al-Hanafi, *Tuhfah al-Tarki is more of a Ya'mala than al-Malik*, 18.

⁴⁸ Khallaf, *al-Siyasah al-Syar'iyyah fi al-Syuun al-Dusturiyah wa al-Kharijiah wa al-Maliyah*, 46.

eliminating the presidential threshold. It affirms the people's right to participate in government, encompassing both active and passive rights. Fiqh siyasah similarly upholds the principle of al-musawah for all individuals before laws and regulations, particularly concerning constitutional rights.

CONCLUSION

The removal of the presidential threshold for presidential and vice-presidential nominations in future elections broadens citizens' opportunities to exercise their constitutional rights, as guaranteed by Article 28D paragraph (3) of the 1945 Constitution. These rights are also upheld within the framework of *fiqh siyasah*, which emphasizes the universal principle of equality grounded in Islamic teachings. In the Indonesian context, this ensures that all citizens possess both active and passive rights related to political participation (HTSDP). Thus, the petitioners' request for a judicial review aims to promote wider public involvement in the nomination process while protecting equal constitutional rights for every individual—an objective that aligns closely with the core values of *fiqh siyasah* in upholding justice and inclusivity.

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